

From: NICHOLS Elisa [Elisa.Nichols@des.qld.gov.au]
Sent: Thursday, 27 October 2016 12:59 PM
To: HAMMILL Ben
CC: KENYON Kirstin; GREENE Greg; FULLERTON Matthew
Subject: RE: GBR Foundation matched funding agreement

Sorry I meant Anna Marsden

Elisa Nichols

Executive Director

Office of the Great Barrier Reef

Department of Environment and Heritage Protection



P 07 3330 5988

S.78B(2)

Level 10, 400 George St, Brisbane, QLD, 4000

From: NICHOLS Elisa
Sent: Thursday, 27 October 2016 12:57 PM
To: HAMMILL Ben
Cc: KENYON Kirstin; GREENE Greg; FULLERTON Matthew
Subject: RE: GBR Foundation matched funding agreement

That's the first I've heard of that. I've got a call in with Anna Hanson and will give her another call if I don't hear from her today.

Elisa Nichols

Executive Director

Office of the Great Barrier Reef

Department of Environment and Heritage Protection



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Level 10, 400 George St, Brisbane, QLD, 4000

From: HAMMILL Ben
Sent: Thursday, 27 October 2016 12:50 PM
To: NICHOLS Elisa
Cc: KENYON Kirstin; GREENE Greg; FULLERTON Matthew
Subject: RE: GBR Foundation matched funding agreement

Hi Elisa

I just got off the phone with Theresa from GBRF. Theresa informed me that GBRF has just come out of a hectic 3 week period and now that things have settled she will have comments/edits on the draft Matched Funding agreement back to us by late next week.

Theresa said that GBRF are still in talks to secure a major donor for our matched funding arrangement and interestingly pointed out that they cannot guarantee that a donor, once secured, will support the proposed Northern Reef Recovery Project (e.g they may wish to fund other initiatives). The draft Matched Funding Agreement refers to the focus being on gully remediation on the highest priority gullies in the Cape York region.

If GBRF has doubts that the matched funding arrangement between GBRF and the Qld Gov is to be used to fund the proposed gully remediation Northern Reef Recovery Project then this could have significant consequences for the broader GBR Gully and Streambank Joint Program which we have been working towards with the Commonwealth.

We have included the GBRF partnership/Northern Reef Recovery Project in a number of 'GBR Gully and Streambank Joint Program' documents which we were hoping to release publicly as a good news story at MinFo.

I've asked Theresa to keep me in the loop with any developments. Might be worth touching base at a higher level over the next week or so.

Cheers

Ben

From: Theresa Fyffe [<mailto:tfyffe@barrierreef.org>]
Sent: Tuesday, 27 September 2016 5:55 PM
To: HAMMILL Ben
Cc: ANDERSEN Claire
Subject: Re: GBR Foundation matched funding agreement

Great- thanks Ben. I'll review and get back to you.
Theresa

Theresa Fyffe
Director Projects & Partnerships



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On 27 Sep 2016, at 10:04 am, HAMMILL Ben <Ben.Hammill@ehp.qld.gov.au> wrote:

Dear Theresa

Please find attached a matched funding agreement between GBRF and the department for your perusal. You will note that the document is locked, but if you want to propose any changes to the standards terms, you may do this in the special conditions item of the Schedule 1. The department will consider your proposed changes and respond back.

As this is a high-level agreement between the parties to detail matched funding arrangements only, there is no requirement to include individual detailed projects at this stage, or to consider whether subcontractors will be required. Those items will form part of the collaborative agreement to be developed. That agreement will also contain greater details on how the funding is to be spent.

Once you have reviewed, and provided any comments back to the department, we will review and be in touch to discuss any outstanding issues.

Cheers

Ben Hammill |Principal Project Officer
Reef Coordination and Partnerships
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T: (07) 3330 5760 | F: (07) 3330 5875
E: ben.hammill@ehp.qld.gov.au<<mailto:ben.hammill@ehp.qld.gov.au>>

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<EDOCS - 4948764 - Matched Funds Agreement GBRF - 2.DOCX>

From: Theresa Fyffe [tfyffe@barrierreef.org]
Sent: Thursday, 10 November 2016 2:03 PM
To: HAMMILL Ben
CC: KENYON Kirstin
Subject: Contract

Hi Ben,
Anna caught up with Elisa recently and I believe they agreed that as we are so close to knowing whether our funder is in or out for the northern gbr project that we would hold off on the contract for a few weeks.

I'll be in touch when I'm back on the 30th November but if we hear good news in the meantime Anna will get in touch with Elisa straight away.

Thanks
Theresa

Theresa Fyffe
Director Projects & Partnerships | Great Barrier Reef Foundation

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From: KENYON Kirstin [Kirstin.Kenyon@des.qld.gov.au]
Sent: Thursday, 8 December 2016 3:13 PM
To: NICHOLS Elisa
CC: HAMMILL Ben; ROBINSON Scott
Subject: FW: Matching funds agreement

FYI – keeping you in loop – GBRF want to do the matched funding agreement to get it locked in. However they have asked for a change to the purpose of the agreement see below. They are still saying all the right things but about progressing with the project and we would have to agree to what the project is about, but this does leaves things a little more open.

Previously it was written in the matched funding agreement as:

“To raise funding for Individual Projects focusing on gully remediation focusing on the highest priority gullies in the Cape York region.”

Now it is:

To raise funding for a water quality project in a Reef catchment that is agreed by the parties, in accordance with the Collaborative Agreement.

From: Theresa Fyffe [mailto:tfyffe@barrierreef.org]
Sent: Wednesday, 7 December 2016 6:05 PM
To: HAMMILL Ben; KENYON Kirstin
Subject: Matching funds agreement

Hi Ben and Kirsten,

My meeting with the funder re Northern GBR has been shifted to next week so if you are in agreement can we please proceed with finalizing the matched funding agreement?

Thank you

Theresa

Theresa Fyffe
Director Projects & Partnerships | Great Barrier Reef Foundation

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From: HAMMILL Ben [Ben.Hammill@des.qld.gov.au]
Sent: Tuesday, 24 January 2017 4:49 PM
To: ERBACHER Jean; COGLE Lex
Subject: GBRF- post today's meeting

Hi Jean and Lex

I spoke briefly to Elisa today about some of the things that came up at the GBRF catch-up today.

In terms of potentially conducting water quality monitoring in the Annan-Endeavour to verify COTs initiation zones, Elisa would like GBRF to provide a 1 page summary outlining this potential activity as part of the Northern GBR Recovery Program before making a decision on whether it is appropriate or not. I can contact GBRF about this if you like.

Secondly, Elisa expressed concern over the the prospect of GBRF not being able to match our \$1M contribution this financial year. She's of the opinion that we are better investing our contribution this year anyhow (into Springvale), but recommends we wait until March to see how GBRF are tracking before briefing the Minister. I mentioned the possibility of carrying the money forward to future years. She wasn't dismissive of this idea, but suggested that the same issue could happen in those years.

Just things to be aware of for now.

Cheers

Ben Hammill |Principal Project Officer
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From: KENYON Kirstin [Kirstin.Kenyon@des.qld.gov.au]
Sent: Friday, 21 April 2017 3:14 PM
To: NICHOLS Elisa; ROBINSON Scott; COGLE Lex
CC: ERBACHER Jean; D'ARCY Rachel; HAMMILL Ben
Subject: FW: Northern GBR proposal update

GBRF let the Minister's office know about this Tuesday and then I met with Theresa yesterday. Theresa said there may be some philanthropic interest but it didn't sound very promising. We will need to talk about our funding and how to invest as we still need to do work in Springvale regardless of the matched investment. Scott – did you want to alert CSS to this before they hear it from others?

