

DEED OF VARIATION TO THE GRANT AGREEMENT BETWEEN THE REEF TRUST AND GREAT BARRIER REEF FOUNDATION**Parties to this Deed**

1. **Commonwealth of Australia** represented by the Department of Agriculture, Water and the Environment (ABN 34 190 894 983) of John Gorton Building, King Edward Terrace, Parkes, ACT 2600 (the **Department**)
and
2. **Great Barrier Reef Foundation** (ABN 82 090 616 443) of Level 11, 300 Ann Street, Brisbane QLD 4000 (the **Foundation**)

Date of this Deed

This Deed is dated	23 November	2021
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Background

- A. The parties entered into a Grant Agreement between the Reef Trust and Great Barrier Reef Foundation on 27 June 2018, which provides a grant of \$443.3 million to the Foundation for it to achieve significant, measurable improvement in the health of the Great Barrier Reef World Heritage Area in accordance with the Reef 2050 Plan (**Agreement**). The Agreement was varied by the parties on 26 March 2019.
- B. The parties now wish to make amendments to provide increased clarity regarding intellectual property and to otherwise clarify the operation of the Agreement as set out in the terms and conditions of this Deed.

Operative provisions

1. Definitions and Interpretation

Definitions

- 1.1. In this Deed, unless the context indicates otherwise:
 - a. terms that are not defined below and are defined in the Agreement have the same meaning as in the Agreement; and
 - b. a term in bold type in the table below has the meaning shown opposite it.

Agreement	means the Agreement between the parties referred to in paragraph A of the Background, as varied from time to time;
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Date of this Deed	means the date on which this Deed is signed by the Department and the Foundation; and
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Deed means this deed and includes all schedules and attachments to it.

Effective Date means the Commencement Date of the Agreement as defined in the Agreement.

Interpretation

- 1.2. Unless the context indicates otherwise, this Deed is to be interpreted in accordance with clauses 1.2 and 1.3.2 to 1.3.5 inclusive of the Agreement with references in those clauses to “this Agreement” being replaced with references to “this Deed”.

Commencement

- 1.3. The terms of this Deed apply on and from the Date of this Deed.

2. Variation to the Agreement

- 2.1. With effect from the Effective Date, the Agreement is varied as set out in clause 3 of this Deed.
- 2.2. With effect from the Date of this Deed, the Agreement is varied as set out in clause 4 of this Deed.

3. Amendments to take effect from the Effective Date

Clause 1 of the Agreement

- 3.1. Replace the word “Commonwealth” in each of the definitions of “Cash Contributions” and “In-Kind Contributions” in clause 1 of the Agreement with the word “Department”.

Clause 8 of the Agreement

- 3.2. Insert the following new clause 8.1.3 at the end of clause 8 of the Agreement:

“8.1.3 The Foundation agrees to use the Other Contributions:

- a. for the purpose of achieving significant, measurable improvement in the health of the Great Barrier Reef World Heritage Area in accordance with the Reef 2050 framework set out in clause 5.2.1; and
- b. so that, from the Completion Date, no more than ten percent (10%) of the Other Contributions are spent on the Foundation’s administrative costs, as those costs are defined in the Foundation’s Internal Accounting Plan.

This clause 8.1.3 survives the expiration or termination of the Agreement”.

Schedule 2 to the Agreement

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- 3.3. Insert the following new Item 1.2.3 at the end of Item 1 in Schedule 2 to the Agreement:

“1.2.3 On and from 1 July 2019, the Foundation will develop and adhere to an Internal Accounting Plan, which contains the Foundation’s internal business rules for the performance of the Agreement, including the Foundation’s benchmarking of Activity costs and it’s classification of costs that come within the Administrative Activities in Component 1 of the Activity.”

Schedule 10 to the Agreement

- 3.4. Insert the following new Item 3 at the end of Schedule 10 to the Agreement:

“3. Exemption from a requirement in this Schedule 10

- 3.1.1 The requirements in Items 1 and 2 of this Schedule 10 are subject to the Department agreeing in writing that one or more particular requirement(s) in Item 1 or 2 of this Schedule 10 do not need to be included by the Foundation in a specific Subcontract or class of Subcontracts.
- 3.1.2 The Foundation agrees to retain a record of any exemptions provided under this Item 3”

4. Amendments to take effect from the Date of this Deed

Clause 1 of the Agreement

- 4.1. Delete the word “Ministerial Forum” and the entirety of the accompanying definition in clause 1 of the Agreement.
- 4.2. Insert the new definition “Responsible Ministers means both the Australian Government Minister and the Queensland Government Minister with portfolio responsibility for the Great Barrier Reef” immediately following the definition of “Report”.

