

# Great Barrier Reef Foundation – Services Agreement



Great Barrier  
Reef Foundation

**Date** [\*]

**Parties**

1. Great Barrier Reef Foundation (ABN 82 090 616 443) of Level 11, 300 Ann Street, Brisbane QLD 4000 (the **Foundation**); and
2. [Service Provider] (ACN [\*]) of [insert address] (the **Service Provider**).

**Recitals**

- A. The Foundation requires the provision of certain Services.
- B. The Service Provider has represented that it has the necessary expertise and resources to provide the Services.
- C. The Service Provider agrees to provide and the Foundation agrees to acquire the Services on the terms of this Agreement, including the Terms of Reference.

**Foundation Details**

Party Name: Great Barrier Reef Foundation

ABN: 82 090 616 443

Contact Name: [ ]

Street Address: Level 11, 300 Ann Street, Brisbane, QLD 4000

Contact Postal Address: GPO Box 1362, Brisbane QLD 4000

Contact Telephone: 07 3252 7555

Contact Email: contracts@barrierreef.org

**Party Name:** [ ]

**ABN:** [ ]

**Contact Name:** [ ]

**Street Address:** [ ]

**Contact Postal Address:** [ ]

**Contact Telephone:** [ ]

**Contact Email:** [ ]

**Services** [Insert description of services to be provided including any milestones, reports.]

**Contract Payment** [Insert details of payment i.e. hourly rate, instalments or lumpsum.]

**Payment Date** [Insert payment date/s]

[insert additional conditions where relevant]

[insert reports as required].

**Reports**

**Additional Conditions**

**Commencement Date**



## Completion Date

### Insurance

Workers Compensation as required by law during the term of this Agreement.

Public Liability [\$20m] during the term of this Agreement.

Professional Indemnity [\$1m] during the term of this Agreement and for 7 years after the completion of this Agreement.

[Other insurance i.e. motor vehicle, boat]

**It is agreed** as follows.

## 1. Term and expiry

This Agreement commences on Commencement Date and continues until the Completion Date (**Term**) unless extended (in writing) or terminated earlier.

## 2. Definitions and Interpretation

### 2.1 Definitions

The following definitions apply unless the context requires otherwise.

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

**Deliverables** means the deliverables described in the Terms of Reference and any further reports, documents, Materials that the Service Provider creates for or supplies to the Foundation as part of the Services under this Agreement, and as expressly set out under the Terms of Reference.

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

**Intellectual Property** means all Intellectual Property Rights in or arising out of the Services, Deliverables and the Materials, but excludes any IPR in the Service Provider's Background IP.

**Intellectual Property Rights or IPR** means all industrial and intellectual property rights of any kind including but

not limited to copyright (including rights in computer software), trade mark, service mark, design, patent, trade secret, semi-conductor or circuit layout rights, trade, business, domain or company names, moral rights, rights in Confidential Information, know-how or other proprietary rights (whether or not any of these are registered and including any application, or right to apply, for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which subsist or may hereafter subsist anywhere in the world.

**Material** means any material (whether originating with the Service Provider or a third party) which is developed by or on behalf of the Service Provider in the course of or in connection with the supply of the Services and Deliverables in any form whatsoever (including electronic form) and includes without limitation all Deliverables, inventions, discoveries, improvements, processes, software, tools, databases, models, drawings, plans, artwork, designs, logos, reports, advices, proposals and records.

## 3. Services and Service Provider Obligations

### 3.1 Services

The Service Provider must:

- (a) Provide the Services;
- (b) Comply with all relevant laws;
- (c) Carry out the Services diligently, effectively and in a professional manner;
- (d) Comply with all reasonable requests, directions and requirements of the Foundation;

- (e) Not do anything that reflects unfavourably upon the Foundation, might negatively impact the image or reputation of the Foundation or [is in conflict with the Reef Trust Partnership.];
- (f) Notify the Foundation of any conflict of interest;
- (g) Notify the Foundation of any complaint or Claim relating to breach of any Laws (including Privacy Laws) by the Service Provider or its personnel;
- (h) Notify the Foundation if the Service Provider is delayed in its provision of the Services;
- (i) Only spend the Contract Payment on the Services;
- (j) Comply with any obligations necessary to comply with the Reef Trust Grant agreement between the Foundation and the Commonwealth of Australia represented by the Department of the Environment and Energy executed on 27 June 2018 (as varied) ("**Grant Agreement**").

