



Australian Government

Department of the Environment and Energy

GRANT AGREEMENT BETWEEN THE REEF TRUST AND GREAT BARRIER REEF FOUNDATION

Project Identification: 2600000202

**Commonwealth of Australia represented by
the Department of the Environment and
Energy (ABN 34 190 894 983)**

**Great Barrier Reef Foundation (ABN 82 090
616 443)**

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GRANT AGREEMENT

Parties

This Agreement is made between and binds the following parties:

1. **Commonwealth of Australia** represented by the **Department of the Environment and Energy (ABN 34 190 894 983)** of John Gorton Building, King Edward Terrace, Parkes, ACT 2600 (the **Department**)
2. **Great Barrier Reef Foundation (ABN 82 090 616 443)** of Level 13, 300 Ann Street, Brisbane, QLD 4000 (the **Foundation**)

Recitals

- A. 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**).
- B. The Department has agreed to fund the Activity from the Special Account, and the Foundation has agreed to perform the Activity, to further the objectives of the Reef Trust in accordance with the Determination.
- C. The Foundation recognises the need for it to perform the Activity in a way that achieves value for money with the Grant and which demonstrates good governance and financial management.
- D. The Foundation agrees to accept the Grant for the purposes, and subject to the terms and conditions, set out in this Agreement.

Operative provisions

In consideration of the mutual promises contained in this Agreement, the parties to this Agreement agree as follows:

1. Definitions and Interpretation

1.1. Definitions

1.1.1. In this Agreement, unless the context indicates otherwise:

Activity includes performance of all of the Components and the provision of the Activity Material to the Department;

Activity Material means any Material:

- a. created by the Foundation or a Subcontractor for the purposes of this Agreement and which is provided, or required to be provided, to the Department under the Agreement; or
- b. derived at any time from the Material referred to in paragraph a,

and includes all Plans and Reports;

Activity Period	means the period specified in clause 3.4;
Additional Component	means the part of the Activity that is set out in an Additional Component Schedule;
Additional Component Schedule	means a schedule agreed and executed by the parties using the template in Schedule 8;
Additional Grant Amount	means an amount of money to be paid by the Department to the Foundation for an Additional Component, as specified in an Additional Component Schedule;
Advisory Bodies	means the bodies and entities specified in clause 5.6.2;
Agreement	means this agreement and includes any Schedules and Annexures and the latest version of each finalised Plan;
Annexure	means any annexure or attachment to a Schedule;
Annual Work Plan	means the annual plan of work for the Activity that the Foundation is required to prepare and consult on in accordance with clause 5;
Approved Independent Auditor	means a person who is: <ul style="list-style-type: none"> a. registered as a company auditor under the <i>Corporations Act 2001</i> (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia or of CPA Australia; b. not a principal, member, shareholder, officer, agent, Subcontractor, employee or related entity of the Foundation or of a related body corporate (the terms 'related entity' and 'related body corporate' have the same meaning as in section 9 of the <i>Corporations Act 2001</i> (Cth)); and c. not the Foundation's Qualified Accountant;
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 Grant and which has a GST exclusive value of \$10,000 or more;
Auditor-General	means the office established under the <i>Auditor-General Act 1997</i> (Cth) and includes any other entity that may, from time to time, perform the functions of that office;
Australian Accounting Standards	refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth);
Australian Privacy Principle	has the same meaning as it has in the Privacy Act;

Australian Standard	means any standard published by Standards Australia Limited in the form applicable at the Commencement Date.
Board	means the board of directors of the Foundation;
Budget	means: <ul style="list-style-type: none"> a. in respect of the 2018-19 Financial Year - the budget for the activities described in the Gantt chart for that Financial Year as required by clause 5.5.1.a; and b. in respect of each subsequent Financial Year - the budget for the Activity, including each Component, that is contained in the Annual Work Plan for that Financial Year as required by clause 5.5.4;
Business Day	means a weekday other than a public holiday in the State or Territory specified in Item 7 of Schedule 1;
Cash Contributions	means all monetary contributions provided for a Component by a person other than the Foundation or the Commonwealth and includes the cash contributions specified in the relevant Annual Work Plan for the Component;
Commencement Date	has the meaning given in clause 3.1;
Commonwealth Material	means any Material: <ul style="list-style-type: none"> a. provided by the Department to the Foundation for the purposes of this Agreement; or b. derived at any time from the Material referred to in paragraph a, excluding the Activity Material;
Completion Date	has the meaning given in clause 3.3;
Component	means a component of the Activity described as such in a Schedule to this Agreement and includes any Projects for that component;
Confidential Information	means: <ul style="list-style-type: none"> a. the information described in Item 8 of Schedule 1; b. specific elements of the Co-Financing Strategy Plan and the Communication and Stakeholder Engagement Plan referred to in clause 5.5 that the parties agree in writing are confidential information for the purposes of this Agreement; and

- c. any information that the parties agree in writing after the Commencement Date is confidential information for the purposes of this Agreement;

Constitution	means the Foundation's constitution as amended from time to time, including any rules that are part of that constitution;
Department	includes any department, agency or authority of the Commonwealth which is from time to time responsible for administering this Agreement;
Director	means a person appointed to the position of a director or alternate director of the Foundation and acting in that capacity within the meaning of the <i>Corporations Act 2001</i> (Cth);
Dispose	means to sell, license, 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;
Existing Material	means all Material in existence prior to the Commencement Date that is: <ul style="list-style-type: none">a. incorporated in;b. supplied with, or as part of; orc. required to be supplied with, or as part of, the Activity Material;
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;
Foundation	includes the officers, employees, agents, volunteers, Subcontractors and successors of the Foundation;
Funding Recipient	means a Subcontractor to whom the Foundation pays part of the Grant to perform a Project as part of a Component and which directly benefits one or more sectors of the community (as opposed to a Subcontractor who is engaged by the Foundation to provide goods or services directly to the Foundation for its benefit);
Grant	means: <ul style="list-style-type: none">a. the money payable by the Department to the Foundation under this Agreement for the Components that exist at the Commencement Date as specified in clause 7.1.2; andb. any Additional Grant Component payable by the Department to the Foundation under this Agreement for an Additional Component as specified in an Additional Component Schedule,

	and includes any interest and other income the Foundation earns on those amounts;
Great Barrier Reef Marine Park Authority or GBRMPA	means the non-corporate Commonwealth entity established by section 6 of the <i>Great Barrier Reef Marine Park Act 1975</i> (Cth);
Great Barrier Reef World Heritage Area or GBRWHA	has the meaning given by the <i>Great Barrier Reef Marine Park Act 1975</i> (Cth);
GST	has the meaning in the GST Act;
GST Act	refers to the <i>A New Tax System (Goods and Services Tax) Act 1999</i> ;
In-Kind Contributions	means all non-monetary contributions provided for a Component by a person other than the Foundation or the Commonwealth and includes the in-kind contributions specified in the relevant Annual Work Plan for the Component;
Intellectual Property Rights	includes: <ul style="list-style-type: none"> 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; <p>but does not include:</p> <ul style="list-style-type: none"> d. Moral Rights; e. the rights of performers; or f. rights in relation to Confidential Information;
Investment Strategy	means the investment strategy for the Activity (including each Component) specified in Schedule 2, which the Foundation is required to prepare and consult on in accordance with clause 5;
Law	means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time anywhere in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law as applicable from time to time;
Material	means any thing in relation to which Intellectual Property Rights arise;

MERI	means Monitoring, Evaluation, Reporting and Improvement, as detailed on the Australian Government MERIT website at https://fieldcapture.ala.org.au/ ;
MERI Plan	means the plan detailing how the Foundation will conduct and complete the Activity, including relevant monitoring and evaluation activities to be undertaken, in accordance with this Agreement and the MERI, including timeframes for completion of various stages of the Activity, as amended from time to time;
MERIT	means the Monitoring, Evaluation, Reporting and Improvement Tool, which is the Department's online MERI tool.
Ministerial Forum	means the Ministerial forum, comprising 2 Australian Government Ministers (including the Minister responsible for administering the <i>Great Barrier Reef Marine Park Act 1975</i> (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: <ul style="list-style-type: none"> a. the right of attribution of authorship; b. the right of integrity of authorship; and c. the right not to have authorship falsely attributed;
Objectives	includes: <ul style="list-style-type: none"> a. the Agreement and Activity objective specified in clause 4; and b. the objectives for a Component specified in Item 1.1 of the Schedule for that Component;
Other Contributions	means the Cash Contributions and the In-Kind Contributions;
Outcomes	includes the outcomes for each Component as specified in Item 1.1 of the Schedule for that Component;
Performance Measures	means the performance measures to be agreed by the parties in accordance with clause 5.4 and Item 1.2 of Schedule 2;
Personal Information	has the same meaning as it has in the Privacy Act;
Personnel	means: <ul style="list-style-type: none"> a. in relation to the Foundation - any natural person who is a director or other officer, employee, contractor, agent or

professional advisor of either the Foundation or a Subcontractor; and

- b. in relation to the Department - any natural person, other than a person referred to in paragraph a, who is an officer, employee, contractor, agent or professional advisor of the Department;

Plan

means:

- a. a document or plan specified in clause 5.5.1;
- b. the Investment Strategy; and
- c. each Annual Work Plan,

that the Foundation has prepared, consulted on and finalised in accordance with clause 5, as updated or amended from time to time in accordance with this Agreement;

Privacy Act

refers to the *Privacy Act 1988* (Cth);

Project

means a project or activity that forms part of a Component and which the Foundation performs, or engages a Subcontractor to perform, to assist the Foundation achieve the Objectives and Outcomes of that Component;

Project Funds

means any Grant amount that a Funding Recipient receives from the Foundation to conduct a Project and includes any interest and other income the Funding Recipient earns on that amount;

Proposal

means the Foundation's proposal for the performance of the Activity dated 28 May 2018, to the extent approved by the Department and the Minister for the Environment and Energy;

Public Fund

means the Great Barrier Reef Foundation Public Fund established by the Foundation and entered on the Register of Environmental Organisations on 2 February 2001 and which has Deductible Gift Recipient status for the purposes of the *Income Tax Assessment Act 1997* (Cth);

Qualified Accountant

means a person who is a member of the Institute of Chartered Accountants in Australia or of CPA Australia;

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 (which at the Commencement Date is available [here](#)) and the draft *Reef 2050 Water Quality Improvement Plan 2017-2022* available [here](#), both as amended from time to time;

Reef 2050 Plan Integrated

means the document entitled *Reef 2050 Plan Integrated Monitoring and Reporting Strategy* prepared by GBRMPA

Monitoring and Reporting Strategy or RIMREP	and the Queensland Government (which at the Commencement Date is available at http://elibrary.gbrmpa.gov.au/jspui/bitstream/11017/2977/1/5883%20RIMReP%20Program%20Strategy%20Booklet.pdf) as amended from time to time;
Reef 2050 Plan Investment Framework	means the document entitled <i>Reef 2050 Plan Investment Framework</i> prepared by the Australian and Queensland Governments (which at the Commencement Date is available at https://www.environment.gov.au/system/files/resources/ea14e16d-15c1-4599-ac4a-53b9f1375f59/files/reef-2050-investment-framework.pdf) 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 Objectives, Outcomes and Investment Principles	means the document entitled <i>Reef Trust Objectives, Outcomes and Investment Principles</i> prepared by the Department (which at the Commencement Date is available at https://www.environment.gov.au/system/files/resources/34e3d346-376e-465d-a615-c5a7bb57a3a2/files/factsheet-reef-trust-objective-outcomes-investment-principles.pdf) as amended from time to time;
Reef Trust Special Account	means the special account entitled <i>Reef Trust Special Account 2014</i> established for the Reef Trust pursuant to subsection 78(1)(a) of the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth);
Reef Trust Special Account Determination	means the <i>PGPA Act (Reef Trust Special Account 2014) Determination 01</i> , which establishes the Reef Trust Special Account as amended from time to time;
Report	means Activity Material that is provided by the Foundation to the Department for reporting purposes as stipulated in Item 2 of Schedule 1;
Scaling Up Activity	means those activities referred to as such in Schedule 2;
Schedule	means a schedule to this Agreement which either: <ul style="list-style-type: none"> a. forms part of this Agreement on the Commencement Date; or b. is subsequently added to the Agreement in accordance with clause 5.1.3, and which may include Annexures and incorporate other documents by reference;

Subcontract	means a legally-binding written agreement between the Foundation and a Subcontractor (including both a contract for the provision of goods or services and a funding agreement with a Funding Recipient);
Subcontractor	means any entity (including one who is a Funding Recipient) that is engaged by the Foundation to undertake any part of the Activity;
Term	means, unless this Agreement is terminated earlier, the period between the Commencement Date and the Completion Date;
Termination Event	means an event specified in clause 25.2; and
WHS	means work, health and safety.

1.2. Interpretation

1.2.1. In this Agreement, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. a reference to a clause is a reference to a clause in this Agreement;
- i. a reference to an Item is a reference to an Item in a Schedule;
- j. a Schedule and any Annexures form part of the Agreement;
- k. if any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of a Schedule (and attachments if any), the terms and conditions of the clauses prevail;
- l. if any conflict arises between any part of a Schedule and any part of an Annexure, the Schedule prevails; and
- m. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Guidance on construction of Agreement

- 1.3.1. This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible, all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If any clause in this Agreement is void or otherwise unenforceable, then it will be severed to the extent it is void and unenforceable and the rest of the Agreement remains in force.
- 1.3.4. A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.
- 1.3.5. The word 'include' will not be construed as a term of limitation.

2. Nature of Agreement

- 2.1.1. The Department provides the Grant from the Reef Trust Special Account to the Foundation on the terms and conditions specified in this Agreement. The Grant will be paid by the Department to the Foundation on or before 29 June 2018. Throughout the Activity Period, the Foundation agrees to spend the Grant consistently with the purposes of the Reef Trust Special Account Determination and so as to achieve the Objectives and thereby assist to protect the Great Barrier Reef World Heritage Area.
- 2.1.2. Subject to clause 3.2, this Agreement is, and is intended to be, legally binding on the parties.

3. Duration of Agreement

3.1. Commencement Date

- 3.1.1. Subject to clause 3.2, this Agreement commences on the later of:
 - a. the date it is signed by both parties; or
 - b. the date that the legislation appropriating the Grant amount to the Reef Trust Special Account (being the Appropriation Bill (No. 5) 2017-18) receives Royal Assent.

3.2. Condition Precedent

- 3.2.1. This Agreement will not commence, and will have no legal force or effect unless Appropriation Bill (No. 5) 2017-18 receives Royal Assent on or before 29 June 2018.

3.3. Completion Date

- 3.3.1. Unless terminated earlier, this Agreement expires on the day after the date that the Foundation has:
 - a. completed the Activity;
 - b. provided all Reports and participated in all evaluation activities; and

- c. fully acquitted the Grant,
as required under this Agreement to the satisfaction of the Department.

3.4. Activity Period

- 3.4.1. The Activity commences on 1 July 2018. Unless the Agreement is terminated earlier, the Activity ends on 30 June 2024.

4. Objectives

- 4.1.1. The principal objective of the Agreement and the Activity is to achieve significant, measurable improvement in the health of the Great Barrier Reef World Heritage Area during the Term of this Agreement in accordance with the Reef 2050 framework set out in clause 5.2.1 and underpinned by innovation, science and community engagement.
- 4.1.2. The expected outcomes of the Activity are:
 - a. improved management of the Great Barrier Reef World Heritage Area and relevant activities in the adjacent catchments;
 - b. protection of attributes that contribute to the outstanding universal value of the Great Barrier Reef World Heritage Area, including species, habitats and indigenous values; and
 - c. management of key threats to the Great Barrier Reef World Heritage Area, including poor water quality and crown-of-thorns starfish outbreaks.
- 4.1.3. The Outcomes and Objectives of each Component are set out in the Schedule for that Component.

5. Activity

5.1. Activity Components

- 5.1.1. The Foundation agrees to perform the Activity, and each of its Components, in accordance with this Agreement.
- 5.1.2. At the Commencement Date, the Agreement includes the following Components:
 - a. Administrative activities (including the Scaling Up Activities), as set out in Schedule 2;
 - b. Water quality activities, as set out in Schedule 3;
 - c. Crown-of-Thorns Starfish control activities, as set out in Schedule 4;
 - d. Reef restoration and adaptation science activities, as set out in Schedule 5;
 - e. Indigenous and community reef protection activities, as set out in Schedule 6; and
 - f. Reef integrated monitoring and reporting activities, as set out in Schedule 7.
- 5.1.3. During the Activity Period, the parties may add one or more Additional Components to this Agreement by agreeing, completing and executing another Schedule to this Agreement using the template in Schedule 8. On execution by the parties, the

additional Schedule will automatically become part of, and be subject to the terms of, this Agreement.