From: Theresa Fyffe [mailto:tfyffe@barrierreef.org]

Sent: Friday, 21 April 2017 11:10 AM

To: [redacted] S.78B(2) Christian.Roth

(Christian.Roth@csiro.au) <Christian.Roth@csiro.au>

[redacted] S.78B(2)

[redacted] S.78B(2)

ERBACHER Jean

<Jean.Erbacher@ehp.qld.gov.au>; COGLE Lex <Lex.Cogle@ehp.qld.gov.au>

Cc: [redacted] S.78B(2) KENYON Kirstin

<Kirstin.Kenyon@ehp.qld.gov.au>

Subject: Northern GBR proposal update

Hi Everyone,

I just wanted to let you all know that we received notification from our funder for the Northern GBR proposal last week and unfortunately they have chosen not to provide funding support. At the end of the day it had nothing to do with the proposal itself – they just made a strategic decision to continue funding education focused projects, rather than environment.

This is disappointing for everyone but we will continue to shop the proposal around with other funders and will keep you all updated if we get any nibbles.

On a positive note we were pleased to see a large Reef Trust investment into Cape York – a trend which will hopefully keep growing.

Thanks so much to all of you for your assistance in getting this proposal together and we will let you know if and when things progress.

Regards

Theresa

Theresa Fyffe
Director Projects & Partnerships | Great Barrier Reef Foundation

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From: Theresa Fyffe
Sent: January 19, 2017 3:17 PM
To: [redacted] S.78B(2) Christian.Roth
(Christian.Roth@csiro.au) <Christian.Roth@csiro.au> [redacted] S.78B(2)
[redacted] S.78B(2)
[redacted] S.78B(2) RBACHER Jean <Jean.Erbacher@ehp.qld.gov.au>; COGLE Alex <Alex.Cogle@ehp.qld.gov.au>
Cc: [redacted] S.78B(2)
Subject: Thank you!

Hi everyone,

Just a short email to say thanks so very much for your participation yesterday. There was much great discussion and many learnings to be shared. Thanks to your input we are confident that we can put together a strong proposal that combines social, economic and environmental outcomes. Our timelines are short as we need to submit this to our corporate funder by the end of January so along with working out details with QG we may be in touch with some of you requesting a few more details to help with our proposal development and due diligence process.

So thanks again to all of you and we will aim to get you a summary document of yesterday's workshop shortly.

Theresa

Theresa Fyffe
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RTI Act 2009

From: Anna Marsden [amarsden@barrierreef.org]
Sent: Tuesday, 25 July 2017 3:32 PM
To: NICHOLS Elisa
Subject: Island Bright Spots

Hi Elisa

I understand you would have your hands well and truly full the next week with Rimrep, MinFo, IEP and RAC. But hoping I can book in a time to see you following RAC next week to discuss the Island restoration project and the Minister's offer to consider applying part of the match funding to this. We have now secured philanthropic funding for this project so are in a position for an announcement once QG and the Minister's office are comfortable with the project.

Please let me know any times that may suit

Best
Anna

Anna Marsden
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From: Anna Marsden [amarsden@barrierreef.org]
Sent: Friday, 4 August 2017 4:29 PM
To: NICHOLS Elisa
Subject: Proposal
Attachments: Reef Islands overview.pdf

Dear Elisa

Thank you so much for the meeting. Please find attached the proposal for your briefing purposes.

Stephen is in Australia around 21 and 22 September.

We are all very excited about this.

Thank you and have a good weekend

Anna

Anna Marsden
Managing Director | Great Barrier Reef Foundation

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Reef Islands

*Protecting and preserving the
Great Barrier Reef's most
precious landscapes in the face
of climate change.*

Great Barrier
Reef Foundation

The challenge

Coral reefs are critically important, supporting 25% of all marine life on the planet and rivalling the Amazon Rainforest for biodiversity. The Great Barrier Reef is undoubtedly the greatest and largest coral reef, unequalled for its natural beauty and conservation values, it has the greatest diversity of marine life in the world.

This global treasure is under threat from the combination of local stresses and changing climatic conditions. Already we have witnessed two consecutive years of mass coral bleaching on the Great Barrier Reef and a series of catastrophic tropical cyclones, an unprecedented phenomenon, impacting both coral cover and island habitat along two thirds of the length reef.

It is clear that business-as-usual approaches for managing the Great Barrier Reef are no longer sufficient. Without a step change, we are on a trajectory that could see the world lose parts of this natural wonder, literally before our eyes.

Tackling the overarching threats of global climate change and regional-scale threats, such as poor water quality, is critical to the future of the Great Barrier Reef. These actions need to occur now, but for the most part will take decades to have effect.

There is an immediate and important need to maintain climate refuges throughout the Reef (in land and in water), essentially serving as arks that protect and preserve the Reef and its inhabitants while the impact of the mitigation and adaptation strategies is delivered.

While strategies are in place to protect coral cover in the vital source reefs, this project will focus on protecting the Reef's terrestrial refuges - namely its islands.

Islands are impacted by a combination of both global climate change – particularly more intense extreme weather events, sea level rise, ocean acidification and rising air and sea temperatures - and local threats – particularly the introduction of exotic species and disease, clearing or modifying island habitat, coastal development and altered hydrological flows, island developments and marine debris.

These impacts are all projected to increase into the future. Meaning interventions are required if we are to maintain the function of these most critical climate refuges.

Why islands

- The *Great Barrier Reef Climate Change Adaptation Strategy and Action Plan 2012 – 2017* lists the establishment and protection of climate refuges as an important component of maintaining a healthy Great Barrier Reef ecosystem.
- Islands contribute to all four of the natural criteria for which the World Heritage Area was listed in 1981: exceptional natural beauty, significant geomorphic features, significant ongoing ecological and biological processes, and significant natural habitats for the conservation of biological diversity.
- Interconnected reef and island ecosystems support some of the richest biodiversity on the planet.
- Islands are an important part of the Great Barrier Reef ecosystem and provide a range of ecosystem services. Playing important roles in the life cycle of many species of flora and fauna, islands provide shelter, living space, feeding and breeding grounds and nesting habitats for many marine and terrestrial species, including some of which are endemic and listed under Australian or Queensland government legislation as near threatened, vulnerable, or endangered.
- Islands often function as refugia for plants and animals, protecting these from prevalent and increasing impacts found on the mainland. Islands are also hotspots of evolution in the long-term, and in some cases have developed divergent or endemic species of flora and fauna.
- The islands of the Great Barrier Reef are global strongholds for seabirds, turtles and other wildlife as well as being important recreational areas and valuable ecotourism destinations.
- More than 25 per cent of the tropical seabirds of Australia nest on the islands of the Great Barrier Reef, made up of 24 different species and 1.7 million individuals. Many islands also provide important roosting and feeding habitat for migratory shorebird species that are of state, national and international significance.

The solution

Over the next five years, the Great Barrier Reef Foundation will deliver a \$14 million tailored program of on-ground restoration and conservation actions across a network of islands that will boost the resilience and provide critical habitat for seabirds, turtles, corals and other marine species in the face of a changing climate.

This project is a partnership between the Foundation, Great Barrier Reef Marine Park Authority (GBRMPA), Department of Parks and Wildlife, island based businesses and communities and relevant science agencies.

By piloting new field management actions, including new interventions and other innovations we hope to transform the way the Great Barrier Reef is managed.

This project builds on the momentum and success of the Raine Island Recovery Project where a coordinated program of science, intervention, innovation and on ground conservation has resulted in successfully restoring the world's largest green sea turtle hatchery.

Through the learnings from Raine Island we understand the impact a localised approach can have on the overall health of the Great Barrier Reef. A key part of this project will be to facilitate and coordinate resilience-building actions by local communities, businesses, traditional owners and government agencies, thus creating a platform for existing and new partners to work together to improve the outlook for the Great Barrier Reef.

In addition to boosting resilience of key islands, there is scope and flexibility in the life of this project to respond to unexpected challenges facing an ecosystem as a result of a major event such as extreme weather.

The islands

Five island groups have been prioritised based on an assessment of the Great Barrier Reef islands undertaken by Queensland Parks and Wildlife and GBRMPA. This assessment considered both the biodiversity and conservation value of each island and the threat level to these values due to global and local stressors. Furthermore, these islands are each core economic drivers for tourism for the Great Barrier Reef. Quite simply, these islands cannot and must not fail.