### 3.2 Service Provider Obligations

- (a) The Contract Payment may only be spent on the Project.
- (b) The Service Provider may not use more than ten per cent of the Contract Payment for the administration of the Project; and
- (c) The Service Provider must hold the Contract Payment in an account in the Service Provider's name and in the Service Providers sole control, with an Approved Financial Institution.
- (d) If the Funding Recipient uses the Contract Payment:
  - (i) for any purposes other than for the purposes of the Project in accordance with this Agreement; or
  - (ii) in breach of clause 3.2 **Error! Reference source not found.**,

without prejudice to the Foundation's other rights and remedies under this Agreement otherwise at law the Foundation may, by written notice, require the Service Provider to refund the misapplied Contract Payment amount including any Interest on it from the date of the notice until it is paid in full (**Amount**).

- (e) The Foundation is not liable to Service Provider or any other person for any costs overruns, or debts that the Service Provider incurs, in relation to the Project.
- (f) GBRF may terminate this Agreement in accordance with clause 11 for any breach of this clause **Error! Reference source not found.**
- (g) The Service Provider agrees to acknowledge the provision of the Contract Payment by the Department from the Reef Trust Special Account in accordance with the document entitled 'Australian Government Reef Trust and Reef Programme Acknowledgement Guide' issued by the Department from time to time, which details the acknowledgement and communications requirements for activities funded by the Commonwealth through the Reef Trust.

### 3.3 Financial accounts

The Service Provider must:

- (a) keep financial accounts and records relating to the Project that identifies all receipts and payments related to the Project and retain those records for a period of no less than seven (7) years after the termination of this Agreement;
- (b) provide a financial statement to the Foundation upon completion of the Project:
  - (i) showing the Service Provider's receipt and expenditure of the Contract Payment for the Project; and
  - (ii) that is certified by the Service Provider's Director, Chairperson, CEO or CFO that the Project Funds have been spent on that Project in accordance with the requirements of this Agreement.

### 3.4 Reports

- (a) The Service Provider must submit the Reports by the dates and containing the information described in this Agreement.
- (b) The Service Provider must provide to the Foundation any other information or material about the Service Provider, its Personnel, the Project, the

Contract Payment or any other matter in connection with this Agreement or in connection with the Foundations obligations under the Grant Agreement when requested in writing by the Foundation within a reasonable time specified by the Foundation in its request.

#### **4. Payments**

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- (a) Subject to the Service Provider's ongoing compliance with this Agreement, the Foundation must pay to the Service Provider the Contract Payment on the Payment Date/s.
- (b) The Foundation may withhold the Contract Payment until all reports are submitted, services due are provided and the Foundation is satisfied that the Service Provider has complied with its obligations under this Agreement (including receiving a valid Tax Invoice).
- (c) If the Foundation notifies the Service Provider that the funds to be paid under this clause are not available, the parties agree that this Agreement will terminate with immediate effect.

#### **5. Taxes and GST**

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The Contract Payment specified in the Particulars are exclusive of GST.

#### **6. Intellectual property and moral rights**

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

- (a) The Service Provider hereby assigns to the Foundation upon creation all of the Service Provider's rights in the Intellectual Property and Materials (and any Background IP comprised in, or otherwise required to use, the Intellectual Property and Materials).
- (b) The Service Provider acknowledges that, because of the assignments under paragraph (a), the Foundation owns and will own all right, title and interest to the Intellectual Property and Materials.

- (c) The Foundation grants a non-transferable, exclusive license to the Service Provider to use Intellectual Property and Materials created by the Service Provider under this Agreement for any non-commercial purpose.

##### **6.2 Assistance**

- (a) During and after the Term and at the request of the Foundation, the Service Provider must execute any documents and take such action as the Foundation considers necessary or desirable to:
  - (i) assist or allow the Foundation to perfect, enforce, assert or defend its interest in and rights to use, reproduce, publish, perform, exhibit, transmit, communicate or adapt the Intellectual Property and the Materials;
  - (ii) generally give effect to this clause 6; and
  - (iii) assist or allow the Foundation to comply with its obligations under clause 12.2.3 of the Reef Trust Grant which requires the Foundation to provide (or procure) a licence to the Department of Intellectual Property and Material where such Intellectual Property and Material is 'Activity Material' (as that term is defined in the Reef Trust Grant).