5.2. Conduct of the Activity

- 5.2.1. The Foundation agrees to carry out the Activity and each of its Components, and ensure each Project is carried out, for the benefit of the Great Barrier Reef World Heritage Area in a manner that gives effect to and is consistent with each of the following:
- a. the requirements of this Agreement;
 - b. the following purposes of the Reef Trust Special Account Determination:
 - i. to improve water quality and the coastal habitat in the Great Barrier Reef World Heritage Area;
 - ii. to address threats to the environment of the Great Barrier Reef World Heritage Area; and
 - iii. to protect, repair or mitigate damage to the Great Barrier Reef World Heritage Area;
 - c. the Reef 2050 Plan, including its actions, targets, objectives and outcomes and the Reef 2050 Plan Investment Framework;
 - d. the Reef Trust Objectives, Outcomes and Investment Principles; and
 - e. the Reef 2050 Plan Integrated Monitoring and Reporting Strategy.
- 5.2.2. The Foundation agrees to develop the Plans, including the Investment Strategy and Annual Work Plans, and select and implement Projects, which will achieve the Objectives in a manner that is consistent with and gives effect to the requirements, purposes and documents specified in clause 5.2.1.
- 5.2.3. The Foundation agrees to:
- a. carry out the Activity strategically, diligently, efficiently, effectively and to a high ethical standard; and
 - b. take an innovative, coordinated and collaborative approach to the conduct of the Activity.
- 5.2.4. In consideration of the provision of the Grant, the Foundation must perform the Activity:
- a. within the Activity Period and in accordance with the Budget;
 - b. so as to meet the agreed Project completion time frames and other Activity performance requirements, and where no time frames or Activity performance requirements are specified, promptly and without delay;
 - c. consistently with and so as to deliver the Objectives and Outcomes, and meet all reporting requirements, in accordance with the requirements of this Agreement; and

- d. otherwise in accordance with the provisions of this Agreement and all applicable Laws.

5.3. Guiding principles

- 5.3.1. The Foundation will use the following guiding principles in developing and implementing the Investment Strategy and Annual Work Plans:
 - a. seek to address the highest priority threats to the Great Barrier Reef in the highest priority locations;
 - b. protect and improve the Great Barrier Reef through on-ground change;
 - c. complement previous and current investments in the Great Barrier Reef and associated catchment area;
 - d. effect the most amount of environmental benefit for each dollar of the Grant;
 - e. use co-investment, strategic collaborations and partnerships in Projects; and
 - f. select investments guided by the best available scientific research and expert knowledge.

5.4. Performance Measures

- 5.4.1. By 31 March 2019, the Foundation and the Department will agree on clear, outcome-based and independently verifiable performance measures for the Activity and each Component. These measures will draw on insights from the ANAO's report entitled 'Reef Trust - Design and Implementation' dated 24 November 2016 and available at: <https://www.anao.gov.au/work/performance-audit/reef-trust-design-and-implementation>.

5.5. Plans

- 5.5.1. The Foundation is required to prepare and finalise the following Plans as further described in, and by the date specified in, Item 1.2 of Schedule 2:
 - a. Gantt chart setting out the Foundation's plan and associated budget for implementing the Agreement in the 2018-19 Financial Year;
 - b. Investment Strategy and Annual Work Consultation Plan;
 - c. Resourcing Plan;
 - d. Co-Financing Strategy Plan;
 - e. Risk Management Plan;
 - f. Communication and Stakeholder Engagement Plan;
 - g. Fraud Prevention Plan; and
 - h. Monitoring and Evaluation Plan (including the MERI Plan for the Activity and the performance measures as per clause 5.4.1).
- 5.5.2. The Foundation will give the Department drafts of each of the Plans referred to in clause 5.5.1 and take into account any comments of the Department in finalising the Plans.

- 5.5.3. The Foundation is required to annually review, and where necessary update, each Plan specified in clause 5.5.1.
- 5.5.4. In addition, the Foundation is required to prepare, consult on and finalise an Investment Strategy and an Annual Work Plan that sets out the Foundation's priority activities and outcomes and budget for each Component for each Financial Year it covers.
- 5.5.5. Each Plan must give effect to and be consistent with the requirements, purposes and documents specified in clause 5.2.1.
- 5.5.6. The Foundation agrees to obtain expert advice in its development and implementation of each Plan.

5.6. Consultation on Investment Strategy and Annual Work Plans

- 5.6.1. The parties acknowledge that the Investment Strategy and Annual Work Consultation Plan is intended to set out the methodology by which the Investment Strategy and each Annual Work Plan will be developed, finalised and updated.
- 5.6.2. The Investment Strategy and Annual Work Consultation Plan will contain provision for consultation by the Foundation with the following bodies in developing and finalising the Investment Strategy and each Annual Work Plan:
 - 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,(together the **Advisory Bodies**).
- 5.6.3. The Investment Strategy and Annual Work Consultation Plan will include provision for:
 - a. the Foundation to give the Department a draft of the Investment Strategy and each Annual Work Plan and to take into account any comments of the Department in its development;
 - b. the respective roles of the Foundation and the Department in engaging those Advisory Bodies other than the Department in the consultation process;
 - c. the timing of the development of the Investment Strategy and Annual Work Plans;
 - d. the revision and updating of the Investment Strategy and Annual Work Plans; and
 - e. the anticipated roles of those Advisory Bodies other than the Department in the consultation process.

5.7. Finalisation and publication of Plans

5.7.1. Once the Foundation's Board has approved a Plan, the Foundation will within 10 Business Days:

- a. give a copy of the Plan to the Department; and
- b. publish the Plan, other than the Co-Financing Strategy Plan and the Communication and Stakeholder Engagement Plan, on the Foundation's website.

5.7.2. The Foundation agrees to perform the Activity in accordance with the approved Plans.

5.7.3. The Foundation agrees to re-apply the consultation process contemplated in or by clauses 5.5 and 5.6 in respect of any material updates or amendments that the Foundation proposes to a Plan that has previously been approved by the Foundation's Board.

5.8. Liaison and evaluation

5.8.1. The Foundation agrees to liaise with and provide all reasonable assistance and information as requested by the Department in relation to this Agreement and the Activity.

5.8.2. The Foundation agrees to focus on the monitoring and evaluation of the Activity's Outcomes and to participate in any review or evaluation of this Agreement that the Department conducts, or requests the Foundation engage an independent third party to conduct, at any time during or at the end of the Activity Period.

5.9. Activity contracting

5.9.1. Subject to the requirements in this clause 5.9, the Foundation may subcontract the performance of some or all of a Component to an appropriately qualified and experienced person.

5.9.2. The Foundation agrees to have a Subcontract with each Subcontractor. As required by clause 30.1, the terms of each Subcontract must be consistent with, and give effect to, the Foundation's obligations under this Agreement and contain all of the provisions that Schedule 10 requires be included in a Subcontract of that type.

5.9.3. The Foundation agrees to generally award each Subcontract for the Activity in accordance with principles of open, transparent and effective competition, value for money and fair dealing. The Foundation agrees to select Subcontractors using rigorous and robust assessment criteria and after having conducted all reasonable due diligence on the entity selected for a Subcontract. Where the Foundation elects to engage Subcontractors other than as a result of an open, competitive process, it will provide the Department with notice of the reasons and justifications for the approach taken by the Foundation.

5.9.4. In addition, the Foundation agrees not to enter into one or more Subcontracts during the Term totalling more than \$10,000 excluding GST with an individual 'related entity' or a 'related body corporate' (as those terms are defined in section 9 of the *Corporations Act 2001* (Cth)) of the Foundation. The Foundation will advise the

Department within 10 Business Days after the Foundation enters into any Subcontract with a 'related entity' or 'related body corporate' that is not prohibited by this clause, providing details of its cost, scope and the related entity/body corporate involved.

- 5.9.5. The Foundation agrees not to enter into a Subcontract under this Agreement with a Subcontractor named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).
- 5.9.6. The Foundation agrees to make available to the Department (if requested) details of all Subcontractors it engages in the performance of the Activity.
- 5.9.7. The Foundation acknowledges, and agrees to inform all Subcontractors that, the Department may publicly disclose the names of any Subcontractors engaged in the performance of the Activity.

5.10. Responsibility of the Foundation

- 5.10.1. The Foundation is fully responsible for the performance of the Activity and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of:
 - a. subject to clause 21.1.2, any involvement by the Department or any other Commonwealth agency in the performance of the Activity;
 - b. any Subcontracting of the Activity by the Foundation; or
 - c. the payment of the Grant to the Foundation.

5.11. Records

- 5.11.1. The Foundation agrees to create and maintain full and accurate accounts and records of the conduct of the Activity, including all:
 - a. progress of each Component and the selection and performance of each Project for that Component;
 - b. receipt and use of the Grant and Other Contributions for each Component; and
 - c. the creation, acquisition and Disposal of Assets,and retain them for a period of no less than 7 years after the Completion Date.

5.12. Reports

- 5.12.1. The Foundation acknowledges that the Department requires the Reports to assist the Department meet its own accountability and reporting requirements, including under the *Public Governance, Performance and Accountability Act 2013* (Cth) and in relation to its administration of the Reef Trust.
- 5.12.2. The Foundation agrees to provide written Reports:
 - a. in relation to the Activity - in the manner specified in Item 2 of Schedule 1; and
 - b. in relation to a specific Component – in the manner specified in the Schedule, and Annual Work Plan, for that Component.

- 5.12.3. Each Report is required to be:
- a. in the format and contain the information; and
 - b. provided to the Department and any other entities by the date, specified in the relevant Schedule or Annual Work Plan or as otherwise required by the Department.
- 5.12.4. If the Department, acting reasonably, considers that a Report does not adequately address the relevant reporting requirements specified in the relevant Schedule or Annual Work Plan, the Department will require the Foundation to amend the Report to address those inadequacies and resubmit the Report to the Department for its review. This process may occur more than once.

6. Governance requirements

6.1. Governance policies and procedures

- 6.1.1. The Foundation agrees to employ best practice corporate governance arrangements and engage governance and risk management experts to assist it to develop and implement robust governance, anti-corruption, fraud prevention, audit and risk management policies and procedures that are based on and reflect current relevant Australian Standards.

6.2. Commonwealth Observer

- 6.2.1. In this clause 6.2:
- a. **Board** means the Foundation's board of Directors and includes any committee or subcommittee formed in connection with the administration of the Grant and/or this Agreement; and
 - b. **Commonwealth Observer** means a person appointed by the Department to act in that position from time to time and includes any replacement, substitute or alternate nominated by the Department.
- 6.2.2. The Department may appoint a Commonwealth Observer.
- 6.2.3. The role of the Commonwealth Observer is to observe and report to the Department on matters relating to the administration of the Grant and the performance of this Agreement by the Foundation.
- 6.2.4. The Commonwealth Observer is entitled to:
- a. receive notice of meetings of the Board;
 - b. subject to clause 6.2.6, attend any meeting of the Board or the members of the Foundation as the Commonwealth Observer sees fit; and
 - c. access such information held by, or under the control of, the Foundation or the Board as the Commonwealth Observer requests for the purposes of reporting to the Department.
- 6.2.5. The Commonwealth Observer is not entitled to exercise any of the rights of the Commonwealth Observer until the Commonwealth Observer has entered into an

agreement with the Foundation, substantially in the form set out in Schedule 9, relating to confidentiality and access to, and return and destruction of, documents and information received by the Commonwealth Observer.

- 6.2.6. The Foundation may exclude the Commonwealth Observer from any meeting, or part of a meeting, of the Board in one or more of the following circumstances:
- a. there is a bona fide dispute with the Department relating to this Agreement to be considered at the meeting;
 - b. the Foundation is considering giving a notice of breach or enforcing its rights against the Department under this Agreement;
 - c. the Board is considering its response to a notice of breach from, or threatened or actual legal action by, the Department against the Foundation under this Agreement;
 - d. the Board believes the Commonwealth Observer's presence at the meeting or part of the meeting would result in a breach of the Board's statutory or fiduciary duties to the Foundation or a breach of applicable law;
 - e. the meeting or part of the meeting does not relate to this Agreement or any part of the Activity performed under it.
- 6.2.7. Where the Foundation excludes the Commonwealth Observer under clause 6.2.6, contemporaneously with or within 24 hours after the exclusion of the Commonwealth Observer, the Foundation will provide the Department with written reasons (by reference to the circumstances in clause 6.2.6) for excluding the Commonwealth Observer. To avoid doubt, the exclusion of the Commonwealth Observer from a meeting or part of a meeting pursuant to clause 6.2.6 will not be a breach by the Foundation of this Agreement.
- 6.2.8. The Commonwealth Observer may report to the Department on any matter relating to the administration of the Grant or this Agreement.
- 6.2.9. The Department may only appoint one Commonwealth Observer at any given time. If the Department nominates a replacement, substitute or alternate person, that person shall become the Commonwealth Observer.
- 6.2.10. The Foundation is not responsible for any expenses incurred by the Commonwealth Observer to attend any meetings or exercise any of the entitlements of the Commonwealth Observer under this clause 6.2. To avoid doubt, the Foundation will not seek to recover from the Department or the Commonwealth Observer the costs of making available to the Commonwealth Observer the information referred to in clause 6.2.4.
- 6.2.11. The Foundation will not be in breach of this Agreement solely due to any act or omission by the Commonwealth Observer.
- 6.2.12. The Department indemnifies the Foundation from and against any:
- a. cost or liability incurred by the Foundation;
 - b. loss of or damage to property of the Foundation; or

- c. loss or expense incurred by the Foundation 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 the Foundation, arising from:
- d. any breach by the Commonwealth Observer of the agreement referred to in clause 6.2.5; or
- e. any act or omission involving fault (as defined in clause 21.2.1) by the Commonwealth Observer in connection with this Agreement including in connection with the agreement referred to in clause 6.2.5.

6.3. Partnership Management Committee

- 6.3.1. The Foundation will establish a Partnership Management Committee of the Board (**PM Committee**) for the carrying out of the Activity and the management of this Agreement.
- 6.3.2. The Foundation agrees that the Department may appoint one person as a member of the PM Committee. The appointee may be the Commonwealth Observer or another Departmental nominee. The appointee shall have the same role, rights and obligations as the other members of the PM Committee.

6.4. Management of the Foundation, Activity and Grant

- 6.4.1. The Foundation agrees that a person specified in this clause 6.4 may not have a role in the management of the Foundation, the Activity or the Grant:
 - a. a person who is an undischarged bankrupt;
 - b. a person who has in operation a composition, deed of arrangement or deed of assignment with his or her creditors under the law relating to bankruptcy;
 - c. a person who has suffered final judgment for a debt and the judgment has not been satisfied;
 - d. 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:
 - i. that conviction is regarded as spent under paragraph 85ZM(2) (taking into consideration the application of Division 4 of Part VIIC);
 - ii. the person was granted a free and absolute pardon because the person was wrongly convicted of the offence; or
 - iii. the person's conviction for the offence has been quashed; or
 - e. 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.
- 6.4.2. Where a person falls or is discovered as falling within any of clauses 6.4.1.a to e, the Foundation will be in breach of clause 6.4.1 if the Foundation does not immediately:

- a. if and to the extent that the removal of the person from his or her role in the management of the Foundation, the Activity or the Grant is within the power of the Board, remove the person from that role; or
- b. otherwise, take steps to convene and hold as soon as practicable, a meeting of the members of the Foundation, at which a resolution to approve the removal of the person from that role is to be put and the Board makes a recommendation that the members approve the resolution.

6.4.3. The Foundation agrees to notify the Department if and/or when the removal of the person has occurred.

6.5. Constitution and operations

6.5.1. The Foundation warrants that nothing in its Constitution conflicts with its obligations under this Agreement.

6.5.2. The Foundation agrees to provide a copy of the Foundation's Constitution to the Department upon request by the Department.

6.5.3. The Foundation agrees to notify the Department whenever there is a proposed or actual material change in the Foundation's Constitution, structure, management or financial position, including the details and date of the proposed or actual change.

6.6. Notification

6.6.1. In the event that the Foundation applies to come under, receives a notice requiring the Foundation to show cause why the Foundation should not come under, receives a notice or an application from any other person for the Foundation to come under or has otherwise come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* or an order has been made for the purpose of placing the Foundation under external administration, the Foundation agrees to notify the Department within 5 Business Days after the date of the making or receipt of such a notice or application or the making of such an order.

7. Grant

7.1. Payment of the Grant

7.1.1. Subject to the terms of this Agreement, and sufficient Commonwealth funds being available for the Activity, the Department agrees to provide the Foundation with the Grant from the Reef Trust Special Account for the Activity on or before 29 June 2018.

7.1.2. As at the Commencement Date, the total GST exclusive amount of the Grant to be paid by the Department to the Foundation on or before 29 June 2018 for the Components in Schedule 2 to Schedule 7 inclusive is \$443,303,000.

7.1.3. The Grant also includes any Additional Grant Amount that is specified in an Additional Component Schedule. That Additional Component Schedule will set out the manner in, purpose for and time(s) at which that Additional Grant Amount will be paid to the Foundation.

7.1.4. The Department is not responsible for the provision of any money to the Foundation in excess of the Grant.

7.2. Use of the Grant

7.2.1. The Foundation agrees to manage and spend the Grant efficiently, effectively, economically and ethically in accordance with this Agreement so as to achieve the Objectives consistently with the purposes and documents specified in clause 5.2.1.

7.2.2. A Grant amount specified in a Schedule for a Component may only be spent on that Component in accordance with that Schedule and the relevant Annual Work Plan for that Component.

7.2.3. A variation pursuant to clause 30.4 is required to reallocate a Grant amount between Components.

7.2.4. Interest and other income the Foundation earns on the Grant must only be used for the Component in Schedule 2, unless:

- a. the Foundation earns interest or other income in excess of the amount permitted to be used for that Component; or
- b. the interest or other income is not required by the Foundation for that Component,

in which case the excess interest or other income may be used for another Component. For clarity, the maximum amount of interest or other income which may be expended on the Component in Schedule 2 is \$21,825,300.00 excluding GST. Any amount of interest or other income in excess of that must be expended on the Components in Schedule 3 to Schedule 7.

7.2.5. The Foundation agrees to do all things necessary to ensure that all payments from the Grant that it makes to third parties (including Subcontractors) are correctly made and properly authorised and that the Foundation maintains proper and diligent control over the incurring of all liabilities.