Key project activities

The project partners have compiled an indicative suite of activities that will be undertaken at each site, although these will be tailored to meet the specific needs of each island, with some activities receiving greater or less emphasis than others.

Monitoring and modelling to support resilience-based management

- Develop a detailed resilience map for each island area and its adjoining coral reefs, including local scale hydrodynamic and ocean chemistry.
- Model predicted impacts of climate change on island geomorphology and ecosystems, including potential range expansions of critical species
- Strengthen island condition and trend monitoring and reporting to support a complete adaptive management approach for islands and deliver more resilient island ecosystems.
- Pilot novel, cost-efficient monitoring platforms and methods such as acoustic monitoring of birds' nests to record hatchling success, under and above water automated vehicles, drones, thermal-imaging, automated image analyses via machine learning etc.

Habitat mapping

- Develop detailed vegetation and geomorphological maps including sand budgets

Implementing on-ground actions

- Restoration/accelerated recovery of key habitats both in water and on land including:
 - Re-profiling and re-vegetation of island areas
 - Restoration of mangroves, seagrasses and coral reefs
 - Improved protection measures for critical species for example: fencing to prevent turtle deaths; moorings to prevent anchor damage on coral reefs; pest management and eradication
- Strengthening stewardship activities with communities and tourism operators
- Increasing indigenous engagement and indigenous management opportunities

Carbon mitigation

- Develop carbon budgets for each island and explore ways to decrease carbon footprints – e.g. carbon neutral GBR islands.



Raine Island

Fully funded and in progress

Background: Raine Island is a critical Reef habitat supporting the largest remaining green turtle rookery in the world, and a major Coral Sea seabird nesting population. In terms of ecological importance, Raine Island is also the focal point for one of the greatest animal migrations occurring on Earth with up to 20,000 turtles nesting in a single night.

Research and monitoring over the last 30 years shows that the northern Great Barrier Reef (GBR) green turtle stock is in the early stage of decline, and that Raine Island has been failing as a turtle rookery since the late 1990s. It has been shown that turtles are typically unsuccessful in their attempts to nest on Raine Island due to shallow and dry sand, and there is low hatching success due to nest flooding, or unsuitable nesting substrate. This is resulting in an unsustainably low recruitment of hatchlings to a population that is already under pressure from threats elsewhere.

This is a 5 year, \$8M collaboration between BHP Billiton, the Queensland Government, Traditional Owners and the Great Barrier Reef Foundation, that aims to restore and maintain the island as a viable island ecosystem which facilitates green turtle breeding, and seabird nesting and feeding, to support sustainable populations of those species and other dependent species.

Key project activities include:

- Restoring nesting habitat, including sand profiling and fencing
- Monitoring of key island species – including turtles, seabirds and other pelagic marine species such as tiger sharks
- Researching factors contributing to nesting success/failure and broader turtle connectivity (population model for Northern GBR turtle populations)
- Engagement with Traditional Owners



Lady Elliot Island

Priority 1

Nature conservation values rating: Outstanding

Background: Lady Elliot Island is the southern-most of all the GBR islands. It was intensively mined for guano in the late 1800's stripping the island of all vegetation and removing more than 1m of topsoil. The island is home to a small Eco resort which is almost totally run on renewable energy.

Lady Elliot Island is one of the most important sites in the Great Barrier Reef World Heritage Area for seabird nesting. The diversity of seabirds breeding is the second highest of any island on the Great Barrier Reef. The island is home to a number of threatened bird species; it is one of only two breeding sites on the Great Barrier Reef for the red tailed tropicbird (listed as 'vulnerable' wildlife under the Nature Conservation Act), and an important site for nesting roseate terns. It is a roosting site for the lesser and greater frigate bird and brown booby. It is also a site for migratory birds covered under international migratory bird treaties such as Pacific golden plover, bar-tailed godwit, and grey-tailed tattler. Lady Elliot Island is an indicator species site and a key breeding site under the Coastal Bird Monitoring and Information Strategy (Department of National Parks, Recreation, Sport and Racing).

Pisonia grandis grew naturally on the island prior to the mining activities. *Pisonia* forest is important as breeding habitat for black noddies and wedge-tailed shearwaters. In the Capricornia Cays, *Pisonia* supports 75% of all nesting seabirds in the Great Barrier Reef World Heritage Area. *Pisonia grandis* low closed forest is restricted to a few scattered sand cays and is defined as 'of concern' under the Vegetation Management Act 1999 (3.2.29).

The island is also a nesting site for vulnerable green turtles (*Chelonia mydas*) and endangered loggerhead turtles (*Caretta caretta*). The turtles that use Lady Elliot Island are an important component of the turtle populations of the southern Great Barrier Reef.

Focus of works: GBRMPA has a draft Lady Elliot Island Resilience plan with a vision to maximise resilience to climate change and other stresses by enhancing natural vegetation communities, minimising impacts of introduced flora and fauna, and maximising breeding opportunities for important coastal birds and marine turtle species while having regard to existing footprint and uses. This project will extend the current resilience plan and include in water activities such as monitoring marine megafauna (e.g. manta rays, dolphins and sharks) and enhancing the resilience of adjoining coral reefs.

Alignment to Reef 2050 Priorities

Ecosystem Health

EHA2: Incorporate and prioritise Traditional Owners' planning into existing and future ecosystem and policy and projects.

EHA3: Support Traditional Owner stewardship activities that contribute to Reef health and resilience.

EHA7: Prioritise functional ecosystems critical to Reef health in each region for their protection, restoration and management

EHA10: Improve connectivity and resilience through protection, restoration and management of reef priority coastal ecosystems, including islands, through innovative and cost-effective measures

EHA13: Identify and prioritize key sites of high ecological value and implement recovery programs (Reef Recovery Plans)

EHA14: Implement ecosystem health initiatives through the Reef Trust investment strategy

EHA15: Improve mapping, modelling and monitoring of ecosystems important for the protection of the reef to inform planning, assessment and decision-making.

Biodiversity

BA2: Work with Traditional Owner groups to identify biocultural resources within their sea country and develop plans of management for conservation and use of those resources.

BA3: Improve Traditional Owner engagement to strengthen participation in decision making at all levels relating to the conservation and cultural use of biodiversity.

BA10: Identify, protect and manage key marine turtle nesting areas

BA11: Identify, protect and manage key seabird nesting islands, and key habitats that support foreshore and pelagic foraging.

BA16: Implement conservation plans for priority species of conservation concern

BA19 Monitor and report on key seabird populations to establish trends.

BA20 Monitor and report on turtle breeding and/or nesting success of green, loggerhead, flatback and hawksbill turtles at key locations.

BA24 Ensure that through the Field Management Program resources are available for island habitat restoration species (due to range shifts and loss of habitat elsewhere).

From: HAMMILL Ben [Ben.Hammill@des.qld.gov.au]

Sent: Friday, 25 August 2017 12:20 PM

To: Theresa Fyffe

CC: D'ARCY Rachel; KENYON Kirstin

Subject: Matched Funding Agreement - variation

Attachments: EDOCS - 5725741 - Deed of Variation GBRF agreement - 1.docx; EHP-GBRF-signed-matched funding agreement_Dec_2016.pdf

Importance: High

Hi Theresa

Our internal legal services have drafted a deed of variation for the existing matched funding agreement between EHP and GBRF (see attached).

The need for this variation is to provide greater flexibility in terms of project scope and timeframes, enabling the agreement to be used to fund an initiative such as *Reef islands* .

Can you please review the draft deed of variation on behalf of GBRF and let me know if you would like any further changes made.