Clause 5.5 of the Agreement

- 4.3. Insert the following new paragraph after paragraph c. in clause 5.5.1 of the Agreement:

“cc. Internal Accounting Plan”.

Clause 5.6 of the Agreement

- 4.4. Delete the entirety of paragraph a. in clause 5.6.2 of the Agreement and renumber the remaining paragraphs so that paragraph b. becomes paragraph a., paragraph c. becomes paragraph b., paragraph d. becomes paragraph c., paragraph e. becomes paragraph d. and paragraph f. becomes paragraph e.

Clause 12 of the Agreement

- 4.5. Delete the entirety of clause 12 of the Agreement and replace with clause 12 set out in Attachment A to this Deed.

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Clause 14.4 of the Agreement

- 4.6. Delete “, the Ministerial Forum” in paragraph e. of clause 14.4.1.

Schedule 1 to the Agreement

- 4.7. In Item 2.1.1 in Schedule 1 to the Agreement, replace the reference to “1 February” with “31 March” and replace the reference to “1 August” with a reference to “30 September”.
- 4.8. Insert the following new paragraph after paragraph d. in Item 2.1.2 in Schedule 1 to the Agreement:
- “dd. the Foundation’s progress in generating Other Contributions under this Agreement against each of the interim and final fundraising targets in its Co-Financing Strategy Plan (which is also known as the Foundation’s Collaborative Investment Strategy).”
- 4.9. Delete the words “, 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” in paragraph f. in Item 2.1.2 of Schedule 1 to the Agreement.
- 4.10. Insert the following new paragraph after paragraph d. in Item 2.2.3 in Schedule 1:
- “e. a narrative report regarding the progress of the Activity and of the work undertaken by the Foundation and its Subcontractors for each Component against the Monitoring and Evaluation Plan 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.”
- 4.11. Replace the references to “Ministerial Forum” in the clause 2.3 heading and in clause 2.3.1 with references to “Responsible Ministers”.

New Annexure A to the Agreement

- 4.12. Add ‘Annexure A’ contained at Attachment B to this Deed to the end of the Agreement.

5. Costs

- 5.1. Each party will bear its own costs and expenses (including legal costs) arising out of and incidental to the negotiation, preparation, execution and delivery of this Deed.

6. Entire agreement and variation

- 6.1. Subject only to the variations contained in this Deed, the Agreement remains in full force and effect.

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6.2. The provisions of this Deed will not be varied either in law or in equity except by agreement in writing signed by the parties.

7. Applicable law

7.1. This Deed is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory. The parties submit to the jurisdiction of the courts of the Australian Capital Territory.

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EXECUTED as a Deed.

SIGNED, SEALED AND)
DELIVERED for and on behalf)
of Commonwealth of Australia)
represented by the Department)
of Agriculture, Water and the)
Environment ABN 34 190 894)
983 by:

Signed 23 November 2021

Name of signatory

Signature and date

In the presence of:

Signed 23 November 2021

Name of witness

Signature of witness

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

Signed 23 November 2021

Name of director

Signature of director and date

and by:

Signed 23 November 2021

Name of director/secretary

Signature of director/secretary and date

Attachment A

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, the Foundation owns, or is otherwise licensed to deal with, the Intellectual Property Rights in Activity Material in the manner required under this Agreement.
- 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.
- 12.2.2A Existing Material is only licensed to the Department for use with, and as part of, the Activity Material and for no other purpose.
- 12.2.3 In this clause 12 and clauses 12.2A, 12.2B and 12.2C:
- a. **Activity Material** has the meaning given in clause 1. For the avoidance of doubt, Material that is both:
 - i. not provided; and
 - ii. not required to be provided,to the Department under this Agreement is not Activity Material.
 - b. **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>).
 - c. **Core Commonwealth Functions** means the Commonwealth's inherent governmental (and non-commercial) activities, including:
 - i. internal and external Commonwealth reporting (including to a Minister and a House or Committee of Parliament);
 - ii. dissemination and publication of the Reports and Plans (as defined in clause 1) including on the Department's website;
 - iii. development of Commonwealth policy; and

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iv. administration of Commonwealth programs.