7.2.6. The Foundation may not use any part of the Grant for any of the following:

- a. costs incurred by the Foundation before the Commencement Date;
- b. 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 *Environment Protection Act 1994* (Qld);
- c. construction work on or acquisition of land or other real property unless that construction work or acquisition directly furthers the outcome of a Component (excluding Component in Schedule 2);
- d. on-ground activities outside the Reef Catchment;
- e. legal assistance or advice relating to any actual or potential claim against, or the avoidance of any actual or purported obligation owed to, the Department or the Commonwealth (including under this Agreement);
- f. a Subcontract prohibited by clause 5.9.4 or a use prohibited by clause 11.5.1;

- g. to conduct fundraising activities which involve the acquisition of items that are used as prizes for those fundraising activities;
- h. any activity that is likely to have an adverse environmental impact; or
- i. the duplication of an activity that is already being undertaken for the benefit of the Great Barrier Reef World Heritage Area.

7.2.7. The Department is not liable to the Foundation or any other person for any cost overruns, or debts that the Foundation incurs, in relation to the Activity.

7.3. Account and Financial Records

7.3.1. The Foundation agrees to ensure that, other than any part of the Grant that is being invested in accordance with clause 7.3.3 to 7.3.5 inclusive, the Grant is held in an account in the Foundation's name and which the Foundation solely controls, with a deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia. The details of this bank account are specified in Item 1 of Schedule 1.

7.3.2. The Foundation agrees to ensure that the bank account referred to in clause 7.3.1:

- a. is titled the Reef Trust Partnership Account;
- b. is established solely for the purposes of the Activity;
- c. is an account maintained in Australia;
- d. earns interest not exceeding an ordinary commercial rate; and
- e. is separate from the Foundation's other operational accounts and its Public Fund.

7.3.3. The Foundation may invest any part of the Grant that is not at the relevant time required for use in connection with the Activity:

- a. in any investments in which the Foundation is authorised by law to invest the Public Fund;
- b. in a manner which is consistent with sound commercial practice; and
- c. as permitted under a written investment policy of the Foundation in relation to the Grant, which is consistent with sound commercial practice and in respect of which the Foundation has consulted the Department prior to the finalisation of the policy.

7.3.4. The Foundation may not invest any part of the Grant until the investment policy referred to in clause 7.3.3.c has been finalised in consultation with the Department.

7.3.5. The parties agree that the following principles reflect 'sound commercial practice' for the purposes of this Agreement:

- a. investment of the Grant will be conservative and not speculative;
- b. investment of the Grant will be in investment grade financial products with a long-term rating of BBB or higher by Standard and Poor's or Moody's;

- c. investment of the Grant will be sensitive and appropriate to the purposes of the Activity and the Objectives of this Agreement and the Reef 2050 Plan;
- d. it is not appropriate to invest the Grant in organisations engaged in the products, services and activities specified on page 2 of the Australian Government Department of Finance's *Information Sheet: Accepting Sponsorship Guide*¹;
- e. the Grant must not be invested in any entities that are specified on the website of the Australian Government's Future Fund as being excluded from the Future Fund's investment portfolio;
- f. if any part of the Grant is held in a bank account, it will be the bank account referred to in clause 7.3.1;
- g. the Foundation must not make any loans, advances or financial accommodation with the Grant to or for the benefit of any other person;
- h. the Foundation will not invest in any 'related body corporate' or 'related entity' (as those terms are defined in section 9 of the *Corporations Act 2001* (Cth)) of the Foundation, unless the entity is listed on the Australian Securities Exchange; and
- i. no part of the Grant will be invested in derivative financial products except for hedging risk.

7.3.6. The Foundation may not invest any part of the Grant except as set out in clauses 7.3.2 to 7.3.5 inclusive.

7.3.7. The Foundation agrees, in relation to the bank account referred to in clause 7.3.1:

- a. to provide the Department and the authorised deposit-taking institution with a written authority for the Department to obtain any details relating to any use of the account directly from the bank with which it is held;
- b. if the account changes, to notify the Department within 10 Business Days after the change occurring and provide the Department with details of the new account;
- c. to ensure that as a minimum, two signatories are required to operate the account; and
- d. that the Department and the bank will enter into an account bank deed to give effect to the priority intended by clause 11.3.1 or, if there is no account bank deed in place, that if any of the events set out in clauses 27.1.1.a to d occur, the Department may give notice to the bank that the Department has the right to control account transfers without the consent of the Foundation from the date specified in the notice.

¹ This document is available at: <https://www.finance.gov.au/sites/default/files/Accepting-Sponsorship-Information-Sheet.pdf?v=1>

- 7.3.8. The Foundation agrees to provide to the Department details of the investments made with any part of the Grant which is not retained in the bank account referred to in clause 7.3.2, including:
- a. the nature of investment made;
 - b. the identity of the institution or organisation with or in which it is held;
 - c. details of the expected return on the investment; and
 - d. details on the actual return of the investment.
- 7.3.9. In respect of those investments referred to in clause 7.3.8, the Foundation will provide the required details for the matters in paragraphs a and b of that clause to the Department when the investment is made and when any material change to the investment is made by the Foundation or otherwise occurs. The Foundation may provide the details required by paragraphs c and d of that clause by way of 6 monthly reports during the Term.
- 7.3.10. The Foundation agrees to:
- a. keep financial accounts and records relating to the Activity that identifies:
 - i. all receipts and payments related to the Activity with receipts and payments for the Grant and Other Contributions, and each Component, shown separately;
 - ii. all investments in which any part of the Grant is invested; and
 - iii. all interest and other income earned on the Grant;
 - b. prepare financial statements for each Financial Year in accordance with Australian Accounting Standards, including:
 - i. an income and expenditure statement for the Activity, and each Component, for the Financial Year to date; and
 - ii. a register of the Assets created, acquired, written-off or Disposed of during the Financial Year to date; and
 - c. 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).

8. Other Contributions

- 8.1.1. In accordance with the Co-Financing Strategy Plan specified in clause 5.5.1, the Foundation agrees to seek Cash Contributions and In-kind Contributions for each Component (other than the Component in Schedule 2), including those specified in the Annual Work Plans for that Component.
- 8.1.2. The Foundation agrees to create a separate sub-fund within its Public Fund for the purpose of recording all tax deductible Cash Contributions that are paid to it for the Activity.

9. Taxes, duties and government charges

9.1. Foundation to pay all taxes

- 9.1.1. Except as provided by this clause 9, the Foundation agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.
- 9.1.2. Unless otherwise indicated, the Grant and all other consideration for a supply made under this Agreement is exclusive of any GST imposed on the supply.
- 9.1.3. If one party (the **supplier**) makes a taxable supply to the other party (the **recipient**) under this Agreement, on receipt of a tax invoice from the supplier, the recipient will pay without set-off an additional amount to the supplier equal to the GST imposed on the supply in question.
- 9.1.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

9.2. Recipient created tax invoices

- 9.2.1. The parties acknowledge and agree that each party:
- a. is registered for GST purposes;
 - b. has quoted its Australian Business Number to the other; and
 - c. is required to tell the other of any changes to the matters listed in paragraph a and b above.
- 9.2.2. The Department will issue a 'recipient created tax invoice', as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), and any adjustment notes for taxable supplies by the Foundation to the Department under this Agreement, within 28 days after determining the value of the taxable supplies in question.
- 9.2.3. The Foundation agrees not to issue tax invoices or adjustment notes for taxable supplies by the Foundation to the Department under this Agreement.
- 9.2.4. Both parties agree to comply with the determination scheduled to GSTR 2000/10.
- 9.2.5. The Department will not issue tax invoices or adjustment notes for taxable supplies by the Foundation to the Department under this Agreement at any time either party fails to comply with the determination scheduled to GSTR 2000/10.

10. Assets

10.1. Acquisition of Asset

- 10.1.1. This clause applies to each Asset that is created or acquired with the Grant.

10.2. Foundation's responsibilities for Asset

- 10.2.1. Throughout the Term, the Foundation agrees to:
- a. use any Asset in accordance with this Agreement for the purposes of the Activity;

- 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 the Department's interest, if any, in the Asset under the 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 and containing the details as described in Item 3 of Schedule 1 and, as and when requested by the Department, provide a copy of the Assets register to the Department.

10.3. **Sale or Disposal of Asset during Term**

10.3.1. In this clause 10:

- a. **Depreciated** means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards; and
- b. **Undepreciated** means the value of an Asset that has not been Depreciated.

10.3.2. If the Foundation Disposes of an Asset during the Activity Period, the greater of the following amounts forms part of the Grant and must be used for the same Component that the Asset was used for:

- a. the proportion of the sale proceeds from the Asset; and
- b. 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 Grant.

10.4. **Loss, damage, etc of Asset**

10.4.1. If any of the Assets are lost, damaged or destroyed, the Foundation agrees to ensure that the Asset is promptly reinstated, including from the proceeds of the insurance, and this clause 10 continues to apply to the reinstated Assets. The proportion of any surplus from the proceeds of the insurance that the Foundation receives, which reflects the proportion of the cost of the Asset that was funded from the Grant, must be notified to the Department, forms part of the Grant and must be used for the Activity.

10.5. **Dealing with Asset**

10.5.1. If, at the end of the Activity Period or the earlier termination of this Agreement (**Relevant Date**), an Asset has not been fully Depreciated, the Department may, by written notice, require the Foundation to:

- a. pay to the Department within 20 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 Grant;

- b. sell the Asset for the best market price reasonably obtainable and pay to the Department, 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 Foundation) that was funded from the Grant; or
- c. continue to use the Asset for the purposes, and in accordance with any conditions, notified by the Department.

10.5.2. Amounts payable to the Department under clause 10.5.1 form part of the Grant and are recoverable as such.

11. Security in favour of the Commonwealth

11.1. Definitions

11.1.1. In this clause 11:

- a. **Control Event** means, in relation to any Secured Property:
 - i. that is or would have been a Revolving Asset:
 - A. the Foundation breaches, or attempts to breach, clause 11.5 in respect of the Secured Property or takes any step which would result in it doing so;
 - B. a person takes a step (including signing a notice or direction) which may result in Taxes, or any amount owing to an authority, ranking ahead of the secured interest in the Secured Property under this Agreement;
 - C. distress is levied or a judgment, order or Encumbrance is enforced or a creditor takes any step to levy distress or enforce a judgment, order or Encumbrance, over the Secured Property; or
 - D. the Department gives a notice to the Foundation that the Secured Property is not a Revolving Asset. (However, the Department may only give a notice if the Department reasonably considers that it is necessary to do so to protect its rights under this Agreement or if a Termination Event is subsisting); or
 - ii. in respect of all Secured Property that is, or would have been, Revolving Assets:
 - A. a voluntary administrator, liquidator or provisional liquidator is appointed in respect of the Foundation or the winding up of the Foundation begins;
 - B. a Receiver is appointed to any of the Foundation's property; or
 - C. something having a substantially similar effect to paragraph (A) or (B) above happens under any law;

- b. **Encumbrance** means:
 - i. any mortgage, pledge, lien or charge;
 - ii. any title retention arrangement;
 - iii. any other right, interest, agreement, notice or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property, including any arrangement under which money or the benefit of a bank or other account may be applied, set off or made subject to a combination of accounts or not repayable in certain circumstances;
 - iv. any third party's right or interest arising as a consequence of the enforcement of a judgment; or
 - v. any other agreement, notice or arrangement having a similar effect, and includes any agreement to grant or create any of the above and includes a security interest within the meaning of section 12(1) of the PPSA;
- c. **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- d. **Receiver** means receiver or a receiver and manager;
- e. **Revolving Asset** means any Secured Property:
 - i. which is:
 - A. inventory;
 - B. a negotiable instrument;
 - C. machinery, plant or equipment which is not inventory and has a value of less than \$50,000 or its equivalent;
 - D. money (including money withdrawn or transferred from an account with a bank or other financial institution); and
 - ii. in relation to which no Control Event has occurred, subject to clause 11.8;
- f. **Secured Property** means part of the Grant that has not been spent on the Activity in accordance with this Agreement (including the bank account or any other investment in which the Grant is held); and
- g. **Taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any government agency together with any related interest, penalties, fines and expense in connection with them.

11.2. **Grant of security interest**

- 11.2.1. The Foundation grants a security interest in the Secured Property to the Department to secure the proper performance of the Foundation's obligations under this Agreement.
- 11.2.2. The security interest is in the nature of a floating charge over the Secured Property.

11.3. Priority

11.3.1. The parties intend the security interest created under clause 11.2 to take priority over all other Encumbrances over the Secured Property except obligations mandatorily preferred by law.

11.4. Acknowledgement of no subordination

11.4.1. The Foundation acknowledges that the Department has not agreed to subordinate its Encumbrance in the Secured Property (including by way of *pari passu* security) to any other interest in the Secured Property.

11.5. Restricted dealings

11.5.1. The Foundation agrees not to do, or agree to do, any of the following:

- a. create or allow another interest in:
 - i. any Secured Property;
 - ii. this Agreement or any of the Department's obligations under this Agreement; or
 - iii. any Assets; or
- b. dispose, or part with possession of, any Secured Property except in the proper performance of this Agreement.

11.5.2. Where, by law, the Department may not restrict the creation of any Encumbrance in an asset ranking after the security interest granted in clause 11.2:

- a. clause 11.5.1 will not restrict that creation; and
- b. the Foundation agrees to ensure that, before that Encumbrance is created, the holder of the Encumbrance enters into a deed of priority in form and substance satisfactory to the Department.

11.6. Permitted dealings

11.6.1. The Foundation may, in the ordinary course of the Foundation's business unless it is prohibited from doing so by another provision of this Agreement, withdraw or transfer money from an account with a bank or other financial institution.

11.7. Revolving Assets

11.7.1. If a Control Event occurs in respect of any Secured Property, then automatically:

- a. that Secured Property is not (and immediately ceases to be) a Revolving Asset;
- b. any floating charge over that Secured Property immediately operates as a fixed charge;
- c. if the Secured Property is accounts (as defined in the PPSA) or chattel paper, it is transferred to the Department by way of security; and
- d. the Foundation may no longer deal with the Secured Property under clause 11.6.

11.8. Conversion to Revolving Assets

11.8.1. If any Secured Property is not or ceases to be a Revolving Asset, and becomes subject to a fixed charge or transfer under this clause 11, the Department may give the Foundation a notice stating that, from a date specified in the notice, the Secured Property specified in the notice is a Revolving Asset, or becomes subject to a floating charge or is transferred back to the Foundation. This may occur any number of times.

11.9. Exclusion of PPSA provisions

11.9.1. To the extent the law permits:

- a. for the purposes of sections 115(1) and 115(7) of the PPSA;
 - i. the Department need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
 - ii. sections 142 and 143 are excluded;
- b. for the purposes of section 115(7) of the PPSA, the Department need not comply with sections 132 and 137(3);
- c. if the PPSA is amended after the Commencement Date to permit the Foundation and the Department to agree not to comply with or exclude other provisions of the PPSA, the Department may notify the Foundation that any of these provisions is excluded, or that the Department need not comply with any of these provisions, as notified to the Foundation by the Department; and
- d. the Foundation agrees not to exercise its rights to make any request of the Department under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section (but this does not limit the Foundation's rights to require information other than under section 275).

11.10. Circumstances when security may be enforced

11.10.1. The security interest created under clause 11.2 in respect of the Secured Property is immediately enforceable if the Foundation has become subject to an obligation to repay all or part of the Grant under clause 27 and has not made payment within the required time frame.

11.11. Exercise of rights by Department

11.11.1. If the Department exercises a power, right, discretion or remedy in connection with this Agreement, that exercise is taken not to be an exercise of a power, right, discretion or remedy under the PPSA unless the Department states otherwise at the time of exercise. This clause does not apply to a power, right, discretion or remedy which can only be exercised under the PPSA.

11.12. No notice required unless mandatory

11.12.1. To the extent the law permits, the Foundation waives:

- a. its rights to receive any notice that is required by:
 - i. any provision of the PPSA (including a notice of a verification statement); or
 - ii. any other law before a secured party or Receiver exercises a power, right, discretion or remedy; and
- b. any time period that must otherwise lapse under any law before a secured party or Receiver exercises a right, power or remedy.

11.12.2. If the law which required a period of notice or a lapse or time cannot be excluded, but the law provides that the period of notice or lapse or time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

11.12.3. Nothing in this clause 11.12 prohibits the Department or any Receiver from giving a notice under the PPSA or any other law.

11.13. Appointment of nominee for PPSA registration

11.13.1. For the purposes of section 153 of the PPSA, the Foundation appoints the Department as its nominee, and authorises the Department to act on its behalf, in connection with a registration under the PPSA of any security interest in favour of the Foundation which is:

- a. evidenced or created by chattel paper;
- b. perfected by registration under the PPSA; and
- c. transferred to the Department under this Agreement.

11.13.2. This authority ceases when the registration is transferred to the Department.

11.14. Department's right to make good a default

11.14.1. If the Foundation breaches this Agreement, the Department may, upon prior written notice to the Foundation and within a reasonable time after the occurrence of the breach, do everything it reasonably considers to be necessary or desirable to attempt to remedy the breach to the Department's reasonable satisfaction. The Department is not obliged to do so. Any liabilities or expenses reasonably incurred by the Department in attempting to remedy any such breach must be reimbursed by the Foundation on demand.

11.14.2. Clause 11.14.1 does not limit any other right the Department has under this Agreement or at law.

11.15. Powers on enforcement

11.15.1. If the security interest has become enforceable, the Department or any of its authorised representatives may exercise any of the powers that might be exercised by a Receiver even if a Receiver has not been appointed. If the Department or its

authorised representatives exercise these powers, the Department will notify the Foundation of that exercise.