I have attached the signed existing matched funding agreement to assist you in reviewing the deed variation.

cheers

Ben Hammill |Principal Project Officer

Reef Partnerships

Office of the Great Barrier Reef

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Department of Environment and Heritage Protection

Queensland Government

Level 10 400 George Street, Brisbane Q 4000

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Deed of Variation

made at Brisbane on the day of 20__

Between **State of Queensland** acting through the **Department of Environment and Heritage Protection ABN 46 640 294 485**

(Department)

Great Barrier Reef Foundation CAN 090 616 443

(Co-Contributor)

Background

- A. The Department and the Great Barrier Reef Foundation entered into a written agreement dated 22 December 2016 for the purpose to raise funding for a water quality project in a Reef catchment that is agreed by the parties, in accordance with the Collaborative Agreement.
- B. By clause 2 the parties may vary the Agreement by a document signed by or on behalf of each party.
- C. The parties now wish to record their agreement as to the variations and extension of the Agreement in this deed, which consists of:
 - (a) this cover page and the signing page;
 - (b) Schedule 1 – Deed details;
 - (c) Schedule 2 – Terms and conditions;
 - (d) Annexure 1 – Agreement.
- D. Capitalised words and phrases have the meanings specified in clause 4.



Deed of Variation

Schedule 1 – Deed details

Item 1 Party details

Department:

Party Name: State of Queensland acting through the Department of Environment and Heritage Protection

ABN: ABN 46 640 294 485

Street Address: Level 10, 400 George Street, Brisbane QLD 4000

Contact Officer Name: Ben Hammill

Contact Officer Postal Address: GPO Box 2454 BRISBANE QLD 4001

Contact Officer Telephone: 07 3330 5760

Contact Officer Facsimile: 07 3330 5875

Other Party:

Party Name: Great Barrier Reef Foundation

ACN/ABN: 090 616 443

Street Address: Level 13, 300 Ann Street, Brisbane, 4000

Contact Officer Name: Theresa Fyffe

Contact Officer Postal Address: PO Box 2725, Fortitude Valley BC, QLD, 4000

Contact Officer Telephone: 07 3252 7555

Contact Officer Facsimile: N/A

Item 2 Extension Date

31 March 2020

Item 3 Variations

Variation No.	Clause reference in Agreement	Variation	Effective Date
[1]	Throughout Agreement	All references to the Reef Water Quality Fund Account are deleted and replaced with Great Barrier Reef Fund Account.	On signing by both parties
[2]	Sch 1, Item 3	To raise funding for a Reef project that is agreed by the parties, in accordance with the Collaborative Agreement	On signing by both parties
[3]	Sch 1, Item 7	This agreement is condition upon the parties entering into the Collaborative Agreement by	On signing by both

Variation No.	Clause reference in Agreement	Variation	Effective Date
		31 December 2017 (Condition Precedent). If the Condition Precedent is not satisfied by 31 December 2017, the Department may immediately terminate this agreement at any time by giving notice to this effect to the Co-Contributor.	parties
[4]	Sch 1, Item 4	The instalments will commence in 2017/18 and will conclude in 2019/20.	On signing by both parties
[5]	Sch 1, Item 5	Financial reports Submission Date - 31 May 2018, 31 May 2019, 28 February 2020	On signing by both parties

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Deed of Variation

Schedule 2 – Terms and conditions

1. Variations

- (a) The parties agree that the Agreement is modified, varied, amended or added to in accordance with the Variations.
 - (b) Each Variation takes effect on and from the Effective Date.
 - (c) In all other respects the Agreement remains unaltered.
-

2. Extension

Effective on and from the date of this deed, the term of the Agreement is extended to the Extension Date.

3. General

3.1 Further acts

Each party must promptly do all acts and execute and deliver all documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this deed.

3.2 Notices

Each communication (including each notice, consent, approval, request and demand) in connection with this deed to be given by either party to the other must be in writing and delivered by hand, posted by pre-paid post, or sent by facsimile transmission to the address or number specified in Item 1 of Schedule 1 (or any other address or number notified from time to time).

3.3 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

3.4 Expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with preparing, negotiating, executing and performing this deed.

3.5 Governing law

This deed is governed by and will be construed according to the law applying in Queensland.

3.6 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 3.6(a).

4. Definitions and interpretation

In this deed:

- (a) Unless the context indicates a contrary intention, the definitions and rules of interpretation specified in clause 24.1 of the Agreement also apply to this deed.
- (b) **Agreement** means the agreement between the parties as described in the Background to this deed and attached in Annexure 1.
- (c) **Effective Date** means, for each Variation, the date specified for that Variation in Item 3 of Schedule 1.
- (d) **Extension Date** means the date (if any) specified in Item 2 of Schedule 1.
- (e) **Variations** means the variations (if any) specified in Item 3 of Schedule 1.

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Deed of Variation

Annexure 1 – Agreement

[attach copy of Agreement (including as previously varied), so that it can be read with the variations in this deed]

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Deed of Variation

Executed as a deed

Signed, sealed and delivered for and on behalf of the **State of Queensland** acting through the Department of Environment and Heritage Protection ABN 46 640 294 485 by

_____ a person duly authorised to act in that behalf in the presence of:

Signature of Witness

Name of Witness in full

Signature

Date: _____

Executed by Great Barrier Reef Foundation ACN 090 616 443 in accordance with section 127 of the *Corporations Act 2001* (Cth)

Signature of Director/sole Director

Name of Director/sole Director in full

Date: _____

Signature of Director/Secretary

Name of Director/Secretary in full

Date: _____



Matched Funds Agreement

made at Brisbane on the 22 day of December 2016

Between State of Queensland acting through the Department of Environment and Heritage Protection ABN 46 640 294 485

(Department)

Great Barrier Reef Foundation ACN 090 616 443

(Co-Contributor)

Background

- A. The Queensland Government has allocated \$90 million over four years to deliver on projects that will deliver cleaner water for a healthy Great Barrier Reef.
- B. The Department has agreed to Match the Payments raised by the Co-Contributor for the Purpose, to the amount of up to \$1 million each for three years, resulting in a combined total of up to \$6 million.
- C. The parties wish to record the terms and conditions of their agreement, which consists of:
 - (a) this cover page and the signing page;
 - (b) Schedule 1 – Agreement details; and
 - (c) Schedule 2 – Terms and conditions.
- D. Capitalised words and phrases have the meanings specified in clause 24.



Matched Funds Agreement

Schedule 1 – Agreement details

Item 1 Party details

Department:

Party Name: State of Queensland acting through the Department of Environment and Heritage Protection

ABN: 46 640 294 485

Street Address: Level 10, 400 George Street, Brisbane QLD 4000

Contact Officer Name: Ben Hammill

Contact Officer Postal Address: GPO Box 2454 BRISBANE QLD 4001

Contact Officer Telephone: 07 3330 5760

Contact Officer Facsimile: 07 3330 5875

Contact Officer Email (notices cannot be given by email): ben.hammill@ehp.qld.gov.au

Other Party:

Party Name: Great Barrier Reef Foundation

ABN/ACN: 090 616 443

Street Address: Level 13, 300 Ann St, Brisbane, 4000

Contact Officer Name: Theresa Fyffe

Contact Officer Postal Address: PO Box 2725, Fortitude Valley BC, QLD, 4006

Contact Officer Telephone: 07 3252 7555

Contact Officer Facsimile: N/A

Contact Officer Email (notices cannot be given by email): tfyffe@barrierreef.org

Item 2 Term: (clauses 21.1 and 24.1)

Commencement Date: The date the last of the parties signs this agreement

Expiry Date: 31 March 2019

Item 3 Purpose: (clauses 4.1 and 24.1)

To raise funding for a water quality project in a Reef catchment that is agreed by the parties, in accordance with the Collaborative Agreement.

Item 4 Payment: (clauses 3, 5 and 24.1)

The Department will contribute up to \$3 million for the Purpose (ex GST) in three separate instalments of up to \$1 million. The instalments will commence in 2016/17 and will conclude in 2018/19.

The Co-Contributor will contribute up to \$3 million for the Purpose in three separate instalments of up to \$1 million. The instalments will commence in 2016/17 and will conclude in 2018/19.