12.2.4 Notwithstanding any other provision of this Agreement, in all cases, the Foundation must grant to (or procure for) the Commonwealth (including 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 all Activity Material (and any Existing Material in it) for the Core Commonwealth Functions.

12.2.5 Except where clause 12.2A, clause 12.2B or clause 12.2C applies or unless otherwise agreed in writing by the Parties, the Foundation also grants to (or will procure for) the Department (and any person nominated by 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 the Activity Material) for any Commonwealth purpose other than a Core Commonwealth Function.

12.2.6 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.

12.2.7 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.

12.2.8 The Foundation agrees to ensure that its Subcontractors are aware of the requirements in this clause 12. 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.

12.2A Replacement of clause 12.2.5 in respect of Activity Material created under Schedule 5 Component 4 – Reef Restoration and Adaptation Science Activities

12.2A.1 The Parties agree that this clause 12.2A:

- a. does not apply to the use, reproduction, adaptation, modification, performance, communication and/or exploitation of the Activity Material (and any Existing Material in it) for a Core Commonwealth Function;

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- b. applies instead of clause 12.2.5, where Activity Material created under Schedule 5 Component 4 of this Agreement (and any Existing Material in that Activity Material) is sought to be used, reproduced, adapted, modified, performed, communicated and/or exploited for a Commonwealth purpose that is not a Core Commonwealth Function; and
 - c. does not affect the operation of any part of clause 12.2 other than clause 12.2.5.
- 12.2A.2 Subject to clauses 12.2A.3, 12.2A.4 and 12.2B, the Foundation grants to (or will procure for) the Department (and any person nominated by 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 that Activity Material) created under Schedule 5 Component 4 of this Agreement for any or all of the following purposes in the field of 'reef restoration and adaptation':
- a. commercial and non-commercial purposes;
 - b. educational purposes; and
 - c. research purposes,
- to the extent that licence is not already provided under clause 12.2.4.
- 12.2A.3 On a case by case basis in relation to particular Activity Material (and any Existing Material in that Activity Material) covered by clause 12.2A.2.a:
- a. the Foundation may notify the Department that the licence in clause 12.2A.2.a will be limited to Australia to the extent that the use of the particular Activity Material or Existing Material is for commercial purposes. Where this paragraph applies, the Foundation agrees:
 - i. to specifically identify, and clearly mark, the Activity Material or Existing Material that is subject to this limitation at the time it is provided to the Department; and
 - ii. that this limitation does not itself preclude the Department from publishing that particular Activity Material or Existing Material on its website; and
 - b. the Foundation and the Department will submit to the process set out in Item 1 of Annexure A [*Licence Adjustment Process*] for the purpose of seeking to address any additional limitation(s) on the licence in clause 12.2A.2 to that particular Activity Material or Existing Material that may be imposed by the owner of IP (including such limitations as relate to the non-disclosure of confidential information).
- 12.2A.4 Where the Department wishes the licence in clause 12.2A.2 to extend beyond any of the purposes in clause 12.2A.2 (or beyond any limitation advised or previously agreed under clause 12.2A.3), the parties will submit to the process

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set out in Item 2 of Annexure A [*Licence Adjustment Process*] for an additional licence in favour of the Department.

12.2A.5 The Foundation agrees that it will not unreasonably reject any request for, and will use all reasonable endeavours to obtain, an additional licence that is proposed by the Department in accordance with the process set out in Annexure A [*Licence Adjustment Process*].

12.2A.6 In this clause 12.2A and Annexure A [*Licence Adjustment Process*], '**reef restoration and adaptation**' means reef restoration and adaptation activities (and related activities), including but not limited to those activities described in Schedule 5 Component 4 of this Agreement.

12.2B Restrictions on rights in respect of Activity Material

12.2B.1 In recognition of any particular and significant contribution (whether financial or 'in-kind') made or to be made by the Foundation and/or its commercial partners in respect of any given Project, any licence which would otherwise be granted under clause 12.2.5, but for the operation of this clause 12.2B, in respect of Activity Material (and any Existing Material in that Activity Material) created in the course of that Project may be limited by written agreement between the Foundation and the Department using the process set out in Item 1 of Annexure A [*Licence Adjustment Process*].

12.2B.2 This clause 12.2B does not affect the operation of any part of clause 12.2 other than clause 12.2.5.