12. Intellectual property

12.1. Use of Commonwealth Material

12.1.1. The Department grants a royalty-free, non-exclusive licence for the Foundation to use, reproduce and adapt the Commonwealth Material only for the purposes of this Agreement.

12.1.2. The Foundation agrees to use the Commonwealth Material strictly in accordance with any conditions or restrictions the Department may notify to the Foundation.

12.2. Rights in Activity Material

12.2.1. Subject to this clause 12, Intellectual Property Rights in Activity Material vests or will immediately vest in the Foundation.

12.2.2. Clause 12.2.1 does not affect the ownership of Intellectual Property in Existing Material or any Commonwealth Material incorporated in the Activity Material.

12.2.3. The Foundation grants to (or will procure for) the Department a perpetual, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt, modify, perform, communicate and exploit the Activity Material (and any Existing Material in it) for any Commonwealth purpose.

12.2.4. In this clause 12, **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 (see <http://creativecommons.org.au/learn-more/licences>).

12.2.5. The Foundation agrees:

- a. that the Department may, and the Foundation will, publish the Investment Strategy, the Annual Work Plans and the Reports on its website under an Open Access Licence; and
- b. to use its best endeavours to obtain the contractual consent of each Subcontractor, who produces a report, publication or data set (including any location data) as part of the Activity, to the Foundation publishing that Material (excluding any Personal Information) on the Foundation's website.

12.2.6. The Foundation agrees, on request by the Department, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 12.

12.2.7. The Foundation warrants that:

- a. it is entitled; or
- b. it will be entitled at the relevant time,

to deal with the Intellectual Property in the Activity Material (and any Existing Material in the Activity Material) in the manner provided for in this clause 12.

12.3. Moral Rights

12.3.1. In this clause 12.3, **Permitted Acts** means any of the following classes or types of acts or omissions in relation to the Activity Material (and any Existing Material in it):

- 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.

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

12.3.3. This clause 12.3 does not apply to any Commonwealth Material incorporated in the Activity Material.

13. Acknowledgement and publicity

13.1. Acknowledgement of support

13.1.1. The Foundation agrees to:

- a. collaborate with the Commonwealth on the planning of strategic communication opportunities regarding the Activity;
- b. invite the Department's Minister to attend and speak at any public launch or event relating to the Activity;
- c. seek the Department's comment on any publication, promotional or advertising materials that the Foundation proposes to publish or use at events relating to the Activity; and
- d. use the Department's 'Reef Trust' branding in accordance with any Reef Trust Branding Guidelines notified by the Department.

13.1.2. The Foundation agrees, in all publications, promotional and advertising materials, public announcements and activities relating to the Activity, and any products, processes or inventions developed as a result of the Activity, to acknowledge the financial and other support the Foundation has received from the Australian Government in the manner set out in Item 5 of Schedule 1 or as otherwise notified by the Department prior to its use.

13.1.3. Where the Foundation uses the Grant to produce a publication, it agrees to provide a final copy of the publication to the Department.

13.1.4. The parties acknowledge that the terms 'partnership' and 'collaboration' as used in the policy description of the Activity and any promotional or other materials related to it is not intended to suggest or create a legal relationship of partnership and that clause 30.2 sets out the relationship of the parties.

13.2. Right to publicise the Grant

13.2.1. The Department may publicise and report on the award of the Grant to the Foundation including by stating the Foundation's name, the amount of the Grant and the title and a brief description of the Activity and its Components in media releases, general announcements about the Grant, annual reports or through any other means as determined by the Department.

13.3. No restriction on advocacy activities

13.3.1. The Department confirms that, subject to clause 13.3.2:

- a. no right or obligation arising under this Agreement should be interpreted as restricting or preventing the Foundation or its employees from commenting on, advocating support for or opposing change to any matter established by law, policy or practice of the Commonwealth; and
- b. the Department does not require the Foundation to obtain advance approval from the Department of any involvement by the Foundation or its employees in any of the activities referred to in clause 13.3.1.a.

13.3.2. Nothing in this clause 13.3 limits or derogates from the Foundation's obligations, arising under this Agreement or otherwise, to not disclose Personal Information or confidential information as defined in the *Not-for-profit Sector Freedom to Advocate Act 2013* (Cth).

14. Confidential Information

14.1. Reports and Plans not Confidential Information

14.1.1. The parties agree that the Plans and Reports are not Confidential Information of either party, except in relation to agreed, specified aspects of the Co-Financing Strategy Plan and the Communication and Stakeholder Engagement Plan which are the Confidential Information of the Foundation.

14.2. Confidential Information not to be disclosed

14.2.1. Subject to clause 14.4, a party agrees, without the prior written consent of the other party, not to disclose any Confidential Information of the other party to a third party.

14.3. Written undertakings

14.3.1. The Foundation agrees, on request by the Department, to arrange for:

- a. the Foundation's Personnel; or
- b. any person with a legal or equitable right, interest, power or remedy in favour of any person other than the Department or the Foundation in connection with the 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 the Department relating to the use and non-disclosure of the Department's Confidential Information.

14.4. Exceptions to obligations

- 14.4.1. The obligations on the parties under this clause 14 will not be taken to have been breached to the extent that Confidential Information:
- a. is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
 - b. is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
 - c. is disclosed by the Department to the responsible Minister;
 - d. is disclosed by the Department in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. is shared by the Department within the Commonwealth or with one or more of the Advisory Bodies, the Ministerial Forum or the Australian Institute of Marine Science where that serves their legitimate interests;
 - f. is authorised or required by law to be disclosed; or
 - g. is in the public domain otherwise than due to a breach of this clause 14.
- 14.4.2. Where a party discloses Confidential Information to another person pursuant to clauses 14.4.1.a - 14.4.1.e, the disclosing party agrees to notify the receiving person that the information is confidential.
- 14.4.3. In the circumstances referred to in clauses 14.4.1.a, 14.4.1.b and 14.4.1.e, the disclosing party agrees not to provide the information unless the receiving person agrees to keep the information confidential (subject to the exceptions in this clause 14).
- 14.4.4. The Foundation agrees to secure all of the Department's Confidential Information against loss and unauthorised access, use, modification or disclosure.
- #### **14.5. Period of confidentiality**
- 14.5.1. The obligations under this clause 14 will continue, notwithstanding the expiry or termination of this Agreement:
- a. in relation to an item of information described in Item 8 of Schedule 1 – for the period set out in respect of that item; and
 - b. in relation to any item of information agreed after the Commencement Date to be Confidential Information – for the period agreed by the parties in writing in respect of that item and, if no such period is agreed by the parties, in perpetuity.
- #### **14.6. No reduction in privacy Obligations**
- 14.6.1. This clause 14 does not detract from any of the Foundation's obligations under the Privacy Act or under clause 15.

15. Obligations of Foundation in relation to privacy

- 15.1.1. The Foundation agrees, in conducting the Activity:
- a. to 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 the Department, would be a breach of an Australian Privacy Principle under the Privacy Act; and
 - b. to comply with any directions, guidelines, determinations or recommendations of the Department, to the extent that they are consistent with the obligations referred to in subclause a above.
- 15.1.2. The Foundation agrees to notify the Department immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 15.
- 15.1.3. In this clause 15, **Eligible Data Breach** has the same meaning as it has in the Privacy Act.
- 15.1.4. If the Foundation 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 Foundation as a result of this Agreement or its performance of the Activity, the Foundation agrees to:
- a. notify the Department in writing as soon as possible, which must be no later than within 3 days; and
 - b. carry out an assessment in accordance with the requirements of the Privacy Act.
- 15.1.5. Where the Foundation is aware that there are reasonable grounds to believe there has been, or where the Department notifies the Foundation that there has been, an Eligible Data Breach in relation to any Personal Information held by the Foundation as a result of this Agreement or its performance of the Activity, the Foundation agrees to:
- a. 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
 - b. take all other action necessary to comply with the requirements of the Privacy Act.

16. Conflict of interest

- 16.1.1. In this clause 16, **Conflict** means any matter, circumstance, interest or activity involving or affecting the Foundation, its Personnel or Subcontractors which may or may appear to impair the ability of the Foundation to perform any part of the Activity diligently and independently.
- 16.1.2. The Foundation 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 Foundation's obligations under the Agreement.
- 16.1.3. If during the Term a Conflict arises, the Foundation agrees to:
- a. notify the Department immediately;

- b. make full disclosure to the Department of all relevant information relating to the Conflict; and
- c. after consultation with the Department, take any steps necessary to resolve or otherwise deal with that Conflict.

17. Compliance with Legislation

- 17.1.1. In this clause 17, **Legislation** means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority.
- 17.1.2. The Foundation agrees to comply with all Legislation applicable to its performance of this Agreement including, without limitation:
 - a. the *Environment Protection and Biodiversity Conservation Act 1999* (Cth); and
 - b. the *Great Barrier Reef Marine Park Act 1975* (Cth).
- 17.1.3. Without limiting clause 17.1.2, the Foundation agrees to ensure all relevant permits are obtained before any part of the Activity is undertaken in the Great Barrier Reef World Heritage Area or Reef catchments.

18. Work Health and Safety

18.1. WHS requirements

- 18.1.1. The Foundation agrees not to use any Grant amount for a Project unless and until the Foundation has:
 - a. developed and implemented appropriate and comprehensive WHS policies and procedures for the Foundation's operations, including the Activity;
 - b. conducted a WHS risk assessment for that Project;
 - c. identified the WHS risks arising from that Project and how those risks will be managed;
 - d. taken all reasonable steps to manage those identified WHS risks before the Project commences;
 - e. identified any specific training or qualifications that the Foundation, its Personnel or Subcontractors require to perform the Project and the Foundation has verified that they have the required training or qualifications before they commence performing the Project; and
 - f. documented the Foundation's conduct of each of the steps in this clause 18.1.1.

18.2. Notifiable Incidents

- 18.2.1. In this clause 18.2, **Notifiable Incident** has the meaning given by section 35 of the *Work Health and Safety Act 2011* (Cth) and includes the death of a person, a serious injury or illness of a person, or dangerous incident.
- 18.2.2. The Foundation agrees to report to the Department any significant WHS risks that it identifies, including as a result of conducting the process in clause 18.1.1, as well as any Notifiable Incidents. If requested by the Department, the Foundation agrees to provide the Department with information (including evidence of the Foundation's

completion of the steps in clause 18.1.1) relating to those WHS risks and Notifiable Incidents.

- 18.2.3. Where some or all of a Project is to be performed by or on behalf of a Subcontractor, the Foundation agrees to require the Subcontractor to complete the actions in clause 18.1.1 and report the matters in clause 18.2.2 to the Foundation in respect of that Project before the Foundation provides any Grant amount to the Subcontractor.

18.3. Secondees

- 18.3.1. The parties agree that the Department may, from time to time, make available to the Foundation secondees to assist with the Activity, particularly in the early stages of the Term.

- 18.3.2. The Foundation agrees, in respect of those secondees:

- a. to provide suitable WHS induction and training in respect of the activities to be performed by the secondee in the Foundation's business or undertaking; and
- b. that, for the purposes of WHS Law, the Foundation has supervision and control of the secondees in their performance of the Activity for the Foundation.

18.4. Australian Government Building and Construction WHS Accreditation Scheme

- 18.4.1. In this clause 18.4:

- a. **Builder** has the meaning given in section 43(8) of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth);
- b. **Building Work** has the meaning given in section 6 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth); and
- c. **Scheme** means the scheme described at s 43 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

- 18.4.2. The Department is required by law to ensure that it applies the Scheme to certain Commonwealth-funded Building Work.

- 18.4.3. As necessary, the Foundation agrees to administer the Grant in accordance with the requirements of the Scheme.

- 18.4.4. Construction projects to which the Grant is applied are bound by the application of the Scheme.

- 18.4.5. The Foundation agrees to ensure that all of its Subcontracts valued at \$4 million (GST inclusive) or more and requiring Building Work related to the Activity:

- a. are notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity (that is, when approaching the market); and
- b. contain a requirement that the Builder:
 - i. is accredited under the Scheme;
 - ii. maintains Scheme accreditation for the life of the contract;
 - iii. must comply with all conditions of Scheme accreditation; and

- iv. must comply with the National Construction Code performance requirements in relation to building materials.

19. Foundation warranties

19.1.1. The Foundation represents and warrants that:

- a. it is a body corporate and it is duly incorporated in accordance with the Laws of its place of incorporation, validly exists under those Laws and has the capacity to sue or be sued in its own name and to own its property and conduct its business as it is being conducted;
- b. it has full power and authority to enter into, perform and observe its obligations under this Agreement;
- c. the execution, delivery and performance of this Agreement has been duly and validly authorised by the Foundation's Board;
- d. this Agreement imposes valid and legally binding obligations on it and is enforceable against it by the Department in accordance with its terms;
- e. the unconditional execution and delivery of, and compliance with its obligations under, this Agreement do not:
 - i. 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;
 - ii. contravene its Constitution or other constituent documents;
 - iii. contravene any agreement or instrument to which it is a party;
 - iv. contravene any obligation of it to any other person; or
 - v. require it to make any payment or delivery in respect of any financial indebtedness before the scheduled date for that payment or delivery;
- f. no litigation, arbitration, mediation, conciliation or administrative proceedings 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;
- g. it is not entering into this Agreement as trustee of any trust or settlement;
- h. it has not made any false declaration in respect of any current or past dealings with any Commonwealth or other government agency, including in the Proposal, any tender or application process or in any agreement; and
- i. it has had 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.

19.1.2. The Foundation acknowledges that, in entering into this Agreement, the Department is relying on the accuracy and truth of the Foundation's warranties and representations contained in this Agreement.

20. Audit and access

- 20.1.1. The Foundation agrees:
- a. to give the Department, or any persons authorised in writing by the Department, access to premises where obligations under this Agreement are being carried out; and
 - b. to permit those persons to inspect and take copies of any Material relevant to the Activities under this Agreement.
- 20.1.2. The rights referred to in clause 20.1.1 are subject to:
- a. the Department providing reasonable prior notice; and
 - b. the reasonable security procedures in place at the premises.
- 20.1.3. The Auditor-General and Information Officer (including their delegates) are persons authorised for the purposes of clause 20.1.1.
- 20.1.4. This clause 20 does not detract from the statutory powers of the Auditor-General or Information Officer (including their delegates).
- 20.1.5. In this clause 20, **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.

21. Liability

21.1. Indemnity

- 21.1.1. The Foundation indemnifies the Department from and against any:
- a. cost or liability incurred by the Department;
 - b. loss of or damage to property of the Department; or
 - c. loss or expense incurred by the Department 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 the Department, arising from:
 - d. any breach of the Agreement by the Foundation (which may be due to an act or omission of its Personnel or a Subcontractor);
 - e. any act or omission involving fault by the Foundation, its Personnel or a Subcontractor in connection with this Agreement;
 - f. use of the Assets;
 - g. any reasonable action to enforce the security interest granted under clause 11; or
 - h. the use by the Department of the Activity Material or Existing Material within the scope of its licence in clause 12.2.3 and its right to undertake Permitted Acts as described in clauses 12.3.1 and 12.3.2, including any claims by third parties

about the ownership or right to use Intellectual Property Rights or Moral Rights in the Activity Material or Existing Material.

21.1.2. The Foundation's liability to indemnify the Department under clause 21.1.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of the Department or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

21.1.3. The right of the Department to be indemnified under this clause 21.1 is in addition to, and not exclusive of, any other right, power or remedy provided by Law, but the Department is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

21.2. Meaning of 'fault'

21.2.1. In this clause 21, **fault** means any negligent or unlawful act or omission or wilful misconduct.

21.3. Foundation's assumption of risk and release of Department

21.3.1. The Foundation agrees to deliver the Activity at its own risk and the Department is not liable to the Foundation (or the Foundation'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 Activity, save in relation to any negligent or unlawful act or omission or wilful misconduct caused by the Department or the Department's Personnel.

22. Insurance

22.1.1. The Foundation agrees to:

- a. effect and maintain the insurance specified in Item 4 of Schedule 1; and
- b. on request, provide proof of insurance acceptable to the Department.

22.1.2. This clause 22 continues in operation for so long as any obligations remain in connection with this Agreement.

23. Dispute resolution

23.1. Procedure for dispute resolution

23.1.1. The parties agree that a dispute arising under this Agreement will be dealt with as follows, and that, subject to clause 23.4, neither party will commence legal proceedings in relation to that dispute until this procedure is completed:

- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
- b. within 5 Business Days, or such other period as agreed by the parties in writing, each party will nominate a representative not having any prior involvement in the dispute;
- c. the representatives will try to settle the dispute by direct negotiation between them;

- d. failing settlement within a further 10 Business Days, or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a representative within a period set out in 23.1.1.b), the parties may agree to refer the dispute to an independent third person with power:
 - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - ii. to mediate and recommend some form of non-binding resolution;
- e. the parties will co-operate fully with any process instigated under clause 23.1.1.d in order to achieve a speedy resolution; and
- f. if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as the parties may agree in writing), either party may commence legal proceedings.

23.2. Costs

- 23.2.1. Each party will bear its own costs of complying with this clause 23, and the parties will bear equally the cost of any third person engaged under clause 23.1.1.d.

23.3. Continued Performance

- 23.3.1. Despite the existence of a dispute, the Foundation will (unless requested in writing by the Department not to do so) continue to perform the Foundation's obligations under this Agreement.

23.4. Exemption

- 23.4.1. This clause 23 does not apply to:
 - a. legal proceedings by either party for urgent interlocutory relief; or
 - b. action by the Department under or purportedly under clauses 7.1, 7.2, 11, 20, 25, 26 and 27.