The Co-Contributor Payments are derived from funds raised in accordance with Item 3 of Schedule 1.

The total Funds will be up to \$6 million.

Item 5 Reporting: (clause 7)

Report	Report contents and form	Submission date
Financial reports	The reports must contain at a minimum: - the amount of Funds raised by the Co-Contributor for the current financial year; - the total amount of Funds to date; - copies of bank statements for the Reef Water Quality Fund Account; - broad details on allocation of funds to support implementation.	31 May 2017, 31 May 2018, 28 February 2019

Item 6 Insurance: (clause 16)

Public Liability:	\$10,000,000.00	During the Term
Workers' Compensation:	As required by law	During the Term
Professional Liability:	\$1,000,000.00	During the Term and for 7 years after the Expiry Date

Item 7 Special Conditions: (clauses 2 and 24.1)

This agreement is condition upon the parties entering into the Collaborative Agreement by 30 June 2017 ('Condition Precedent').

If the Condition Precedent is not satisfied by 30 June 2017, the Department may immediately terminate this agreement at any time by giving notice to this effect to the Co-Contributor. If the Department terminates this agreement under this special condition then this agreement has no further force or effect.

IMPORTANT: Special Conditions take precedence over the terms of this agreement. Legal advice should be sought on any Special Conditions that are inconsistent with the terms of the agreement or which are significant (e.g. involve intellectual property, warranties, indemnities or liability). If no Special Conditions insert "NIL".



Matched Funds Agreement

Schedule 2 – Terms and conditions

1. Precedence

Where any inconsistency exists between:

- (a) the Special Conditions;
- (b) this Schedule 2;
- (c) Schedule 1 (except the Special Conditions); or
- (d) any other schedules or annexures of this agreement,

the provisions will take precedence in that order to the extent necessary to resolve the inconsistency.

2. Special Conditions

The parties agree to be bound by any Special Conditions.

3. Matched Funds Arrangement

- (a) The parties agree to:
 - (i) provide their Payments for the Purpose, such Payments to be used to support the Individual Projects.
 - (ii) negotiate in good faith to enter into a Collaborative Agreement.
- (b) If the Co-Contributor advises the Department that it cannot Match a Payment, the Department may either:
 - (i) reduce its corresponding Payment to an amount equal to the reduced Co-Contributor Payment; or
 - (ii) withhold a Department Payment until the Co-Contributor has provided its Co-Contributor Payment in accordance with Item 4 of Schedule 1 or other such amount as agreed by the parties,in accordance with clause 5.
- (c) The parties agree to amend the amount of a Payment in accordance with clause 23.5.
- (d) All Payments provided by a party under this agreement must be used for the sole purpose of carrying out the Project.

4. Co-Contributor's obligations

4.1 Performance of the Purpose

The Co-Contributor must:

- (a) demonstrate donation commitments equal to the Co-Contributor Payments in the amounts and in the timeframes specified in Schedule 1;
- (b) use the Funds for the Project;
- (c) carry out the Purpose in accordance with this agreement and with due care and skill;
- (d) not do anything or become involved in any situation which, in the reasonable opinion of the Department, reflects unfavourably upon the State of Queensland;
- (e) comply with:
 - (i) the terms and conditions of this agreement;

- (ii) applicable laws and regulations;
- (iii) standards of professional care and diligence of the industry to which the Co-Contributor belongs; and
- (iv) the Department's reasonable requests, directions and requirements, to the Department's satisfaction; and
- (f) communicate with, report and provide information to the Department's Contact Officer as reasonably required by the Department.

4.2 General obligations

- (a) The Co-Contributor acknowledges and agrees that all its personnel are the Co-Contributor's responsibility including payment of all employee wages and entitlements.
- (b) If the Co-Contributor is aware of an Allegation, then the Co-Contributor must report the Allegation to a relevant authority, including the Queensland Police Service. In this clause Allegation means an allegation against the Recipient or its Representatives in connection with the Funds or the Purpose which raises a reasonable suspicion of misconduct, dishonesty or unlawful behaviour of a serious nature.

4.3 Notifications

The Co-Contributor must promptly notify the Department:

- (a) of any matters that the Co-Contributor reasonably considers may affect the Co-Contributor's ability to carry out the Purpose or meet any other obligations under this deed;
- (b) if the Co-Contributor is unable to carry out the Purpose within the monetary limit of the Co-Contributor's Payment or by the Purpose End Date;
- (c) of any matter that may affect the Co-Contributor's eligibility to continue receiving the Department's Payments;
- (d) of any allegation of misconduct or dishonesty concerning the Co-Contributor or its Representatives and any report made under clause 4.2(b);
- (e) of any change to its details in Item 1 of Schedule 1; or
- (f) of the amount, source and purpose of any additional funds received from a third party for meeting the costs of the Purpose.

4.4 Reef Water Quality Fund Account

- (a) The Co-Contributor must:
 - (i) establish the Reef Water Quality Fund Account in the Co-Contributor's name and to be solely controlled by the Co-Contributor;
 - (ii) ensure that the account referred to in 4.4(a):
 - (A) is established for the Purpose under this agreement; and
 - (B) can be reported separately from the Co-Contributor's other operational accounts; and
 - (iii) ensure the Reef Water Quality Fund Account is linked to an interest bearing account and that interest is payable subject to the same terms and conditions as agreed with the financial institution with which the monies of the Co-Contributor are deposited, and that interest on Funds can be reported separately.

4.5 Management of the Account

- (a) The Co-Contributor must:
 - (i) manage the Reef Water Quality Fund Account in accordance with the terms of this agreement;
 - (ii) separately record and account for all transactions to and from the Reef Water Quality Fund Account; and

- (iii) manage all payments of funds from the Reef Water Quality Fund Account to Recipients in accordance with the Collaborative Agreement.

4.6 Use of the Department's Payments

- (a) Department Payments provided under this agreement;
 - (i) must only be used for the purposes of carrying out Individual Projects and performing this agreement, consistent with the Purpose;
 - (ii) must not be used to cover the cost of any activities completed prior to the execution of this agreement;
 - (iii) must not, unless agreed by the Department in writing, be used to cover the cost of any activities commenced but not yet completed prior to the execution of this agreement;
 - (iv) are not to be applied towards administrative and other general costs of the Co-Contributor unless agreed by the Department; and
 - (v) must not, unless the prior written approval of the Department has been obtained, be used in a manner which is inconsistent with the Purpose.

5. Department's Payment

5.1 Department's obligations

- (a) The Department will pay the Department's Payments into the Reef Water Quality Fund Account in the amounts and on the dates specified in Item 4 of Schedule 1.
- (b) The Department may in its absolute discretion withhold a Payment to the Co-Contributor until:
 - (i) the Co-Contributor has shown to the Department's satisfaction (allowing the Department reasonable time to assess its satisfaction) that it has met all other Payments due on or before the payment date for a Co-Contributor's Payment;
 - (ii) the Co-Contributor has issued a tax invoice to the Department for the Department's Payment;
 - (iii) the Co-Contributor has submitted to the Department, to the Department's satisfaction, all Reports due on or before the payment date for a Co-Contributor's Payment; and
 - (iv) the Department is reasonably satisfied that the Co-Contributor is not otherwise in breach of this agreement.
- (c) Any Payment to the Co-Contributor by the Department is not an admission or acceptance by the Department that the Recipient has complied with this agreement.

5.2 No further funding

- (a) The Co-Contributor acknowledges that the Department has no obligation to provide the Co-Contributor with funding or assistance of any kind:
 - (i) in excess of the Department's Payments; or
 - (ii) beyond the Term.
- (b) For the avoidance of doubt, the Co-Contributor is responsible for acquiring and/or providing any additional funds, materials or equipment in excess of the Funds required to carry out or complete the Purpose.

6. Management

- (a) Each party must nominate a Contact Officer responsible for:
 - (i) receiving communications;
 - (ii) issuing and signing notices; and
 - (iii) responding to requests or directions,on behalf of that party.