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

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

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

##### **6.4 Warranties**

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

- (a) the Service Provider (and not the Key Person) is the only owner of any Intellectual Property and Materials (including any Background Intellectual Property)

assigned under clause 6.1(a) before that assignment;

- (b) no use, disclosure, publication, exhibition, performance, transmission, communication, adaptation or reproduction of any Materials by the Foundation will infringe any intellectual property or other rights of any third person or give rise to any obligation on the Foundation to pay compensation or royalty to any other person;
- (c) the exercise of the rights to any Intellectual Property and Materials by the Foundation will not infringe any intellectual property or other rights of any third person nor give rise to any obligation on the Foundation to pay compensation or royalty to any other person; and
- (d) the Intellectual Property and Materials are not nor will be the subject of the grant of any interest by way of licence to anyone other than the Foundation.

## 6.5 Publications

Without limitation to the above:

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

## 6.6 Present and Future Rights

The Service Provider acknowledges that:

- (a) the assignments in this clause 6 include, as far as possible, all rights in Intellectual Property and Materials that come into existence in the future; and
- (b) the warranties and undertakings in this clause 13 apply to all Intellectual Property and Materials in existence at the date of this Agreement and that come into existence in the future.

## 6.7 Moral rights

To the full extent permitted by Law:

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

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

## 7. Confidentiality and the Foundation Data

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### 7.1 Confidential Information

- (a) The Service Provider recognises that it may have access to Confidential Information in the course of providing the Services under this Agreement.

### 7.2 Foundation Data

Foundation Data is and will remain the property of the Foundation at all times. Except as required by Law, the Service Provider must not:

- (a) use the Foundation Data other than directly in relation to the performance of its obligations under this Agreement;
- (b) sell, commercially exploit, let for hire, assign rights in or otherwise dispose of any the Foundation Data;
- (c) make any the Foundation Data available to a third party other than an approved subcontractor and then only to the extent necessary to enable the approved subcontractor to perform its part of the Service Provider's obligations under this Agreement; or
- (d) remove or transfer the Foundation Data to any premises or System that is not owned or controlled by the Foundation without obtaining the prior written approval of the Foundation.

### 7.3 Data security

- (a) The Service Provider must establish and maintain safeguards against the destruction, loss or alteration of the Foundation Data in the possession or control of the Service Provider. Such safeguards must comply with all applicable Laws and any procedures notified by the Foundation from time to time.
- (b) Immediately on termination or expiration of this Agreement or on the Foundation's request, the Service Provider must return to the Foundation all the Foundation Data collected by or provided to the Service Provider in connection with this Agreement, provided that the Service Provider may retain copies of such information if necessary to comply with any Law. If and when directed to do so, such return of the Foundation Data may require Secure Data Deletion from the Service Provider's Systems.

### 7.4 Regulated Information and Privacy

- (a) The Service Provider must, and must procure that its Personnel, in respect of any Regulated Information:
  - (i) comply at all times with Privacy Law, any privacy policy or code adopted by the Foundation from time to time and all lawful directions of the Foundation notified to the Service Provider in connection with the security, use, disclosure or handling of any Regulated Information;

- (ii) not to otherwise do any act or engage in any practice which, if done or engaged in by the Foundation or the Department, would be a breach of the Privacy Act;
- (iii) only use or disclose Regulated Information for the purpose of fulfilling its obligations under this Agreement;
- (iv) not transfer or disclose any Regulated Information outside Australia, or allow any person outside Australia to access, view or receive any Regulated Information, without the prior written approval of the Foundation;
- (v) ensure that the Regulated Information held by it is protected against misuse, loss, unauthorised access, interference, modification or disclosure;
- (vi) as soon as reasonably practicable, notify the Foundation if it becomes aware:
  - (A) that a disclosure of Regulated Information is required by Law (including under applicable Privacy Law); or
  - (B) of a breach of this clause 7.4; and
- (vii) ensure that each of its Personnel complies with any privacy policy of the Foundation or any reasonable directions of the Foundation notified to the Service Provider from time to time in connection with such policies or the collection, use or disclosure of any Regulated Information.

- (b) Where the Service Provider discloses any Regulated Information to the Foundation in the course of providing the Services, it warrants and represents that it has obtained the consent of the relevant individual to the collection of that individual's Regulated Information by the Foundation and the Department, and any other third parties to whom such information may be disclosed in connection with the Services, each Deliverable, the administration of this Agreement, and / or the administration of the Reef Trust Grant.

### 7.5 Eligible Data Breach

- (a) In this clause **Eligible Data Breach** has the same meaning as it has in the Privacy Act.