24. Force majeure events

24.1. Occurrence of force majeure event

- 24.1.1. The Foundation 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 Other Contributions for any reason or any strike, lockout or labour disputes that only applies to the Foundation), including but not limited to acts of God, natural disasters, acts of war, riots and strikes outside that party's organisation.

24.2. Notice of force majeure event

- 24.2.1. When the circumstances described in clause 24.1 arise or are reasonably perceived by the Foundation as an imminent possibility, the Foundation agrees to give notice of those circumstances to the Department as soon as possible, identifying the effect they will have on its performance. The Foundation agrees to make all reasonable

efforts to minimise the effects of such circumstances on its performance of this Agreement.

24.3. Cessation of use of Grant

24.3.1. Except for payments that the Foundation is legally obliged to make, the Foundation agrees to cease making payments from the Grant whilst the circumstances under clause 24.1 exist.

24.4. Termination

24.4.1. If non-performance or diminished performance by the Foundation due to the circumstances under clause 24.1 continues for a period of more than 30 consecutive days, the Department may terminate this Agreement immediately by giving the Foundation written notice under clause 25.2.

25. Termination or reduction in scope of Agreement

25.1. Termination for convenience

25.1.1. If there is a material change in Australian Government policy that is inconsistent with the continued operation of this Agreement, the Department may by notice terminate this Agreement or reduce the scope of the Agreement immediately.

25.1.2. The Foundation agrees, on receipt of a notice of termination or reduction under clause 25.1.1, to:

- a. stop or reduce the performance of the Foundation's obligations as specified in the notice;
- b. take all available steps to minimise loss resulting from that termination or reduction including, unless the Department advises otherwise, by exercising the right it has to immediately terminate affected Subcontracts for convenience;
- c. continue performing any part of the Activity not affected by the notice, if requested to do so by the Department; and
- d. subject to clause 25.1.3 and 25.1.4, return to the Department some or all of the Grant in accordance with clause 27 or otherwise deal with the Grant as directed by the Department.

25.1.3. In the event of termination under clause 25.1.1, the Foundation is only entitled to retain the amount of the Grant necessary to cover any reasonable costs that the Foundation unavoidably incurs that relate directly to the termination of the Agreement. The Foundation is not entitled to be paid any other amounts in respect of the termination. In particular, the Foundation is not entitled to be paid any amount consequent on a failure to include in its Subcontracts the requirements for Foundation Subcontracts set out in Schedule 9.

25.1.4. In the event of a reduction in the scope of the Agreement under clause 25.1.1, the Foundation's entitlement to the Grant will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Activity. The Foundation may retain any Grant amount attributable to the removed part of the Activity that is

required to cover the reasonable costs that the Foundation unavoidably incurs and that relate directly to the reduction in scope of the Agreement.

25.1.5. The Foundation's entitlement to compensation for its reasonable termination costs under or in relation to this clause 25.1 is subject to:

- a. the Foundation's compliance with this clause 25.1; and
- b. the Foundation's substantiation of any amount claimed under clause 25.1.3 or 25.1.4.

25.1.6. In no circumstance will the Foundation be entitled to compensation for loss of prospective profits, loss of donations or loss of any benefits that would have been conferred on the Foundation.

25.2. Termination for fault

25.2.1. The Department may by notice terminate this Agreement immediately if:

- a. the Foundation breaches this Agreement and the Department considers that the breach cannot be rectified;
- b. the Foundation breaches this Agreement and does not rectify the breach within 10 Business Days after receiving notice to do so from the Department;
- c. the Foundation comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth);
- d. the Foundation is unable to 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 and 459F of the *Corporations Act 2001* (Cth);
- e. proceedings are initiated with a view to obtaining an order for winding up the Foundation, or a resolution of the members is passed to wind up the Foundation;
- f. the Foundation fails to comply with a Plan in a way that the Department, acting reasonably, considers has materially adversely affected, or is likely to materially adversely affect, the Foundation's performance of some or all of the Activity;
- g. there is a change in the Foundation's control (as defined in section 50AA of the *Corporations Act*), Constitution, structure, management or operations that the Department reasonably believes is likely to materially adversely affect the Foundation's ability to perform the Activity in accordance with this Agreement;
- h. the Foundation breaches a Law relating to the performance of an Activity;
- i. the Department is satisfied that any statement made in the Foundation's Proposal is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Grant;
- j. the Foundation advises that it wishes to withdraw from this Agreement; or
- k. another clause of this Agreement allows for termination under this clause 25.2, (each a **Termination Event**).

25.2.2. Where a Termination Event occurs that only affects part of the Activity (i.e. one or more, but not all, of the Activity's Components), the Department may, by written notice and at its absolute discretion, reduce the scope of this Agreement by removing the affected part of the Activity, instead of terminating the entire Agreement under this clause 25.2.

25.2.3. Where the Department gives the Foundation a notice terminating this Agreement under clause 25.2.1 or reducing the scope of this Agreement under clause 25.2.2, the Foundation agrees to:

- a. stop or reduce the performance of the Foundation's obligations as specified in the notice;
- b. take all available steps to minimise loss resulting from that termination or reduction;
- c. continue performing any part of the Activity not affected by the notice; and
- d. return to the Department some or all of the Grant in accordance with clause 27 or otherwise deal with the Grant as directed by the Department.

25.3. Preservation of other rights

25.3.1. Clause 25.2 does not limit or exclude any of the Department's other rights under this Agreement.

26. Step in rights

26.1.1. If:

- a. a Termination Event occurs; or
- b. the Foundation otherwise requests that the Department exercise its rights under this clause,

the Department may, at its discretion, give a notice to the Foundation that the Department intends to exercise its rights under this clause 26 in respect of some or all of the Activity and the date from which this notice will take effect (**Step-In Notice**).

26.1.2. The Department's rights under this clause 26 may be exercised by the Department or its nominee.

26.1.3. The Department's rights under this clause 26 are not required to be exercised for the benefit of the Foundation.

26.1.4. From the date, and to the extent, specified in the Step-in Notice:

- a. the Foundation will cease being responsible for the performance of the part of the Activity specified in the Step-In Notice; and
- b. the Foundation's right to use the Grant for the part of the Activity specified in the Step-In Notice is suspended.

- 26.1.5. From the date specified in the Step-in Notice:
- a. the Department may take any step to manage the part of the Activity specified in the Step-In Notice that the Department considers is reasonably necessary having regard to the trigger event(s) giving rise to the relevant Step-in Notice; and
 - b. the Foundation agrees to provide all reasonable assistance and comply with any direction of the Department to enable the Department to exercise its rights under this clause and manage that part of the Activity.
- 26.1.6. The Department may withdraw the Step-in Notice if, in the Department's reasonable opinion:
- a. the circumstances giving rise to the trigger event have ceased or are able to be appropriately managed by the Foundation; and
 - b. the Foundation will otherwise be able to comply with its obligations under this Agreement.
- 26.1.7. The Foundation agrees to execute all documents and do all things that the Department considers necessary to give full force and effect to this clause 26 including any of the following:
- a. novate or assign to the Department any contracts with third parties (including any Subcontracts) relating to the Activity;
 - b. assign to the Department (or, where the Foundation is unable to assign, assist the Department obtain) all licences, consents and approvals that the Department requires to fully exercise the Department's rights under this clause 26;
 - c. assign to the Department any leases or licences relating to the Activity that the Department considers are required to complete the Activity; and
 - d. give the Department unfettered access to any site where the Activity is taking, or is to take, place.
- 26.1.8. Without limiting the Department's rights under this Agreement, the Department may recover from the Foundation the reasonable costs incurred by the Department in exercising its rights under this clause 26.
- 26.1.9. The Department will by written notice advise the Foundation of:
- a. the date, if any, when the Step-in Notice will be withdrawn and the Foundation will resume responsibility for the Activity; and
 - b. the amount of the Grant that must be repaid to the Department to reflect the costs incurred by the Department in exercising its rights under this clause 26.
- 26.1.10. The Foundation agrees that the Department will not incur any liability to the Foundation as a result of the Department exercising any of its rights under this clause 26, unless in exercising its rights under this clause, the Department engages in any negligent or unlawful act or omission, or wilful misconduct.

- 26.1.11. Any action taken by the Department under this clause 26 does not affect the Department's other rights under this Agreement or at law.

27. Repayment of the Grant

27.1. Suspension and repayment of the Grant

27.1.1. If:

- a. a Termination Event in clause 25.2 occurs;
- b. the Department terminates or reduces the scope of this Agreement under clause 25.1;
- c. the Foundation advises that it does not require some or all of the Grant; or
- d. the Activity Period ends,

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

- e. direct the Foundation to immediately cease expenditure of some or all of the Grant (which may, depending on the circumstances, be for a specified period, permanently or until the Department advises otherwise);
- f. obtain information about the Grant amount in the possession or control of the Foundation, including by obtaining details about the bank account in clause 7.3;
- g. where the Department terminates the Agreement under clause 25.1 or 25.2 (and subject to clause 25.1.3, if applicable), recover from the Foundation any part of the Grant which:
 - i. is not legally committed for expenditure by the Foundation in accordance with the Agreement and due and payable by the Foundation by the date that the termination notice is issued; or
 - ii. has not, in the Department's reasonable opinion, been spent by the Foundation in accordance with the Agreement; and
- h. where the Department reduces the scope of the Agreement under clause 25.1 or 25.2 (and subject to clause 25.1.4, if applicable), recover from the Foundation any part of the Grant attributable to the removed part of the Activity which:
 - i. is not legally committed for expenditure by the Foundation in accordance with the Agreement and due and payable by the Foundation by the date that the termination notice is issued; or
 - ii. has not, in the Department's reasonable opinion, been spent by the Foundation in accordance with the Agreement; and
- i. where the Activity Period has ended, recover from the Foundation any part of the Grant which:
 - i. was not legally committed for expenditure by the Foundation in accordance with the Agreement prior to the end of the Activity Period; or

- ii. has not, in the Department's reasonable opinion, been spent by the Foundation in accordance with the Agreement.

27.1.2. Any amount that the Department notifies the Foundation is required to be repaid:

- a. under this clause 27.1; or
- b. under clause 26.1.9,

must be repaid by the Foundation to the Department within 20 Business Days after the date on which the Department issued that notice.

27.2. Foundation to recover amounts from Funding Recipients

27.2.1. The Foundation agrees in relation to each Subcontract with a Funding Recipient to take all reasonable steps to recover from the Funding Recipient any amount of the Grant that the Funding Recipient has received for a Project but not spent and acquitted for the Project in accordance with its Subcontract (**Unspent Amount**), as if section 11 of the *Public Governance, Performance and Accountability Rule 2014* (about the recovery of debts) applies to the Foundation.

27.2.2. The parties agree that 'reasonable steps' include:

- a. the Subcontract including an obligation on the Funding Recipient to repay to the Foundation any part of the Grant received for a Project but not spent and acquitted by the Funding Recipient for the Project; and
- b. taking legal action to enforce that obligation against the Funding Recipient.

27.2.3. Where clause 27.1 requires the Foundation to repay an amount to the Department, the Foundation agrees that the amount to be repaid to the Department includes any Unspent Amount that the Foundation has recovered from a Funding Recipient in accordance with the requirements of clause 27.2.1.

27.2.4. Any Unspent Amount that the Foundation recovers from a Funding Recipient after the repayment period specified in clause 27.1.2 must be paid to the Department within 20 Business Days after the date the Foundation recovers the Unspent Amount.

27.3. Debt and Interest

27.3.1. In this clause 27.3, **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 the Department under this Agreement plus 3 per cent per annum, calculated on a daily compounding basis.

27.3.2. The Foundation must pay Interest to the Department 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.

27.3.3. The Foundation must pay any amount owed or payable to the Department or which the Department is entitled to recover from the Foundation under this Agreement, including any Interest, as a debt due to the Department by the Foundation without further proof of the debt by the Department being necessary.

27.3.4. The Foundation agrees that the Interest represents a reasonable pre-estimate of the loss incurred by the Department.

28. Notices

28.1. Format, addressing and delivery

28.1.1. A notice under this Agreement is only effective if it is in writing, and dealt with as follows:

- a. *if given by the Foundation to the Department* - addressed to the Department at the address specified in Item 6 of Schedule 1 or as otherwise notified by the Department; or
- b. *if given by the Department to the Foundation* - given by the Department and addressed (and marked for attention) as specified in Item 6 of Schedule 1 or as otherwise notified by the Foundation.

28.1.2. A notice is to be:

- a. signed by the person giving the notice and delivered by hand;
- b. signed by the person giving the notice and sent by pre-paid post; or
- c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

28.2. When effective

28.2.1. A notice is deemed to be effected:

- a. *if delivered by hand* - upon delivery to the relevant address;
- b. *if sent by post* - upon delivery to the relevant address; or
- c. *if transmitted electronically* - upon actual receipt by the addressee.

28.2.2. A notice received after 5.00 pm, or on a weekend or public holiday in the place of receipt, is deemed to be effected on the next Business Day in that place.

29. Australian Industry Participation Plan

29.1. Definitions

29.1.1. In this clause 29.1.1:

- a. **Australian Industry Participation Plan** means an Australian industry Participation Plan (**AIP Plan**) required where the Department has awarded more than \$20 million in funds, prepared by the Foundation (including prior to execution of this Agreement), and approved by the Industry Department that demonstrates how Australian industry will be provided with full, fair and reasonable opportunity to supply goods and services arising from the program; and
- b. **Industry Department** means the Department of Industry, Innovation and Science.

29.2. Australian Industry Participation Plan, Executive Summary and Implementation Report

- 29.2.1. The Foundation agrees to prepare and implement an AIP Plan and executive summary, which:
- a. demonstrates how Australian industry will be provided with full, fair and reasonable opportunity to participate in all aspects of the program from design to completion;
 - b. must be submitted to the Department by the date specified in Schedule 2 to this Agreement; and
 - c. must be approved by the Industry Department prior to submission to the Department.
- 29.2.2. In addition, the Foundation agrees to prepare an AIP Implementation Report, which:
- a. demonstrates how the Foundation has satisfied the requirements under the AIP Plan; and
 - b. must be submitted to the Department by the date specified in Schedule 2 to this Agreement.
- 29.2.3. Where the Implementation Report does not meet the requirements outlined in the User Guide for Developing an AIP Plan and Implementation Report, the Department may by written notice reject the Implementation Report. Where the Department rejects the Implementation Report, the Department will provide the Foundation with reasons for the rejection.
- 29.2.4. Where the Department rejects the Implementation Report pursuant to clause 29.2.3, the Foundation agrees to provide the Department an amended Implementation Report addressing the reasons advised by the Department, and that otherwise meets the implementation report requirements, within 10 Business Days after the date of the notice issued under clause 29.2.3.
- 29.2.5. If conflict arises between part of the AIP Plan and any other part of the Agreement, the Agreement prevails.
- 29.2.6. The Foundation consents to the Department or any other Commonwealth agency:
- a. publishing the executive summary of its AIP Plan at <http://www.industry.gov.au/industry/IndustryInitiatives/AustralianIndustryParticipation/Pages/PublishedExecutiveSummariesofAIPPlans.aspx>;
 - b. providing a copy of the Implementation Report to Industry; and
 - c. publishing or reporting on the Foundation's performance in relation to the AIP Plan including:
 - i. the level of Australian industry goods and services purchased for the program; and
 - ii. the Foundation's compliance with the AIP Plan.

- 29.2.7. If requested, the Foundation agrees to assist the Department with the collection of information from the program to help monitor and report on the performance of its AIP policy.
- 29.2.8. Once approved, the AIP Plan will form Schedule 11 to this Agreement. A breach of Schedule 11 will constitute a breach of this Agreement.

30. General provisions

30.1. Extension of provisions to Subcontractors and Personnel

- 30.1.1. In this clause 30.1, **Requirement** means an obligation, condition, restriction or prohibition binding on the Foundation under this Agreement.
- 30.1.2. The Foundation agrees to ensure that:
- a. its Subcontractors and Personnel comply with all relevant Requirements; and
 - b. without limiting the requirements of Schedule 10, any Subcontract entered into in connection with this Agreement imposes all relevant Requirements on the other party.
- 30.1.3. The Foundation agrees to use its best endeavours to exercise any rights it may have against any of its Subcontractors, Personnel or third parties in connection with a Requirement.

30.2. Relationship of parties

- 30.2.1. The Foundation is not by virtue of this Agreement an officer, employee, partner or agent of the Department, nor does the Foundation have any power or authority to bind or represent the Department.
- 30.2.2. The Foundation agrees:
- a. not to misrepresent its relationship with the Department; and
 - b. not to engage in any misleading or deceptive conduct in relation to the Activity.

30.3. Waiver

- 30.3.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right.
- 30.3.2. The exercise or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent any other exercise or partial exercise of that right or remedy by the party.

30.4. Variation of Agreement

- 30.4.1. A variation to this Agreement is binding only if agreed in writing and signed by the parties.

30.5. Novation and assignment

- 30.5.1. The Foundation cannot assign its obligations, and agrees not to assign its rights, under this Agreement without the Department's prior written approval.

30.5.2. The Foundation agrees not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of this Agreement without first consulting the Department.

30.6. Survival

30.6.1. Unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the continued operation of any provision relating to:

- a. Intellectual Property;
- b. confidentiality;
- c. security;
- d. privacy;
- e. dealing with copies;
- f. books and records;
- g. audit and access;
- h. an indemnity;
- i. warranties and representations;
- j. acknowledgement and publicity;
- k. step-in rights;
- l. rights or obligations following termination or expiry of the Agreement;
- m. repayment of the Grant; or
- n. any other provision which expressly or by implication from its nature is intended to continue.