- (b) A party may, from time to time, change the Contact Officer by written notice to the other party in accordance with clause 22.
- (c) The Contact Officers will meet to review the performance of this agreement upon reasonable written notice given by either party.

7. Reporting

The Co-Contributor must:

- (a) submit all Reports to the Department in the form, containing the information and on the dates specified in Item 5 of Schedule 1 unless the Department directs otherwise in writing;
- (b) complete each Report to the Department's satisfaction and the Department will return a Report (if necessary) to the Co-Contributor for satisfactory completion within a reasonable time; and
- (c) provide to the Department any other information or material about the Co-Contributor, or any other matter in connection with this agreement as requested in writing by the Department within a reasonable time specified by the Department in its request.

8. Records

The Co-Contributor must:

- (a) keep proper and adequate records, accounts and supporting documents in accordance with generally accepted accounting principles and as required by law, about:
 - (i) all aspects of this agreement, including records about the performance of this agreement and whether time frames and performance requirements for this agreement are met; and
 - (ii) its affairs generally,in secure storage for at least 7 years after the Expiry Date; and
- (b) comply with any additional recordkeeping obligations specified in this agreement.

9. Audit and access

9.1 Access to Co-Contributor's premises and records

- (a) The Co-Contributor will give, and will procure that all of its Representatives give, upon reasonable notice and during normal business hours, full and free access and reasonable assistance to the Department, its Representatives and nominated auditors to:
 - (i) speak to the persons associated with the performance of this agreement;
 - (ii) examine, inspect and copy any material, including any books and records, in the possession of the Co-Contributor which is relevant to this agreement, including providing all necessary facilities for that purpose;
 - (iii) examine and inspect the performance of the Co-Contributor's obligations under this agreement; and
 - (iv) locate and make copies of any of the Co-Contributor's accounts, records, documents and other material that relate directly or indirectly to [performance of this agreement].
- (b) The Department's right of access under clause 9.1(a) may be exercised for any reasonable purpose relating to this agreement, including for financial or compliance audits, or reviews of the Co-Contributor's performance of this agreement.
- (c) When accessing premises and/or records in accordance with clause 9.1(a), the Department will use its best endeavours to minimise interference to the Co-Contributor's employees and the conduct of its obligations under this agreement.
- (d) For the purposes of this clause 9 the Department's nominated auditor may be a person with suitable qualifications as determined by the Department.

9.2 Other information to be provided

The Co-Contributor must promptly provide any information requested in writing by the Department, its Representatives or its nominated auditors.

10. Subcontracting

- (a) The Co-Contributor must not subcontract the whole, or any part, of the Co-Contributor's obligations under this agreement unless agreed in writing by the Department.

11. Intellectual Property Rights

- (a) Nothing in this agreement affects ownership of Background IP.
- (b) Each party warrants that to the best of its knowledge and belief at the Commencement Date, it owns its Background IP, or otherwise has the right to use its Background IP in accordance with this agreement.
- (c) All rights in and title to the Contract Material will vest, upon creation, in the Co-Contributor, and the Co-Contributor will do all things necessary to ensure the vesting of the Contract Material in accordance with this clause 11(c).
- (d) The Co-Contributor grants to the Department a non-exclusive, worldwide, perpetual, irrevocable, royalty-free licence (including a right to sub-license) to use, communicate, reproduce, publish, adapt and modify the Contract Material and the Co-Contributor's Background IP.
- (e) The Department grants to the Co-Contributor a non-exclusive, non-transferable, royalty-free licence to use the Department's Background IP solely for the purposes of carrying out the Activity and exercising its rights in the Contract Material (insofar as the Department's Background IP forms part of the Contract Material).

12. Publication

Before the Co-Contributor may release a public statement or publish promotional material in any media about the Purpose, the Co-Contributor must:

- (a) at least 10 Business Days before the proposed statement or publication, provide to the Department a copy of the proposed statement or publication; and
- (b) comply with all requests, amendments or conditions that the Department may reasonably require by written notice to the Co-Contributor.

13. Conflict of Interest

- (a) The Co-Contributor warrants that, to the best of its knowledge and belief, after making diligent inquiries as at the date of signing this agreement, no Conflict of Interest exists.
- (b) The Co-Contributor must not have, and must take all reasonable measures to ensure its Representatives do not have a Conflict of Interest.
- (c) If, during the Term, a Conflict of Interest arises, or appears likely to arise, the Co-Contributor will notify the Department immediately in writing and to take such steps to resolve or otherwise deal with the conflict to the Department's satisfaction.
- (d) If the Department is given notice of a Conflict of Interest pursuant to clause 13(c) or if the Department otherwise identifies that a Conflict of Interest exists, the Department may:
 - (i) direct the Co-Contributor as to how to manage the Conflict of Interest and the Co-Contributor must comply with any reasonable direction so given by the Department; or
 - (ii) terminate this agreement in accordance with clause 21.3.
- (e) The Co-Contributor must keep a record of each Conflict of Interest that arises and how it was managed.

14. Confidentiality

14.1 Confidential Information

Subject to clause 14.2, a party must not:

- (a) disclose the other party's Confidential Information to a third party; or

- (b) use the other party's Confidential Information other than for the purpose of performing this agreement.

14.2 Exceptions

A party may disclose the other party's Confidential Information:

- (a) with the other party's prior written consent;
- (b) to a professional adviser, financial adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential;
- (c) to any of its Representatives who are bound to keep the information confidential and to whom it is necessary to disclose the information;
- (d) to comply with the law, or a requirement of a regulatory body (including any relevant stock exchange);
- (e) to the extent necessary to enforce its rights or defend a claim or action under this agreement; and
- (f) where that party is the Department:
 - (i) to the responsible Minister administering the Department and their personal and departmental advisers;
 - (ii) in response to a request by the Parliament or a Committee of the Parliament of the State of Queensland;
 - (iii) any Commonwealth department, Queensland Government department, agency, authority or Minister; or
 - (iv) where disclosure is required to be made in accordance with established governmental policies, procedures or for public accountability purposes.

14.3 Breach of confidentiality

- (a) If a party becomes aware of a suspected or actual breach of this clause 14, the party will immediately notify the other party and take reasonable steps required to prevent or stop the suspected or actual breach.
- (b) The parties acknowledge and accept that damages will be an inadequate remedy for a breach of this clause 14.

14.4 Return of Confidential Information

The Receiver will return or destroy (at the Discloser's discretion) material containing Confidential Information when it is no longer required by the Receiver, or when otherwise directed by the Discloser.

14.5 Co-Contributor's undertaking

- (a) The Co-Contributor must make every reasonable effort to ensure that its Representatives and volunteers are aware of and comply with the obligations of confidentiality in this clause 14.
- (b) The Department may, at any time, require the Co-Contributor to arrange for its Representatives and volunteers engaged in the performance of the Purpose, to give written undertakings in a form reasonably required by the Department relating to the non-disclosure of Confidential Information under this clause 14.

15. Privacy and Personal Information

- (a) This clause 15 applies where this agreement amounts to a "service arrangement" under the *Information Privacy Act 2009* (Qld).
- (b) For the purpose of this clause 15, Personal Information has the meaning given in the *Information Privacy Act 2009* (Qld).
- (c) If the Co-Contributor collects or has access to Personal Information in order to undertake the Purpose, the Co-Contributor must:

- (i) comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under this agreement, as if the Co-Contributor was the Department;
 - (ii) ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
 - (iii) not use Personal Information other than for the Purpose, unless required or authorised by law;
 - (iv) not disclose Personal Information without the consent of the Department, unless required or authorised by law;
 - (v) not transfer Personal Information outside of Australia without the consent of the Department;
 - (vi) fully co-operate with the Department to enable the Department to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
 - (vii) comply with such other privacy and security measures as the Department reasonably advises the Co-Contributor in writing from time to time.
- (d) The Co-Contributor must immediately notify the Department on becoming aware of any breach of clause 15(c).
 - (e) On request by the Department, the Co-Contributor must obtain from its Representatives engaged for the purposes of this agreement, an executed deed of privacy in a form acceptable to the Department.