12.2C Replacement of clause 12.2.5 in respect of Activity Material created under Schedule 4 Component 3 – Crown-of-Thorns Starfish Control Activities

12.2C.1 The Parties agree that this clause 12.2C:

- a. does not apply to the use, reproduction, adaptation, modification, performance, communication and/or exploitation of the Activity Material (and any Existing Material in it) for a Core Commonwealth Function;
- b. applies instead of clause 12.2.5, where Activity Material created under Schedule 4 Component 3 of this Agreement (and any Existing Material in that Activity Material) is sought to be used, reproduced, adapted, modified, performed, communicated and/or exploited for a Commonwealth purpose that is not a Core Commonwealth Function; and
- c. does not affect the operation of any part of clause 12.2 other than clause 12.2.5.

12.2C.2 Subject to clauses 12.2C.3, 12.2B and 12.2C.4, the Foundation grants to (or will procure for) the Department (and any person nominated by 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 that Activity Material) created under Schedule 4 Component 3 of this Agreement for any or

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all of the following purposes in the field of Crown of Thorns Starfish management:

- a. commercial and non-commercial purposes;
- b. educational purposes; and
- c. research purposes,

to the extent that licence is not already provided under clause 12.2.4.

- 12.2C.3 On a case by case basis in relation to particular Activity Material (and any Existing Material in that Activity Material) covered by clause 12.2C.2 the Foundation may notify the Department of any limitations that may be sought to be imposed by the owner of IP and the Foundation and the Department will submit to the process set out in Item 1 of Annexure A [*Licence Adjustment Process*] for the purpose of seeking to address such limitation(s).
- 12.2C.4 Where the Department wishes the licence in clause 12.2C.2 to extend beyond any of the purposes in clause 12.2C.2 (or beyond any limitation advised or previously agreed under clause 12.2C.3), the parties will submit to the process set out in Item 2 of Annexure A [*Licence Adjustment Process*] for an additional licence in favour of the Department.
- 12.2C.5 The Foundation agrees that it will not unreasonably reject any request for, and will use all reasonable endeavours to obtain, an additional licence that is proposed by the Department in accordance with the process set out in Annexure A [*Licence Adjustment Process*].
- 12.2C.6 In this clause 12.2C and Annexure A [*Licence Adjustment Process*], '**Crown of Thorns Starfish management**' means Crown of Thorns Starfish management activities (and related activities), including but not limited to those activities described in Schedule 4 Component 3 of this Agreement.

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 that Activity Material):
- a. using, reproducing, adapting or exploiting all or any part of that Material with or without attribution or authorship;
 - b. supplementing that Material with any other Material;
 - c. using that Material in a different context to that originally envisaged; and
 - d. releasing that Material to the public under an Open Access Licence,
- but does not include false attribution of authorship.
- 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

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occurring before or after the consent is given) that would enable the exercise by the Department (and its nominees) of the licence rights granted under clauses 12.2, 12.2A and 12.2B 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.

Attachment B

ANNEXURE A–LICENCE ADJUSTMENT PROCESS

- 1. Limitation of licence to the Department under clause 12.2A.3.b, clause 12.2B or clause 12.2C.3.**
 - 1.1 The Foundation agrees to use all reasonable endeavours (including the proposed exercise of its rights under relevant Subcontracts) to procure, for the Department (and any person nominated by the Department), from each owner of Activity Material (or any Existing Material in that Activity Material) (*IP Owner*) the licence specified in:
 - a. clause 12.2.5;
 - b. in respect of Activity Material relating to Schedule 5, clause 12.2A.2; or
 - c. in respect of Activity Material relating to Schedule 4, clause 12.2C.2.
 - 1.2 For the purposes of clauses 12.2A.3, 12.2B and 12.2C.3, the Foundation agrees promptly to notify the Department if the Foundation becomes aware that an IP Owner will impose, or has imposed, an additional limitation on the licence in clause 12.2.5, 12.2A.2 or 12.2C.2 (as the case may be) in respect of a particular item of Activity Material (or any Existing Material in that Activity Material). This notice must be provided before the particular Activity Material or Existing Material is provided to the Department and must include the following:
 - a. the particular Project or part of the Activity to which the limitation relates;
 - b. details of the particular Activity Material or Existing Material to which the limitation relates and the relevance of that Material to the performance and outcomes of the relevant Project or the Activity;
 - c. the amount of the Grant and any Other Contributions being provided to that Project or the Activity;
 - d. details of the IP Owner that is imposing the limitation and its role in the Project or relevant part of the Activity;
 - e. the IP Owner's ownership or other rights in the particular Activity Material or Existing Material that enable it to impose the limitation;
 - f. the nature, extent and duration of the limitation;
 - g. the reason for the limitation;
 - h. the expected impact of the limitation on the performance and intended outcomes of the Project or relevant part of the Activity including any Great Barrier Reef or other public benefit that is, or is likely to be, facilitated or provided by the limitation;
 - i. the steps the Foundation has taken to date to avoid or remove the limitation;
 - j. if relevant, the expected cost of removing the limitation in whole or part; and