(b) If the Service Provider 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 Service Provider as a result of this Agreement or its performance of the Agreement, the Service Provider agrees to:

- (i) notify the Foundation in writing as soon as possible, which must be no later than within 3 days; and
- (ii) carry out an assessment in accordance with the requirements of the Privacy Act.

(c) Where the Service Provider is aware that there are reasonable grounds to believe there has been, or where the Foundation notifies the Service Provider that there has been, an Eligible Data Breach in relation to any Personal Information held by the Service Provider as a result of this Agreement or its performance of the services, the Service Provider agrees to:

- (i) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates; and
- (ii) take all other action necessary to comply with the requirements of the Privacy Act.

## 8. Insurance

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The Service Provider will, at its own expense, obtain and maintain the insurance policies set out in the Particulars.

## 9. Indemnities

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The Service Provider indemnifies and must defend and hold harmless the Foundation, each Related Body Corporate of the Foundation and their Personnel (**those indemnified**) from and against all Losses suffered or incurred in connection with:

- (a) any breach of this Agreement;
- (b) any breach of a warranty specified in this Agreement;

- (c) Claims made by third parties (including regulators) arising out of a breach of this Agreement, or negligence, by the Service Provider or its Personnel;
- (d) the wilful, fraudulent or negligent acts or omissions of the Service Provider or its Personnel;
- (e) a breach by the Service Provider or its Personnel of any Law or of its obligations set out in clause 7;
- (f) any infringement of any IPR in, or arising out of the delivery to or any use by the Foundation or its licensees of, any Deliverables or Materials; and
- (g) any death or personal injury caused by any act or omission of the Service Provider or its Personnel.

## 10. Liability

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To the extent permitted by Law, the aggregate liability of the Foundation for Loss suffered by the Service Provider, its Related Bodies Corporate and its Personnel in connection with this Agreement (whether under statute, in contract or in tort, including for negligence, or otherwise) is limited to the value of any payments which are then due and payable and unpaid by the Foundation.

## 11. Termination

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This Agreement may be terminated at no cost to either party upon 30 days written notice. This Agreement may be terminated immediately by the Foundation in whole or in part without notice if:

- (a) the Service Provider fails to deliver work products or perform services under this Agreement to the satisfaction of the Foundation within the specified time; or
- (b) any grant monies relevant to the provision of the Services cease to be made available to the Foundation under a Grant Agreement for any reason; and
- (c) any termination event is triggered under a Grant Agreement relevant to the provision of the Services.

For the avoidance of any doubt, termination under this clause be without penalty or the payment of any early termination fee of any kind, but all Payments properly due

and payable for Services already provided at the time at which this Agreement is terminated under these clauses remain due and payable by the Foundation.

## 12. General

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### 12.1 Notices

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

- (i) must be in writing and signed by a person duly authorised by the sender (or in the case of email, set out the full name and title of the person duly authorised by the sender);
- (ii) must be delivered to the intended recipient by hand or by prepaid post (if posted to an address in another country, by registered airmail) or by email to the address or email address below or to the address or email address last notified by the intended recipient to the sender:

to the **Foundation:** Level 11, 300 Ann Street, Brisbane, QLD 4000

to the **Service Provider:** [Postal address, street address and email]

(b) **(Entire agreement)** This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

(c) **(Amendment)** No amendment or variation of this Agreement is valid or binding on a party unless made in writing and executed by both parties.

(d) **(No waiver)** No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial 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.

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

(f) **(Further assurances)** Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

(g) **(Costs)** Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.

(h) **(Governing law and jurisdiction)** This Agreement is governed by the law of Queensland. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Agreement.

(i) **(Counterparts)** This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

(j) **(Electronic Signing)** A party may (if required) sign this Agreement, and bind themselves accordingly, by electronically incorporating their signature:

- (i) using a digital transaction management platform (such as DocuSign);
- (ii) using a stylus or finger to sign a pdf on a laptop, tablet or other electronic device; or
- (iii) pasting an image of their signature into the Agreement.

The parties agree that it is their mutual intention to print this Agreement after all parties signing electronically have done so and that print-out will constitute an original counterpart of this Agreement.

Each signatory confirms that their signature appearing in this Agreement, including any such print-out (irrespective of which party printed it), is their personal signature authenticating it.



**Executed** as an agreement.

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

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Authorised Representative Signature

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Print Name

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Date

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Authorised Representative Signature

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Print Name

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

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Director Signature

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Director/Secretary Signature

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Print Name

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Print Name

**Schedule 1 – Project Description**