16. Insurance

- (a) The Co-Contributor must effect and maintain insurance policies for the types, amounts and for the periods specified in Item 6 of Schedule 1 with an insurer and on terms approved by the Department (such approval not to be unreasonably withheld).
- (b) Upon reasonable request, the Co-Contributor must provide the Department with evidence in a form acceptable to the Department of the terms and currency of the insurance required under clause 16(a), including copies of insurance policies and any endorsements or amendment to such policies.

17. Warranty

- (a) The Co-Contributor warrants and represents to the Department that:
 - (i) it will provide the Co-contributor's Payments; and
 - (ii) it has, and will ensure that its Key Personnel and other Representatives have, the necessary qualifications, skills and expertise to deliver the Services;
- (b) To the full extent permitted by law, all conditions and warranties not expressly stated in this agreement are excluded, or if unable to be excluded then limited to the fullest extent permitted by law.

18. Liability and indemnity

18.1 Release

The Co-Contributor releases to the full extent permitted by law, the Department and its Representatives from all actions, claims, proceedings or demands and in respect of any loss, death, injury, illness or damage (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) arising from or in connection with this agreement.

18.2 No liability for consequential or indirect loss

The Department and its Representatives will not in any circumstances (including for negligence) be liable for any loss of revenue, loss of profit, loss of anticipated savings or business, loss of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of

data or goodwill, loss of reputation or any indirect or consequential loss whether arising in contract, tort (including negligence) or otherwise, in connection with this agreement.

18.3 Indemnity

- (a) The Co-Contributor is liable for and indemnifies the Department and its Representatives against all liability, loss, costs and expenses (including any actions, claims, proceedings or demand brought by any third party, and any legal fees, costs and disbursements on a solicitor and own client basis) arising from or incurred in connection with:
 - (i) the Purpose;
 - (ii) any default by the Co-Contributor or the Co-Contributor's Representatives under this agreement;
 - (iii) any unlawful, wilful or negligent act or omission of the Co-Contributor, the Co-Contributor's Representatives or any person for whose conduct the Co-Contributor is liable;
 - (iv) personal injury (including sickness and death) or property damage or loss in connection with the performance (or attempted or purported performance or non-performance) of this agreement or a breach of this agreement by the Co-Contributor; or
 - (v) any infringement or alleged infringement of any Intellectual Property Rights or Moral Rights.
- (b) The Co-Contributor's liability to indemnify the Department under clause 18.3(a) will be reduced proportionally to the extent that any negligent act or omission or breach of this agreement by the Department caused the loss or liability.
- (c) The indemnity granted in clause 18.3(a) is in addition to and not exclusive of any other remedies the Department may have against the Co-Contributor at law.

18.4 No expense required

It is not necessary for the Department to incur expense or to make a payment before enforcing a right of indemnity conferred by this agreement.

19. GST

- (a) Words defined in the GST Law have the same meaning in this clause 19.
- (b) If a party is required under this agreement to reimburse or pay to another party an amount calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or an entity on whose behalf the party is acting) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (c) If GST is payable by an entity (**Supplier**) in relation to any supply that it makes under or in connection with this agreement, the parties agree that:
 - (i) any consideration (including the value of any non-monetary consideration) provided for that supply under or in connection with this agreement other than under this clause 19(c) (**Agreed Amount**) is exclusive of GST;
 - (ii) an additional amount will be payable by the party providing consideration for that supply (**Receiver**) equal to the amount of GST payable by the Supplier on that supply;
 - (iii) the additional amount is payable at the same time as any part of the Agreed Amount is to be first provided for that supply and the Supplier will provide a tax invoice to the Receiver in respect of that supply, no later than that time; and
 - (iv) to the extent, if any, that any consideration (or part thereof) is specified in this agreement to be inclusive of GST, that consideration (or the relevant part) will be excluded from the Agreed Amount for the purposes of calculating the additional amount under clause 19(c)(ii).

20. Dispute resolution

20.1 Dispute resolution process

- (a) Subject to clause 20.3, the parties will adhere to the following procedure in relation to disputes arising from this agreement, prior to the commencement of litigation or other external dispute resolution procedure.
- (b) The Contact Officer for a party may notify the other in writing of the occurrence of a dispute (Dispute Notice) and the Contact Officers will try to resolve the dispute through negotiation.
- (c) If the Contact Officers are unable to resolve the dispute within 15 Business Days from the receipt of the Dispute Notice, the dispute will be referred to:
 - (i) for the Co-Contributor, the person holding the position of Chief Executive Officer (or equivalent); and
 - (ii) for the Department, the Deputy Director General or the Director General of the Department,for resolution.
- (d) If the dispute is not resolved within 15 Business Days after its referral to the representatives of each of the parties listed in clause 20.1(c), either party may refer the dispute to a mediator agreed by the parties with costs to be shared equally between the parties.
- (e) If the parties cannot agree upon a mediator, either party may request the President of the Queensland Law Society to nominate a mediator.

20.2 Continuity during dispute

Notwithstanding the existence of a dispute, each party will continue to perform its obligations under this agreement.

20.3 Urgent interlocutory relief

Nothing in this clause prevents either party from commencing court proceedings relating to any dispute arising from this agreement at any time where that party seeks urgent interlocutory relief.

21. Term and termination

21.1 Term

This agreement will remain in force for the Term.

21.2 Termination for convenience

- (a) The Department may, at any time, by reasonable written notice, terminate this agreement for convenience, including for a Machinery of Government Change.
- (b) If this agreement is terminated by the Department under clause 21.2(a), the Co-Contributor will be entitled to the reasonable costs (if any) that have been or will be incurred by the Co-Contributor as a direct result of the termination of the agreement and which the Co-Contributor cannot recoup or avoid and which would not otherwise have been incurred by the Co-Contributor if the agreement had continued until the expiry of the Term.
- (c) For the avoidance of doubt, clauses 18.2 and 18.3 apply to any termination of this agreement under clause 21.2(a).

21.3 Termination for breach

- (a) The Department may terminate this agreement by written notice with immediate effect if the Co-Contributor:
 - (i) breaches a term of this agreement which is not capable of being remedied; or
 - (ii) breaches a term of this agreement which is capable of being remedied and fails to remedy that breach within 30 days after receiving notice requiring it to do so;
 - (iii) becomes subject to any form of external administration;
 - (iv) enters into an arrangement with the Co-Contributor's creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or

- (v) is wound up, voluntarily or involuntarily.
- (b) For the avoidance of doubt, clause 18.2 applies to any termination of this agreement under clause 21.3.

21.4 Obligations after termination or expiration

- (a) The Co-Contributor must, upon termination or expiry of this agreement, provide all assistance requested by the Department to facilitate the smooth transition of any relevant information, knowledge or systems from the Co-Contributor to the Department or to a third party, including (if requested by the Department) development of and compliance with a transitional plan.
- (b) Within 10 Business Days of the termination or expiry of this agreement, the Co-Contributor must deliver to the Department:
 - (i) all Reports and documents due under this agreement as at the date of termination or expiration;
 - (ii) a final Financial Report in accordance with any requirements specified in Item 5 of Schedule 1, and detailing the present status of the performance of obligations under the agreement, the extent of achievement of the Purpose, the level of success in meeting stated objectives and any incidental results and benefits of the Purpose.

21.5 Pre-existing rights and survival

- (a) Termination in accordance with this clause 21 is without prejudice to any rights of either party under this agreement existing at the date of termination.
- (b) Clauses 7, 8, 14, 15, 16, 17, 18, 20, 21.4, 21.5 and 23 survive expiration or termination of this agreement for any reason.