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- k. any other information about the limitation that the Commonwealth requires.
- 1.3 If (and only if) the Department requires, the Foundation must:
- a. confirm with the IP Owner the actual cost of removing the limitation in whole or part; and
 - b. pay to the relevant IP Owner any amount of Grant funds specified by the Department for the removal of the limitation.
- 1.4 Where:
- c. the Department agrees to a limitation in respect of particular Activity Material (and/or any Existing Material in that Activity Material); and
 - d. the limitation does not itself preclude the Activity Material or Existing Material that is subject to it being provided to the Department,
- the Foundation agrees to specifically identify, and clearly mark, the part of that Activity Material and/or Existing Material that is subject to the limitation. That part of the Activity Material and/or Existing Material must be so identified and marked at the time it is provided to the Department.
- 1.5 Where the Department agrees to the limitation in respect of all or part of particular Activity Material (or any Existing Material in that Activity Material) and the limitation precludes all or part of the Activity Material or Existing Material being provided to the Department, the Foundation must not provide the Activity Material or Existing Material (or relevant part thereof) that is subject to the limitation to the Department.
- 1.6 Where the Department does not agree to the limitation in respect of all or part of particular Activity Material (or any Existing Material in that Activity Material), the Department may require the Foundation:
- e. not to provide to the Department the Activity Material or Existing Material (or relevant part thereof) that is subject to the limitation (at which time that Material ceases to be Activity Material or Existing Material); and/or
 - f. to take all reasonable steps (including the actual exercise of its rights under the relevant Subcontract(s)) to cease providing the amount of Grant funds specified by the Department to:
 - (i) the IP Owner; and/or
 - (ii) the Project (or part of the Activity) to which the limitation relates.

2. Additional licence to the Department under clause 12.2A or clause 12.2C

- 2.1 Where the Department wishes to expand the scope of a licence granted to the Commonwealth in clause 12.2A or clause 12.2C, the parties agree that the following process will apply:
- a. the Department will make a written request detailing its proposed additional licence (including the specific Activity Material or Existing Material to which the

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- additional licence relates) and the reasons for requiring the proposed additional licence, and submit this to the Foundation;
- b. the Foundation must, within 10 Business Days (or other period agreed by the parties) of receiving such a request from the Department:
 - (i) grant the additional licence to the Department, if the Foundation is entitled to grant such licence; or
 - (ii) if the Foundation is not entitled to grant the additional licence, notify the Department in writing accordingly and give the relevant owner of the Activity Material or Existing Material (**IP Owner**) written notice of the Department's request for the additional licence.
 - c. where Item 2.1.b(ii) applies, the Foundation agrees to use all reasonable endeavours (including the proposed exercise of its rights under relevant Subcontracts but excluding the payment of monies other than the Grant) to promptly procure from the IP Owner, the additional licence for the Department to the Activity Material (and/or any Existing Material in it) requested by the Department;
 - d. If (and only if) the Department requires, the Foundation must:
 - (i) confirm with the relevant IP Owner the actual cost of obtaining the additional licence; and
 - (ii) pay to the IP Owner any amount of Grant funds specified by the Department for the additional licence.
- 2.2 If the IP Owner agrees to grant the additional licence requested by the Department, the terms of that additional licence will form part of the Agreement on and from the date the IP Owner grants the additional licence.
- 2.3 If the IP Owner does not agree to grant the additional licence requested by the Department under clause 12.2A.4 or clause 12.2C.4 (as the case may be) and the Department determines that the additional licence is essential to the successful performance of the relevant Project or part of the Activity, the Department will notify the Foundation of the reasons for its determination and may require the Foundation to take all reasonable steps (including the actual exercise of its rights under the relevant Subcontract(s)) to cease providing the amount of Grant funds specified by the Department to:
- a. the IP Owner and/or
 - b. the Project (or part of the Activity) in respect of which the additional licence was sought.