30.7. Governing law and jurisdiction

30.7.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the State or Territory specified in Item 7 of Schedule 1.

30.8. Counterparts

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

SCHEDULE 1 GRANT DETAILS

1. Bank Account (clause 7.3)

1.1. Bank Account

The details of the bank account referred to in clause 7.3 are set out below:

2. Reporting (clauses 1.1.1, 5.12)

2.1. Progress Reports

2.1.1. The Foundation agrees to provide the Department with six-monthly progress Reports using the Department's MERIT system (or other template or system provided by the Department) (**Progress Reports**). The Progress Report for the period 1 July to 31 December is due on 1 February of the following calendar year and the Progress Report for the period 1 January to 30 June is due on 1 August of the same calendar year.

2.1.2. Each Progress Report must include, but need not be limited to, the following information for the part of the Term to which the Report relates (the **Reporting Period**):

- a. the Foundation's name, the Activity's name and Reporting Period;
- b. the amount of the Grant spent and committed by the Foundation (and each of its Funding Recipients), under the Agreement for the Activity as a whole as well as for each Component and the amount of the Grant that has been invested and/or is remaining in the Foundation's bank account referred to in clause 7.3.1;
- c. any interest or other income earned on the Grant;
- d. a statement of the Other Contributions (separately identifying Cash Contributions and In-Kind Contributions) received to date for each Component, including the amount of the Cash Contributions spent, and the extent to which the In-Kind Contributions have been used, for each Component;
- e. a statement as to whether each Component is proceeding within Budget, and if it is not, an explanation of why the Budget is not being met and the action the Foundation proposes to take to address this;
- f. a report on the work undertaken for the Activity, and each Component, in accordance with the agreed MERI Plan. This will include:
 - i. a detailed summary of the work undertaken for each Component during the Reporting period by the Foundation and its Subcontractors, including a summary of monitoring results, identifying lessons learnt and an evaluation

- of the performance of the Activity to date, including each Component's Objectives and Outcomes, having regard to the Performance Measures;
- ii. an explanation of any delays that have occurred, including the reasons for those delays and the action the Foundation proposes to take, or require its Subcontractors to take, to address the delay and the expected effects (if any) the delay will have on achieving the Objectives and Outcomes for the relevant Components;
 - iii. details of communication and stakeholder engagement activities that have occurred for each Component during the Reporting period;
 - iv. the number of Indigenous people employed as Personnel or engaged as Subcontractors or volunteers in the Activity and each Component;
 - v. identification of any opportunities for continuous Activity improvement and necessary changes to the Activity design or delivery;
 - vi. provision of any other relevant information, for example maps, photos, case studies or raw data; and
 - vii. other details which are included in the 'Paddock to Reef Program' reporting requirements;
- g. the names of all the Foundation's Subcontractors and a description of the Projects they are undertaking and the Component to which it relates;
 - h. an accompanying statement as set out in Item 2.5 of this Schedule; and
 - i. any additional information that a Schedule requires the Foundation to provide for a Component.

2.2. Annual Report

- 2.2.1. Using the Department's MERIT system (or other template or system provided by the Department), the Foundation agrees to provide the Department with an annual Report for each Financial Year of the Term in which the Foundation:
 - a. receives or uses a payment of the Grant; or
 - b. receives any Other Contributions,
 except the Financial Year in which the final Report is to be provided pursuant to Item 2.3 of this Schedule.
- 2.2.2. Annual Reports must be provided within 90 Business Days after the end of the Financial Year to which the annual Report relates.
- 2.2.3. Each annual Report must include the following information for the relevant Financial Year:
 - a. audited financial statements prepared in accordance with Australian Accounting Standards in respect of the Foundation's receipt and expenditure of the Grant and the Other Contributions for the Activity and each Component (and in the context of the Foundation's overall financial position), which must include a definitive statement as to whether the financial information for the Activity

represents the financial transactions fairly and is based on proper accounts and Records;

- b. a copy of a financial acquittal from each Funding Recipient that:
 - i. states the extent to which the Funding Recipient has received and spent the Grant and any Cash Contributions for the Funding Recipient's Project; and
 - ii. is certified by the Funding Recipient's Chairperson, CFO or CEO that any Grant amount that it receives from the Foundation (**Project Funds**) and any Cash Contributions provided for the Funding Recipient's Project have been spent on that Project in accordance with the requirements of its Subcontract;
- c. a written statement prepared by a Qualified Accountant of:
 - i. the Foundation's financial position (assets and liabilities by class), which must include, under assets, the balance of the Foundation's account referred to in clause 7.3;
 - ii. how much money the Foundation needs to meet current liabilities under legal commitments entered into by the Foundation pursuant to this Agreement; and
- d. an accompanying statement as set out in Item 2.5 of this Schedule.

2.3. Annual Report to Ministerial Forum

- 2.3.1. The Foundation agrees to report annually to the Ministerial Forum on its progress against the following:
 - a. the Reef 2050 Plan;
 - b. Investment Strategy; and
 - c. the relevant Annual Work Plan.

2.4. Final Report

- 2.4.1. Within 60 Business Days after completion of the Activity or the termination or expiry of the Agreement, whichever is earlier, the Foundation agrees to provide the Department with a final Report.
- 2.4.2. The final Report must be prepared using the Department's MERIT system (or other template or system provided by the Department).
- 2.4.3. The final Report must contain matters identified in Item 2.2 of this Schedule and must also discuss the matters identified in Item 2.1.2 regarding the Activity, and each Component, in relation to the entire Activity Period. This should include a detailed evaluation of the extent to which the Objectives and Outcomes of the Activity, and each Component were met, having regard to the Performance Measures and an explanation of why any Objectives or Outcomes were not met.
- 2.4.4. The Foundation agrees to also include in the final Report a discussion of any other matters, relating to the performance of the Activity and/or a Component, which the

Department notifies the Foundation is required to be included in the final Report. Any such requirement will be notified to the Foundation at least 20 Business Days before the final Report is due.

2.5. Accompanying statement

- 2.5.1. Each progress Report and annual Report, and the final Report, must be accompanied by a statement that:
- a. all Grant amounts and Other Contributions received were spent for the purpose of the Activity in accordance with this Agreement, and that the Foundation has complied with the Agreement;
 - b. salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant law on industrial or workplace relations;
 - c. unless the Term has expired or the Agreement has been terminated, the unspent portion of the Grant (if any) is available for use within the remaining Reporting periods;
 - d. the financial information is presented in accordance with any other financial Reporting requirements the Department may notify to the Foundation;
 - e. where an Asset has been created or acquired with the Grant, clauses 10.2.1.d and 10.2.1.g have been complied with in respect to the Asset; and
 - f. at the time the Report or financial statement is provided to the Department, the Foundation is able to pay all the Foundation's debts as and when they fall due and the Foundation has sufficient resources to discharge all the Foundation's debts at the end of the current Financial Year.
- 2.5.2. The statement referred to in Item 2.5.1 of this Schedule must be provided by the Foundation's Chairperson, Chief Executive Officer, Chief Financial Officer or a person authorised by the Foundation to execute documents and legally bind the Foundation by their execution. Satisfactory evidence of the authorisation is to be provided to the Department before the statement is made.

2.6. Audit and certification

- 2.6.1. The annual Report and final Report must be accompanied by a copy of a letter to the Foundation from the Approved Independent Auditor, or a report from the Approved Independent Auditor, that includes:
- a. specific comment on the adequacy of financial controls being maintained by the Foundation;
 - b. specific comment on the Foundation's financial position as it relates to any issues affecting the Foundation's ability to repay surplus amounts of the Grant or complete the Activity within the available Grant amount;
 - c. specific comment on the Foundation's ability to meet the Foundation's taxation liabilities and any costs associated with any court or tribunal orders made against the Foundation or involving the Foundation;

- d. specific comment on the Foundation’s compliance with the Foundation’s obligations to pay superannuation entitlements;
- e. where there are any qualifications or limitations on the audit, an outline of the reason(s) for the qualifications or limitations and the remedial action recommended; and
- f. an itemised list of fees paid to Directors, stating how much was paid, to whom, when and what travel costs were involved.

2.7. Other Reports

2.7.1. Throughout the Term, the Department may require the Foundation to provide ad-hoc Reports concerning:

- a. any significant developments in the Activity or a Component; and
- b. any significant delays or difficulties encountered in performing the Activity or a Component in accordance with the Agreement.

2.7.2. The Foundation agrees to provide any such ad-hoc Reports within the timeframe notified by the Department.

3. Assets

(clauses 1.1.1 and 10)

3.1.1. The Foundation agrees to maintain an Asset register in the following form and containing the following information:

Asset number	Description of Asset (inc serial number)	Collateral type and class	Creation, acquisition or total lease cost	Date of creation, acquisition or lease	Term of lease or other arrangement	Location of Asset	Method of, and date, which Asset was written off or Disposed of

4. Insurance

(clause 22)

4.1.1. The Foundation agrees to maintain:

- a. workers compensation insurance as required by law where the Foundation carries out activities under this Agreement;
- b. public liability insurance to the value of at least \$20 million for each and every claim, or occurrence giving rise to a claim, in relation to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be;

- c. directors and officers liability insurance; and
- d. insurance against any loss or damage to an Asset for its full replacement cost including, where relevant, the costs of demolition and removal of debris and the cost of architects, engineers and other consultants.

5. Acknowledgement and publicity

(clause 13)

- 5.1.1. The Foundation agrees to acknowledge the provision of the Grant by the Department from the Reef Trust Special Account in accordance with the document entitled "Australian Government Reef Trust and Reef Programme Acknowledgment Guide" issued by the Department from time to time, which details the acknowledgement and communications requirements for activities funded by the Commonwealth through Reef Trust.

6. Notice

(clause 28)

- 6.1.1. The Department's details are as follows:

- 6.1.2. The Foundation's details are as follows:

7. Governing Law

(clause 30.7)

- 7.1.1. The laws of the Australian Capital Territory govern this Agreement.

8. Confidential Information

(clause 14)

8.1. Department's Confidential Information

- 8.1.1. Agreement Provisions/Schedules/Attachments

Item	Period of Confidentiality
None identified	

8.1.2. Agreement related material

Item	Period of Confidentiality
None identified	

8.2. Foundation's Confidential Information

8.2.1. Agreement Provisions/Schedules/Attachments

Item	Period of Confidentiality
None identified	

8.2.2. Agreement related material

Item	Period of Confidentiality
Specific agreed elements of the Co-Financing Strategy Plan	Completion Date
Specific agreed elements of the Communication and Stakeholder Engagement Plan	Completion Date
All information provided to the Department by the Commonwealth Observer	In perpetuity

SCHEDULE 2 COMPONENT 1 – ADMINISTRATIVE ACTIVITIES

1. Component Description

1.1. Component Objectives and Outcomes

1.1.1. The purpose of this Component is to ensure good governance is in place, including systems and processes, and that effective project management and scaling-up activities are being undertaken.

1.2. Component Activities

1.2.1. In the 2018-19 Financial Year, the Foundation is required to complete the following Scaling Up Activities as part of this Component by the following dates:

	Scaling Up Activity	Description	Due Date
1.	Prepare, consult on and finalise an Activity Gantt chart for the 2018-19 Financial Year of the Activity in accordance with clause 5.	A Gantt chart that sets out the Foundation's plan, and an associated budget, for the implementation of this Agreement in the 2018-19 Financial Year. This will include an organisational maturity assessment for the Foundation. It may also detail Projects or activities proposed to be funded in the 2018-19 Financial Year.	31 August 2018
2.	Foundation to establish a Partnership Management Committee for the Activity and governance arrangements for each Component.	Foundation to establish, and develop terms of reference for, a Partnership Management Committee for the Activity and governance activities for each Component.	31 August 2018
3.	Prepare, consult on and finalise an Investment Strategy and Annual Work Consultation Plan in accordance with clause 5.	A detailed plan that sets out the methodology by which the Advisory Bodies set out in clause 5.6 will be consulted and engaged in the development of the Investment Strategy and each Annual Work Plan. This plan will set out the respective roles of the Foundation and the Department in the process (including the use of any existing secretariat	31 August 2018

Scaling Up Activity	Description	Due Date
4. Prepare, consult on and finalise a Resourcing Plan for the Activity in accordance with clause 5.	resources), the timing for consultation and the roles of the Advisory Bodies other than the Department in the process. The plan should also contemplate the mechanisms by which the Foundation will report to the Advisory Bodies on the implementation and achievement of the Investment Strategy and prior Annual Work Plans. A detailed plan that sets out the Foundation's approach, and the activities it will undertake, to ensure it has the resources required to perform the Activity. Among other things, this plan should include detailed discussion of how the Foundation proposes to address its Personnel, Subcontracting and recruitment, premises and IT and other systems requirements for the Activity. This plan should also specify what the Foundation will do to ensure it is able to commence delivery of all Components by 1 July 2019. The plan will make provision for a continuous feedback loop to enable capability and capacity building within the Foundation.	30 September 2018
5. Prepare, consult on and finalise a Co-Financing Strategy Plan for the Activity in accordance with clause 5.	Overarching fundraising strategy that outlines the Foundation's principles and approach for the 2019-20 to 2023-24 Financial Years, and which sets out how the Foundation will leverage the up-front payment of the Grant to raise the Other Contributions specified in this Agreement (including the Annual Work Plans) and Other Contributions more generally, from private and philanthropic donors.	30 September 2018

Scaling Up Activity	Description	Due Date
6. Prepare, consult on and finalise a Risk Management Plan for the Activity in accordance with clause 5 and appointment of a Risk and Compliance officer.	A detailed plan that identifies all material risks for the Activity and each Component and the various ways in which the Foundation will manage and mitigate those risks. This will include a business continuity and disaster recovery plan. The appointment of a Risk and Compliance officer.	30 September 2018
7. Prepare, consult on and finalise a Communication and Stakeholder Engagement Plan for the Activity in accordance with clause 5 and appointment of a Stakeholder Manager.	A plan that sets out the Foundation's approach and protocols and proposed activities regarding its communication regarding the entire Activity (including the 2018-19 Financial Year) and its engagement with the full range of Activity stakeholders, including but not limited to the Advisory Bodies, the Ministerial Forum and Indigenous communities and Traditional Owners. This plan must contain a separate stakeholder engagement plan for each Component. This plan will include: <ul style="list-style-type: none"> - an expanded social media and digital strategy; and - a detailed stakeholder map and stakeholder engagement plans for the Activity and each Component. The appointment of a Stakeholder Manager.	30 November 2018
8. Prepare, consult on and finalise a Fraud Prevention Plan for the Activity in	A policy that sets out the Foundation's approach to ensuring that fraud does not occur in relation to the Activity or the Grant, including by the	30 November 2018

Scaling Up Activity	Description	Due Date
accordance with clause 5.	Foundation's Personnel and Subcontractors.	
9. Prepare, consult on and finalise a Monitoring and Evaluation Plan for the Activity in accordance with clause 5.	<p>There will be a two-staged approach to developing the Monitoring and Evaluation Plan.</p> <p>Stage 1: draft a detailed plan that contains information for Components scoped to date.</p> <p>Stage 2: prepare a detailed plan that sets out how the Foundation will monitor and report on the Activity and which must be, or include, a MERI Plan for the Activity (and each of its Components).</p> <p>The MERI Plan must:</p> <ul style="list-style-type: none"> (a) comply with the MERI, including by detailing how the Activity will be monitored and evaluated; (b) be substantially in the form of the applicable template provided by the Department (if any); (c) further detail the Activity's Components and how they will lead to achievement of the Objectives and Outcomes; (d) detail how the part of the Grant allocated for monitoring and reporting of each Component will be spent; and (e) be consistent with all timeframes arising under this Agreement and identify how they will be met. <p>The Monitoring and Evaluation Plan will include clear and specific performance measures for the Activity and each Component (in accordance with clause 5.4.1). These performance measures are to be outcome-based and independently verifiable and draw on insights from</p>	<p>Stage 1: 30 November 2018</p> <p>Stage 2: 31 March 2019</p>

Scaling Up Activity	Description	Due Date
10. Prepare, consult on and finalise the Investment Strategy in accordance with clause 5.	the ANAO's report entitled 'Reef Trust - Design and Implementation' dated 24 November 2016 and available at: https://www.anao.gov.au/work/performance-audit/reef-trust-design-and-implementation	24 December 2018
11. Prepare, consult on and finalise the Annual Work Plan for 2019-20 in accordance with clause 5.	The Foundation's work plan for the 2019-20 Financial Year that details the Foundation's priority activities and outcomes and budget for the Activity and each Component for that Financial Year. The Annual Work Plan must set out the Projects to be performed in that period as part of the Activity. The Projects should each have specified targets including an expected environmental outcome and provide for reporting on achievement of the targets.	30 June 2019
1.2.2.	All other activities and requirements (including any governance, stakeholder engagement and reporting requirements) for this Component for a Financial Year will be specified in the Annual Work Plan for that Financial Year.	
2.	Grant amount for this Component	
2.1.1.	The total GST exclusive amount of the Grant that may be spent on this Component under this Agreement is \$22,505,000.	
2.1.2.	In addition, the Foundation may use an amount of interest that it earns on the Grant to cover the costs it incurs in performing this Component.	
2.1.3.	The maximum GST exclusive amount that the Foundation may use for this Component (including the Grant amount in Item 2.1.1 and the earned interest referred to in Item 2.1.2) is ten per cent (10%) of the total Grant amount provided under this Agreement.	

SCHEDULE 3 COMPONENT 2 – WATER QUALITY ACTIVITIES

1. Component Description

1.1. Component Objectives and Outcomes

- 1.1.1. The purpose of this Component is to address water quality improvement targets impacting the Great Barrier Reef World Heritage Area through activities such as improved farming practices, reduced fertiliser user and uptake of new technology and land management practices.
- 1.1.2. The target, objective and proposed outcome of this Component are as follows, consistent with the Reef 2050 Plan as published at the time of preparing the Plans for this Component:

Reef 2050 Action Plan	Reef 2050 Plan Target	Reef 2050 Plan Objective	Reef 2050 Plan Outcome
WQA2: Continue improvement in water quality from broadscale land use through implementation of the Reef Water Quality Protection Plan 2013 actions*.	WQT4: Water quality in the GBR has a stable or positive trend.	WQ01: Over successive decades the quality of water entering the Reef from broad-scale land use has no detrimental impact on the health and resilience of the Great Barrier Reef World Heritage Area.	WQ: Reef water quality sustains the outstanding universal value, builds resilience and improves ecosystem health over each successive decade.

* The Reef Water Quality Protection Plan 2013 has been superseded by the Draft Reef 2050 Water Quality Improvement Plan 2017. Partnership actions are consistent with the 2013 Plan building on its strong foundation of programs and lessons learnt for continuous improvement and that of the Draft Reef 2050 Water Quality Improvement Plan 2017.

1.2. Component Activities

- 1.2.1. In performing this Component the Foundation agrees to act consistently with and give effect to:
- the Reef 2050 Quality Improvement Plan (current draft December 2017) available here: <https://www.reefplan.qld.gov.au/about/assets/reef-2050-water-quality-improvement-plan-2017-draft.pdf> as published at the time of preparing the Plans for this Component; and
 - the Scientific Consensus Statement on Water Quality available here: <https://www.reefplan.qld.gov.au/about/reef-science/scientific-consensus-statement/> as published at the time of preparing the Plans for this Component.
- 1.2.2. This Component will look to build on and accelerate efforts required to achieve the water quality targets and outcomes in the Reef 2050 Plan and the Reef 2050 Quality Improvement Plan in accordance with the Reef Trust water quality intermediate

outcomes set out in the Reef Trust Monitoring and Evaluation Plan available [here](#), as published at the time of preparing the Plans for this Component.

- 1.2.3. Among other things, Projects may focus on existing and new cost-effective technologies and approaches to drive pollutant and load reductions, including activities that achieve load reductions in sediment, nitrogen or pesticides, or any combination thereof, with potential for achieving gains in cost-effectiveness (i.e. cheaper per tonne of pollutant reduced).
- 1.2.4. Projects may also explore opportunities for innovation in the water quality space including delivery models, novel approaches to drive behavioural change (e.g. incentives, supply chain levers), piloting new on-ground approaches and new technologies, and innovative financing solutions. Additionally, the development of basin specific targets and water quality improvement plans provides for more targeted place-based approaches and tailored interventions.
- 1.2.5. Activities and requirements (including any governance, stakeholder engagement and reporting requirements) for this Component for a Financial Year will be specified in the Annual Work Plan for that Financial Year or, in the case of 2018-19, in the Activity Gantt chart for the 2018-19 Financial Year.

2. Grant amount for this Component

- 2.1.1. The total GST exclusive amount of the Grant that may be spent on this Component under this Agreement is \$200,649,000.

SCHEDULE 4 COMPONENT 3 – CROWN-OF-THORNS STARFISH CONTROL ACTIVITIES

1. Component Description

1.1. Component Objectives and Outcomes

1.1.1. The purpose of this Component is to expand efforts to control Crown-of-Thorns Starfish (COTS) to reduce coral mortality from COTS outbreaks in order to protect high ecological and economic value coral reefs in line with GBRMPA’s COTS Control Strategy (which at the Commencement Date is available [here](#)).

1.1.2. The target, objective and proposed outcome of this Component are as follows, consistent with the Reef 2050 Plan as published at the time of preparing the Plans for this Component:

Reef 2050 Action Plan	Reef 2050 Plan Target	Reef 2050 Plan Objective	Reef 2050 Plan Outcome
EHA12: Reduce COTS outbreaks by continuing to improve water quality and undertaking a targeted control program as needed. Improve integration and effectiveness of COTS research and management.	EHT5: Condition and resilience indicators for coral reef, seagrass meadows, islands, estuaries, shoals and inter-reefal habitats are on a trajectory towards at least good condition at local, regional and Reef-wide scales.	EHO3: Trends in the condition of key ecosystems including coral reefs, seagrass meadows, estuaries, islands, shoals and inter-reefal areas are improved over each successive decade.	EH: The status and ecological functions of ecosystems within the Great Barrier Reef World Heritage Area are in at least good condition with a stable to improving trend.

1.2. Component Activities

1.2.1. Projects are likely to focus on reducing coral losses from predation through a scaled up in-water control program as part of an integrated COTS management strategy. The strategy will encompass a combination of in-water COTS control activities, surveillance, monitoring, data analysis and synthesis to better target control programs and innovative science (e.g. early detection, novel higher efficiency culling methods and automation).

1.2.2. COTS control efforts may look to target high tourism value sites and areas of high ecological value – particularly those essential to reef resilience (see the Reef Blueprint ‘building a resilience network’ initiative: [http://elibrary.gbrmpa.gov.au/jspui/bitstream/11017/3287/1/GBRMPA Blueprint for Resilience - Low Res.pdf](http://elibrary.gbrmpa.gov.au/jspui/bitstream/11017/3287/1/GBRMPA%20Blueprint%20for%20Resilience%20-%20Low%20Res.pdf)).

1.2.3. Projects funded under this Component will build on investments in the existing COTS control program and complement work occurring in the Reef catchment to improve water quality and reduce the long-term risk to the Great Barrier Reef from COTS.

- 1.2.4. Activities and requirements (including any governance, stakeholder engagement and reporting requirements) for this Component for a Financial Year will be specified in the Annual Work Plan for that Financial Year or, in the case of 2018-19, in the Activity Gantt chart for the 2018-19 Financial Year.

2. Grant amount for this Component

- 2.1.1. The total GST exclusive amount of the Grant that may be spent on this Component under this Agreement is \$57,800,000.

SCHEDULE 5 COMPONENT 4 – REEF RESTORATION AND ADAPTATION SCIENCE ACTIVITIES

1. Component Description

1.1. Component Objectives and Outcomes

1.1.1. The purpose of this Component is to conduct and implement science activities to deliver and support reef restoration and adaptation for the Great Barrier Reef World Heritage Area.

1.1.2. The target, objective and proposed outcome of this Component are as follows, consistent with the Reef 2050 Plan as published at the time of preparing the Plans for this Component:

Reef 2050 Action Plan	Reef 2050 Plan Target	Reef 2050 Plan Objective	Reef 2050 Plan Outcome
EHA10: Improve connectivity and resilience through protection, restoration and management of Reef priority coastal ecosystems, including islands through innovative and cost-effective measures.	EHT5: Condition and resilience indicators for coral reef, seagrass meadows, islands, estuaries, shoals and inter-reefal habitats are on a trajectory towards at least good condition at local, regional and Reef-wide scales.	EHO2: The Great Barrier Reef World Heritage Area retains its integrity and systems functions by maintaining and restoring the connectivity, resilience and condition of marine and coastal ecosystems	EH: The status and ecological functions of ecosystems within the Great Barrier Reef World Heritage Area are in at least good condition with a stable to improving trend. B: The Reef maintains its diversity of species and ecological habitats in at least good condition with a stable to improving trend.
EHA13: Identify and prioritise key sites of high ecological value and implement recovery programs	BT2: Trends in the availability and condition of habitat for species of conservation concern are improving at Reef-wide and regionally relevant scales.	EHO3: Trends in the condition of key ecosystems including coral reefs, seagrass meadows, estuaries, islands, shoals and inter-reefal areas are improved over each successive decade. BO5: Reef habitats and ecosystems are managed to sustain healthy and diverse populations of indicator species across their natural range.	

1.2. Component Activities

- 1.2.1. Projects under this Component may look to implement newly-developed and innovative activities to repair reef damage and build the Great Barrier Reef's social, ecological and economic resilience.
- 1.2.2. Projects will look to drive innovation and explore and advance new technologies and approaches to reef restoration. The work undertaken as part of this Component will build on pre-existing design work undertaken by the Reef Restoration and Adaptation Program (**RRAP**) which is a collaboration between the Foundation, AIMS, CSIRO, James Cook University, University of Queensland and Queensland University of Technology.
- 1.2.3. Projects will look to engage with leading international partners to ensure global perspectives and experiences inform development and implementation of new techniques.
- 1.2.4. Activities and requirements (including any governance, stakeholder engagement and reporting requirements) for this Component for a Financial Year will be specified in the Annual Work Plan for that Financial Year or, in the case of 2018-19, in the Activity Gantt chart for the 2018-19 Financial Year.

2. Grant amount for this Component

- 2.1.1. The total GST exclusive amount of the Grant that may be spent on this Component under this Agreement is \$100,000,000.

SCHEDULE 6 COMPONENT 5 – INDIGENOUS AND COMMUNITY REEF PROTECTION ACTIVITIES

1. Component Description

1.1. Component Objectives and Outcomes

1.1.1. The purpose of this Component is to improve the engagement of Traditional Owners and the broader community in the protection of the Great Barrier Reef World Heritage Area including, but not limited to, increasing compliance and enforcement action against poaching, as well as greater involvement of traditional owners in sea country management through improved and expanded use of traditional marine resource agreements.

1.1.2. This Component will, among other things:

- a. support stewardship activities to build ecosystem health and resilience in the Great Barrier Reef World Heritage Area and Reef catchments; and
- b. engage Traditional Owners and the broader community in species conservation and ensuring protection efforts are focused on areas that will yield the best outcomes for marine diversity.

1.1.3. The target, objective and proposed outcome of this Component are as follows, consistent with the Reef 2050 Plan as published at the time of preparing the Plans for this Component:

Reef 2050 Action Plan	Reef 2050 Plan Target	Reef 2050 Plan Objective	Reef 2050 Plan Outcome
EHA3: Support Traditional Owner stewardship activities that contribute to Reef health and resilience, including removing and where possible identifying sources of marine debris	HT3: Partnerships between Traditional Owners and all stakeholders are increased to ensure key Reef heritage values are identified, documented, and monitored.	BO1: Traditional Owners are engaged and participate in and manage the conservation and ecologically sustainable use of cultural keystone species and biocultural resources.	CB: An informed community that plays a role in protecting the Reef for the benefits a healthy Reef provides for current and future generations.
BA3: Improve Traditional Owner engagement to strengthen participation in decision making at all levels relating to the conservation and cultural use of biodiversity.	CBT3: Community participation in stewardship actions to improve Reef health and resilience continues to grow. WQT5: Traditional Owners, industry and community are engaged in on-ground water quality	HO2: Indigenous and non-Indigenous heritage, including natural, aesthetic, historic, scientific and social values are identified and conserved in partnership with the community.	

<p>HA1: Build capacity for the involvement of Traditional Owners and community members in cooperative management, planning and assessment</p>	<p>improvement and monitoring.</p>	<p>GO3: Strong partnerships with Traditional Owners, industry, researchers and the community support protection and management of the Reef.</p>
<p>WQ24: Identify and action opportunities for Traditional Owners, industry and community engagement in on-ground water quality improvement and monitoring programs</p>	<p>HT3: Partnerships between Traditional Owners and all stakeholders are increased to ensure key Reef heritage values are identified, documented, and monitored.</p>	<p>CB03: Community benefits provided by the Reef, including its superlative natural beauty and the sense of place, are maintained for current and future generations.</p>
<p>CBA3: Develop collaborative working arrangements with Traditional Owners which establish mutual trust and build Indigenous capacity.</p>	<p>CBT3: Community participation in stewardship actions to improve Reef health and resilience continues to grow.</p>	<p>CBO2: A healthy Reef that supports sustainable lifestyles and livelihoods, and provides coastal communities with protection from extreme weather events.</p>
<p>CBA11: Strengthen programs to understand and promote the opportunities to contribute or play a role in protecting and managing the Reef.</p>		<p>EBO4: Reef-dependent industries are productive and profitable based on a healthy Reef and are ecologically sustainable.</p>
<p>CBA12: Improve the involvement and support local communities in monitoring, protecting, managing and sustainably using the Reef, including</p>		

through citizen science and LMACs.

EB13: Support the uptake of sustainable practices by Reef-dependent and Reef-associated industries to limit impacts on the Reef's OUV.

GA10: Work with Traditional Owners, industry, regional bodies, local governments, research institutions and the community to inform delivery of local and regional actions.

GA11: Improve Traditional Owner participation in governance arrangements for the protection and management of the Reef.

1.2. Component Activities

- 1.2.1. Projects under this Component will focus on Traditional Owner and community engagement, and engage in a combination of Traditional Owner and community education, capacity building and employment (for example, Indigenous Ranger Programs) activities.
- 1.2.2. This will involve engagement activities to support implementation of all investments made under this Agreement, and other initiatives identified or developed through the scoping activities associated with this Agreement, including local community actions (including initiatives detailed in the Great Barrier Reef Marine Park Authority's *Blueprint for Resilience* document) such as marine debris clean ups, local habitat restoration projects and biodiversity projects.
- 1.2.3. Activities and requirements (including any governance, stakeholder engagement and reporting requirements) for this Component for a Financial Year will be specified in the Annual Work Plan for that Financial Year or, in the case of 2018-19, in the Activity Gantt chart for the 2018-19 Financial Year.

2. Grant amount for this Component

- 2.1.1. The total GST exclusive amount of the Grant that may be spent on this Component under this Agreement is \$22,349,000.

SCHEDULE 7 COMPONENT 6 – INTEGRATED MONITORING AND REPORTING ACTIVITIES

1. Component Description

1.1. Component Objectives and Outcomes

1.1.1. The purpose of this Component is to support the implementation of the Reef 2050 Plan Reef Integrated Monitoring and Reporting Program (**RIMREP**) including eReefs and the Paddock to Reef monitoring and reporting programs, to improve health monitoring and reporting of the Great Barrier Reef World Heritage Area to ensure that monitoring and our reporting to UNESCO is scientifically robust and investment outcomes are measurable.

1.1.2. The target, objective and proposed outcome of this Component are as follows, consistent with the Reef 2050 Plan as published at the time of preparing the Plans for this Component:

Reef 2050 Action Plan	Reef 2050 Plan Target	Reef 2050 Plan Objective	Reef 2050 Plan Outcome
<p>GA15: Develop, implement and operate an integrated monitoring and reporting program to facilitate adaptive management for the Reef.</p> <p>GA5: Adopt an approach of continuous improvement as part of adaptive management of the World Heritage Area.</p>	<p>GT5: A comprehensive Integrated Monitoring and Reporting Program is established and operational and the reporting informs review and updating of this Plan.</p> <p>GT4: Investment in actions is prioritised using evidence-based risk assessment to maximise benefits for Reef health and resilience.</p> <p>GT3: Actions under this Plan are prioritised and tailored to reflect local or regional differences in threats to the values of the Reef.</p>	<p>GO2: This Plan guides decisions about the Reef made by governments, industry and the community.</p> <p>GO4: An adaptive management approach underpins implementation of this Plan and results in improved governance arrangements and processes.</p>	<p>The outstanding universal value of the Great Barrier Reef is maintained and enhanced each successive decade through effective governance arrangements and coordinated management activities.</p>

1.2. Component Activities

- 1.2.1. This Component will seek to deliver Projects that contribute to and support the coordination, alignment and integration of Reef catchment and marine monitoring, modelling and reporting programs to capitalise on existing investment and to improve efficiencies and the quality and timeliness of data for decision-making.
- 1.2.2. Projects will support:
- a. the delivery and operationalisation of the integrated modelling, monitoring and reporting program to track progress towards targets under the Reef 2050 Plan, inform outlook Reporting and to drive adaptive management;
 - b. the coordination, alignment and integration of existing marine and catchment monitoring, modelling and reporting programs to capitalise on existing program investment, provide value for money, improve efficiency and ensure no duplication of effort; and
 - c. initiatives that drive innovation in monitoring, modelling and reporting to reduce costs, increase coverage and improve accessibility and timeliness of data for Great Barrier Reef managers and the public.
- 1.2.3. Activities and requirements (including any governance, stakeholder engagement and reporting requirements) for this Component for a Financial Year will be specified in the Annual Work Plan for that Financial Year or, in the case of 2018-19, in the Activity Gantt chart for the 2018-19 Financial Year.

2. Grant amount for this Component

- 2.1.1. The total GST exclusive amount of the Grant that may be spent on this Component under this Agreement is \$40,000,000.

SCHEDULE 8 ADDITIONAL COMPONENT SCHEDULE TEMPLATE

Schedule number [Insert number this Schedule will be when added to the Agreement]

1. Component Name

1.1.1. [Insert name of the new Component]

1.2. Component Objectives and Outcomes

1.2.1. [Specify the objectives and outcomes for this Component here]

1.3. Component Activities

1.3.1. [Set out the general requirements for this Component.]

1.3.2. In the [insert] Financial Year, the Foundation is required to complete the following activities as part of this Component:

- a. [Insert any Component requirements milestones and deliverables and due dates for first 12 months]

1.3.3. All other activities and requirements (including any governance, stakeholder engagement and reporting requirements) for this Component for a Financial Year will be specified in the Annual Work Plan for that Financial Year.

2. Grant amount for this Component

2.1.1. The total GST exclusive amount of the Grant that may be spent on this Component under this Agreement is \$[Insert].

This Additional Component Schedule is made on [day(numeric) month(name) year(numeric) in full].

The parties agree that by signing this Additional Component Schedule, the parties' Agreement for the delivery of the Reef Trust dated [insert date as varied by] [insert the date of any earlier variations] (**Agreement**) is further varied in accordance with clause 5.1.3 of the Agreement and that this Additional Component Schedule becomes an additional Schedule to, and forms part of and is subject to the terms and conditions of, the Agreement.

SIGNED for and on behalf of the
Commonwealth of Australia)
represented by the Department of the)
Environment and Energy ABN 34 190)
894 983)

by:

^Name of signatory^

Signature

In the presence of:

^Name of witness^

Signature of witness

SIGNED for and on behalf of Great
Barrier Reef Foundation (ABN 82 090)
616 443) in accordance with the)
requirements of section 127 of the)
Corporations Act 2001 (Cth) by:)

^Name of Director^

Signature

and by:

^Name of Director/Secretary^

Signature

Great Barrier Reef Foundation

[Insert name of Commonwealth Observer]

Confidentiality Deed

Relating to the Commonwealth Observer under the Grant Agreement between
the Reef Trust and the Foundation

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This Deed is made on

Parties

- 1 **Great Barrier Reef Foundation** (ABN 82 090 616 443) of Level 13, 300 Ann Street, Brisbane, QLD 4000 (the **Foundation**).
- 2 **[Insert name of Commonwealth Observer]** of **[Insert address of Commonwealth Observer]** (the **Recipient**).

Recitals

- A The Recipient wishes to access certain valuable and confidential information of the Foundation for the purpose of performing the Role.
- B The parties enter into this Deed to record the terms on which the Recipient may access Confidential Information for the Permitted Purpose.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Business Day means a day other than a Saturday, Sunday, public or bank holiday in Brisbane or Canberra.

Confidential Information means:

- (a) all information, whether written, oral, electronic or in any other form provided (before, on or after the date of this Deed) by the Foundation or any of its Representatives to the Recipient or received by the Recipient in connection with the Role or the Permitted Purpose or relating to the Foundation's past, present or future assets, operations, financials, affairs, business or strategic plans; and
 - (b) Derived Information.
- It does not include information that:
- (c) is or becomes generally available other than as a result of disclosure by the Recipient in breach of this Deed;
 - (d) is or becomes available to the Recipient from a person (other than the Foundation or any of its Representatives) who is not, to the best of the knowledge of the Recipient, prohibited from disclosing to the Recipient by a legal or equitable obligation to the Foundation; or
 - (e) is in the possession of the Recipient before the date of this Deed (other than information obtained on a confidential basis from the Foundation or any of its Representatives).

Consequential Loss means any Liability suffered by the Recipient that cannot reasonably be considered to arise naturally from a breach of this Deed or the events giving rise to the Liability, including any loss of opportunity, loss of goodwill or damage to reputation.

Department means the Department of the Environment and Energy or any other department, agency or authority of the Commonwealth of Australia which is for the time being responsible for administering the Grant Agreement.

Derived Information means all information, data, findings, records and other material derived or produced by the Recipient partly or wholly from any of the Confidential Information, but only to the extent that such material incorporates or is based on Confidential Information.

Grant Agreement means the agreement between the Department and the Foundation pursuant to which the Department agrees to confer \$443,303,000.00 excluding GST on the Foundation to carry out certain activities for the protection and restoration of the Great Barrier Reef.

Liability means a liability, loss, damage, cost or expense of whatever description, whether actual, contingent or prospective.

Permitted Purpose means, in relation to the Role, observing and reporting to the Department on matters relating to the administration of the Grant (as defined in the Grant Agreement) and the performance of the Grant Agreement by the Foundation, in accordance with the terms of the Grant Agreement. To avoid doubt, it does not include reporting to the Department or any other person on any other matters relating to the Foundation.

Role means the role of the Recipient as Commonwealth Observer for the purpose of the Grant Agreement.

Representative of the Foundation means any:

- (a) director, other officer or employee; or
 - (b) professional adviser (including financial adviser, legal adviser or accountant),
- of the Foundation.

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, in particular, such as, or similar expressions, does not limit what else might be included.
- (c) Nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or a relevant part of it.
- (d) The following rules of interpretation apply unless the context requires otherwise.
 - (i) The singular includes the plural, and the converse also applies.
 - (ii) A gender includes all genders.
 - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.

- (v) A reference to a clause or Schedule is a reference to a clause of, or Schedule to, this Deed.
- (vi) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (vii) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.
- (viii) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form (and includes a communication by electronic mail).
- (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, deed, 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.

1.3 Consents and approvals

If the doing of any act, matter or thing under this Deed is dependent on the consent, acceptance or approval of a party or is within the discretion of a party, such consent, acceptance or approval may be given or such discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion.

2 Purpose of disclosure

- (a) The Recipient acknowledges and agrees that any Confidential Information disclosed to it is disclosed solely, and may only be used, for the Permitted Purpose on the terms of this Deed.
- (b) The Recipient acknowledges that the Recipient is aware of and understands the terms of the Grant Agreement.

3 Confidentiality Obligations

3.1 Maintenance of confidentiality and use of Confidential Information

Except as permitted otherwise by this Deed, the Recipient must:

- (a) keep all Confidential Information in strict confidence and not, without the prior written consent of the Foundation, disclose, or cause or permit the disclosure, to any person of any Confidential Information, except for the Permitted Purpose;
- (b) not, without the prior written consent of the Foundation, copy, extract or reproduce the Confidential Information, except for the Permitted Purpose; and

- (c) not use Confidential Information, except for the Permitted Purpose and in accordance with this Deed.

3.2 Effective security measures

The Recipient must have effective security measures to safeguard all Confidential Information from loss, use, copying, modification or disclosure other than in accordance with this Deed.

3.3 Privacy requirements

If the Confidential Information includes any information, or an opinion, relating to an individual whose identity is reasonably ascertainable from that information or opinion, the Recipient must:

- (a) comply with all applicable privacy laws or data protection laws that regulate the handling, storage, use and disclosure of information, as if it were subject to those laws;
- (b) comply with any privacy code or policy that has been adopted by the Foundation as if it were bound by that code or policy, provided that a copy of that code or policy has been provided to the Recipient;
- (c) promptly notify the Foundation of any complaint or investigation under, or relating to, any of the laws, codes or policies referred to in clauses 3.3(a) and 3.3(b); and
- (d) co-operate with the Foundation in the resolution of any such complaint or investigation.

4 Permitted Disclosure

4.1 Requirements of law

Subject to clause 4.2, the Recipient may disclose Confidential Information:

- (a) if and to the extent required by law;
- (b) if required by the Department, to the Department's responsible Minister;
- (c) in response to a request to the Department by a House or Committee of the Parliament of the Commonwealth of Australia,
(each, a ***Disclosure Obligation***).

4.2 Prior advice and related obligations

- (a) The Recipient must inform the Foundation in writing of any disclosure required by a Disclosure Obligation before or, if this is not reasonably practical and legally permitted, as soon as practical after the disclosure is made.
- (b) The Recipient must use reasonable endeavours to (and assist the Foundation to) restrict distribution of the Confidential Information disclosed, and otherwise take all reasonable steps to preserve the confidentiality of the Confidential Information the subject of the Disclosure Obligation, in accordance with this Deed.
- (c) Without the prior written consent of the Foundation, the Recipient must not take (or omit to take, or procure, suffer, or permit to be taken) any action as a result of which the Recipient may become subject to a legal obligation to disclose Confidential Information.

4.3 Use or disclosure in legal proceedings

The Recipient may use, disclose or allow access to the Confidential Information in any proceedings arising out of or in connection with the Grant Agreement or this Deed to the extent necessary to protect the lawful interests of the Department or the Recipient, provided that the Recipient notifies the Foundation of the Recipient's intention to make that use or disclosure or allow that access, and gives the Foundation details of the material and information to be used, disclosed or accessed.

5 No Other Disclosure

Subject to clause 4, the Recipient will not make any public statement, press release or other communication (public or otherwise) to any other person disclosing, or relating to, the Role or the Permitted Purpose except with the prior written consent of the Foundation.

6 Reliance on Information

6.1 No warranty

Neither the Foundation nor any of its Representatives:

- (a) makes any representation or warranty as to the accuracy, completeness or relevance of any of the Confidential Information;
- (b) accepts any responsibility to update any Confidential Information, except in accordance with its obligations to the Commonwealth Observer under the Grant Agreement; and
- (c) is liable for any Liability of any kind (including any Consequential Loss) arising directly or indirectly from any inaccuracy, incompleteness or similar defect in the Confidential Information or any default, negligence or lack of care in relation to the preparation or provision of the Confidential Information.

6.2 Foundation's rights

The Foundation reserves all rights in the Confidential Information and no rights or obligations, other than those set out in this Deed, are granted by or to be implied from this Deed. The Recipient acknowledges that the Confidential Information and all intellectual property rights in the Confidential Information are the exclusive property of, and will remain the exclusive property of, the Foundation.

6.3 Prohibition against legal proceedings

The Recipient may not bring any legal proceedings in contract, in tort, for breach of statutory duty or otherwise against the Foundation or any of its Representatives in respect of the Confidential Information.

6.4 No waiver of privilege

The Foundation does not by provision of the Confidential Information to the Recipient waive any client privilege in respect of the Confidential Information.

7 Return and Destruction

7.1 Obligation to return or destroy

- (a) Subject to clauses 7.2 and 7.3, if:
 - (i) the Grant Agreement or the Recipient's appointment to the Role terminates for any reason;
 - (ii) the Foundation requests that Confidential Information be returned or destroyed; or

- (iii) ordered by a court, then, within five Business Days (or such later date notified by the Foundation), the Recipient must return to the Foundation (or destroy or delete entirely and permanently from every computer disk or electronic storage facility of any type owned, within the control of or used by the Recipient, where return is not practical) all Confidential Information and all copies of such Confidential Information that are in its possession or under its control.
- (b) The Recipient must provide the Foundation with notice confirming it has satisfied the obligations under this clause 7.1 within two Business Days after the obligations have been satisfied.

7.2 Retaining information

Subject to clause 7.4, the Recipient may retain Confidential Information:

- (a) to the extent that the Department is entitled to retain Confidential Information pursuant to the terms of the Grant Agreement;
- (b) to the extent that it is required to be retained to comply with any applicable law; and
- (c) to the extent it is stored electronically in servers pursuant to an existing routine data back-up process, provided that no attempt is made to recover it from such servers other than as required by any law.

7.3 Archived electronic Material

- (a) Nothing in clause 7.3(b) affects the Recipient's obligations under clause 3.
- (b) This clause 7 does not require the Recipient to actively locate and delete electronic files, documents or information containing Confidential Information or Material (each a **File**) which may be held by the Recipient on any archived electronic storage medium, provided that:
 - (i) all Files which, from time to time, are or become accessible to the Recipient via a current active or accessible information storage system are promptly returned or deleted in accordance with clause 7.1(a);
 - (ii) the archive storage media are stored securely and in a manner that enables the Recipient to comply with its obligations under clause 7; and
 - (iii) if such a storage medium is retrieved from archives or becomes accessible to the Recipient via an active information storage system, the Recipient must search for any File on that storage medium so as to comply with paragraph (i) of this clause 7.3(b).

7.4 Continuing obligations

To the extent that Confidential Information is retained, complying with this clause 7 does not relieve the Recipient from its obligations under this Deed, in particular under clauses 4 and 5.

8 Remedies

8.1 Injunctive relief and specific performance

The Recipient acknowledges that any breach of this Deed (including any use or disclosure of any Confidential Information not permitted by or in breach of this Deed) may cause material damage to the Foundation and that damages may not be a sufficient remedy for such breach. Accordingly, the Foundation has the right to seek injunctive relief or specific

performance (and associated costs) against the Recipient as a remedy for any actual or threatened breach of this Deed.

8.2 No other remedies

The Foundation acknowledges that under the Grant Agreement the Department has indemnified the Foundation in respect of any breach of this Deed by the Recipient. Accordingly, other than the remedies referred to in clause 8.1, the Foundation agrees that it will not seek damages or any other remedy against the Recipient in relation to any Liability of the Recipient to the Foundation for any breach of this Deed.

9 General

9.1 Term

The obligations of the Recipient under this Deed will continue in perpetuity notwithstanding the termination of the Recipient's appointment to the Role or the termination of the Grant Agreement.

9.2 Amendment

This Deed may be amended only by another deed executed by all the parties.

9.3 Assignment

No party can assign, charge, create a security interest over, encumber or otherwise deal with any of its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of the other party.

9.4 Notices

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

- (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 delivered to the intended recipient by prepaid post or by hand or email to the address or email address below or the address or email address last notified by the intended recipient to the sender:
 - (i) to the Recipient: Address: [*]
Email: [*]
Attention: [*]
 - (ii) to the Foundation: Address: [*]
Email: [*]
Attention: [*]
- (c) will be conclusively taken to be duly given or made and received:
 - (i) in the case of delivery by hand, upon delivery to the relevant address;
 - (ii) in the case of delivery by post, upon delivery to the relevant address;
 - (iii) in the case of email, upon actual receipt by the addressee.
- (d) A Notice that would be taken to be given or made and received at a time later than 5pm in the place specified by the intended recipient as its postal address under clause 9.4(b) is taken to have been duly given or made and received at the start of business on the next business day in that place.

9.5 Entire agreement

This Deed and the Grant Agreement contain the entire agreement between the parties with respect to their subject matter. This Deed 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. No party has relied on or is relying on any other Conduct in entering into this Deed and completing the transactions contemplated by it.

9.6 Further assurances

Each party must do anything necessary (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

9.7 Governing law and jurisdiction

This Deed is governed by the laws 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.

9.8 Severability of provisions

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

9.9 No waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Deed 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. For the avoidance of doubt, the doctrine of affirmation by election will not apply to any failure by a party to exercise, or delay by a party in exercising, any right, power or remedy under this Deed.

9.10 No merger

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

9.11 Costs

- (a) Each party must bear its own costs arising out of the negotiation, preparation and execution of this Deed.
- (b) The Foundation will not be responsible for any costs or expenses incurred by the Recipient in connection with the Role or the Permitted Purpose.

9.12 Counterparts

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

Executed and Delivered as a Deed in Queensland.

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

Director Signature

Director/Secretary Signature

Print Name

Print Name

Signed Sealed and Delivered by **[Insert Name]** in the presence of:

Witness Signature

Signature

Print Name

SCHEDULE 10 REQUIREMENTS FOR FOUNDATION CONTRACTS

1. Requirements for inclusion in every Subcontract

- 1.1.1. Without limiting in any way the requirements in clause 30.1, the Foundation must in each Subcontract with any person:
- a. require the Subcontractor to agree it will perform its Project in accordance with all applicable laws and by the date(s) specified in the Subcontract;
 - b. require the Subcontractor to have specified insurances relevant to its Project;
 - c. have rights to terminate the Subcontract for convenience and/or default which are co-extensive with the Department's rights to terminate and/or reduce the scope of this Agreement under clause 25;
 - d. require the Subcontractor to complete the actions in clause 18.1.1 and 18.2.3 in respect of its performance of the Activity and report any identified risks or Notifiable Incidents to the Foundation before the Subcontractor commences performing that Project;
 - e. require each Subcontractor to provide the Foundation with the information the Foundation needs to comply with its reporting and other requirements under this Agreement; and
 - f. require each Subcontractor to comply with the Privacy Act and the Australian Privacy Principles and to consent to the disclosure of Personal Information as required by clause 15 of this Agreement.

2. Requirements for inclusion in each Subcontract with a Funding Recipient

- 2.1.1. Without limiting in any way the requirements in clause 30.1, the Foundation must in each Subcontract with a Funding Recipient:
- a. require the Funding Recipient to agree that any Project Funds and any Cash Contributions it receives for a Project may only be used for that Project and for no other purpose and that the Funding Recipient shall not use more than ten percent (10%) of the Project Funds for the administration of the Project;
 - b. require the Funding Recipient to agree that it will keep records regarding its expenditure of the Project Funds and Cash Contributions for the same period as the Foundation is required to keep records under this Agreement;
 - c. require the Funding Recipient to acknowledge the financial and other support the Foundation has received from the Australian Government in the manner set out in Item 5 of Schedule 1 or otherwise notified by the Department to the Foundation;
 - d. ensure the Foundation has a right to recover any part of the Project Funds and any Cash Contributions that is overpaid to, incorrectly claimed or spent by, or not required by, the Funding Recipient;

- e. require the Funding Recipient to provide the Foundation with a financial statement:
 - i. showing the Funding Recipient's receipt and expenditure of the Project Funds and any Cash Contributions for the relevant Project; and
 - ii. that is certified by the Funding Recipient's Chairperson, CFO or CEO that the Project Funds and Cash Contributions provided for a Project have been spent on that Project in accordance with requirements of the Subcontract; and
- f. require the Funding Recipient to repay to the Foundation any part of the Project Funds and Cash Contributions which the Funding Recipient has not spent on the Project in accordance with the Subcontract, within 20 Business Days after the expiry or earlier termination of the Subcontract and for interest to accrue on any Project Funds that are required to be repaid, but are not repaid, by that date.

Executed as an agreement

This Agreement is made on June 2018

SIGNED for and on behalf of the
Commonwealth of Australia)
represented by the **Department of**)
the Environment and Energy (ABN)
34 190 894 983))

by:

Name of signatory

Signature

In the presence of:

Name of witness

Signature of witness

SIGNED for and on behalf of **Great**
Barrier Reef Foundation (ABN 82)
090 616 443) in accordance with the)
requirements of section 127 of the)
Corporations Act 2001 (Cth) by:)

Name of Director

Signature

and by:

Name of Director/Secretary

Signature