22. Notices

Each communication (including each notice, consent, approval, request and demand) in connection with this agreement to be given by either party to the other:

- (a) must be in writing;
- (b) must be signed by the party making it (or by a person duly authorised by that party);
- (c) must be addressed in accordance with Item 1 of Schedule 1 or as otherwise notified from time to time;
- (d) must be delivered to that address by hand, or posted by pre-paid post to the address, or sent by facsimile transmission to the number of the addressee, in accordance with clause 22(c);
- (e) is taken to have been received by the addressee:
 - (i) where sent by pre-paid post – on the fifth day after the date of posting;
 - (ii) where sent by facsimile transmission – at the time in the place to which it is sent equivalent to the time recorded on the transmitting machine from which it was sent;
 - (iii) where hand delivered – on delivery,

but if the communication is taken to have been received on a day that is not a Business Day or later than 5.00 pm on a Business Day, the communication is taken to have been received at 9.00 am on the next Business Day.

23. General

23.1 Entire agreement

To the extent permitted by law, in relation to its subject matter, this agreement:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

23.2 No relationship

- (a) Nothing contained in this agreement will be taken as giving rise to any employment, agency, partnership or joint venture relationship between the parties.
- (b) The Co-Contributor (including its Representatives):
 - (i) has no authority or power, and must not purport to have the authority or power, to bind the Department or make representations on behalf of the Department;
 - (ii) must not hold itself out or engage in any conduct or make any representation which may suggest to any person that the Co-Contributor is for any purpose an employee, agent, partner of or joint venturer with the Department; and
 - (iii) must not represent to any person that the Department is anything other than as a financial contributor for the Purpose.

23.3 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this agreement except for representations or inducements expressly set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this agreement.

23.4 Assignment

The Co-Contributor must not assign, novate or subcontract the whole or any part of this agreement without the prior written consent of the Department.

23.5 Amendments

This agreement may only be varied by a document signed by or on behalf of each party.

23.6 Further acts and documents

Each party must promptly do all acts and deliver all documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this agreement.

23.7 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement.
- (b) A waiver or consent given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or any other term of this agreement.

23.8 Consents

A consent required under this agreement from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this agreement expressly provides otherwise.

23.9 Severance

If at any time a provision of this agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this agreement; or

- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any provision of this agreement.

23.10 Counterparts

This agreement may be signed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

23.11 Expenses

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

23.12 Continuing obligation

Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement.

23.13 Governing law

This agreement is governed by and will be construed according to the law applying in Queensland.

23.14 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 23.14(a).

23.15 No fettering

Nothing contained in this agreement will fetter, act as an estoppel or as an agreement about the exercise of discretion or the making of a decision or subordinate legislation under any law by the State of Queensland and its Representatives.

24. Definitions and interpretation

24.1 Definitions

In this agreement:

Background IP means Intellectual Property Rights which are made available by a party for the purpose of carrying out the Purpose and that are:

- (a) in existence at the Commencement Date; or
- (b) brought into existence after the Commencement Date other than as a result of the performance of the Purpose.

Business Day means a day that is not a Saturday, Sunday or a public holiday in Brisbane.

Co-Contributor Payments means the payments the Co-Contributor will contribute toward the Purpose for the Project in accordance with Item 4 of Schedule 1.

Collaborative Agreement means the agreement to be entered into by the parties which will contain details for how the Individual Projects will be funded and managed to fulfil the Purpose.

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

Confidential Information means all information, trade secrets and knowledge of or disclosed by a party (Discloser) to another party (Receiver) that:

- (a) is by its nature confidential;
- (b) is designated or marked by the Discloser as confidential; or
- (c) the Receiver knows or ought to know is confidential,

and includes the terms of this agreement and any information provided or received by a party pursuant to this agreement, but does not include information which:

- (d) is or becomes public knowledge other than by breach of this agreement or any other confidentiality obligation; or
- (e) is independently developed by a party while having no knowledge of or access to the other party's Confidential Information.

Conflict of Interest means having an interest (whether personal, financial or otherwise) which conflicts or which may reasonably be perceived as conflicting with the Co-Contributor's ability to perform its obligations under this agreement fairly, objectively and independently.

Contact means the contact person for each party specified in Item 1 of Schedule 1.

Contact Officer means the contact person for each party specified in Item 1 of Schedule 1.

Contract Material means any material including Intellectual Property Rights, created, written or otherwise brought into existence by or on behalf of the Co-Contributor in the course of carrying out the Purpose.

Department Payments the payments the Department will contribute toward the Purpose with Item 4 of Schedule 1.

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

Funds means the total of Department Payments and Co-Contributor Payments that the Department and the Co-Contributor will provide toward the Purpose in accordance with Item 4 of Schedule 1.

GST means a goods and services tax or any similar tax, levy or impost imposed by the Commonwealth of Australia.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Individual Projects means the projects supporting the Purpose as determined in accordance with the Collaborative Agreement.

Intellectual Property Rights means all intellectual property rights, whether created before or after the Commencement Date, including:

- (a) plant breeder's rights, patents, copyright, rights in circuit layouts, trade marks, registered designs and any right to have Confidential Information kept confidential;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) that may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.

Machinery of Government Change means a change to the title, structure, functions or operations of the Department or a part of the Department (including corporatisation) as a result of an order made under the *Constitution of Queensland 2001* (Qld) or other Queensland legislation.

Match means, in relation to the Funds, the contributing proportions the parties agree to contribute for the Purpose, being calculated on a 1:1 ratio.

Moral Rights means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined by and granted under the *Copyright Act 1968* (Cth), and any similar rights existing under foreign laws.

Moral Rights Consent means a written consent to any act or omission of the Department or its Representatives in relation to the Purpose which would otherwise constitute an infringement of that person's Moral Rights.

Payment means either a Department's Payment or a Co-Contributor's Payment, as the context required.

Recipient means the recipient for funding for an Individual Project.

Reef Water Quality Fund Account means the bank account set up by the Co-Contributor in accordance with clause 4.4 of this agreement.

Reports means the reports specified in Item 5 of Schedule 1.

Representative means an employee, agent, officer, director, contractor, subcontractor or other authorised representative of a party.

Special Conditions means any special conditions specified in Item 7 of Schedule 1.

Term means the period commencing on the Commencement Date and ending on the Expiry Date, unless terminated earlier in accordance with clause 21.

24.2 Interpretation

In this agreement:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:
- (b) if more than one person is identified as the Co-Contributor then that expression refers to them, and the obligations of the Co-Contributor under this agreement bind them, jointly and severally;
- (c) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (where incorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a reference to a party, clause, schedule, attachment or annexure is a reference to a party, clause, schedule, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, attachments and annexures to it;
- (h) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **includes** in any form is not a word of limitation;
- (k) a reference to \$ or dollar is to Australian currency; and
- (l) no rule of construction will apply to a provision of this agreement to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it.



Matched Funding Agreement

Executed as an agreement

Signed for and on behalf of the State of Queensland
acting through the Department of Environment and
Heritage Protection ABN 46 640 294 485 by

TIM REEVES a
person duly authorised to act in that behalf in the
presence of:

S.78B(2)

Signature of witness

Margaret Green

Name of Witness in full

Executed by Great Barrier Reef Foundation ACN 090
616 443 in accordance with section 127 of the
Corporations Act 2001 (Cth)

Signature

Date:

S.78B(2)

Signature of Director/sole Director

Anna Marsden
Name of Director/sole Director in full

S.78B(2)

Signature of Director/Secretary

Phillip S.78B(2) Strachan
Name of Director/Secretary in full

Date:

From: Theresa Fyffe [tfyffe@barrierreef.org]
Sent: Thursday, 5 October 2017 8:53 AM
To: HAMMILL Ben
CC: Petra Lundgren
Subject: FW: QLD Gov Deed of Variation Signed
Attachments: Qld Gov Deed of Variation Match Funds Sep 2017.pdf

Hi Ben,
Please see attached the matched funding agreement executed by GBRF.
Thanks
Theresa

Theresa Fyffe
Director Projects & Partnerships | Great Barrier Reef Foundation
d + 61 7 3064 0872 | m [S.78B(2)] | e tfyffe@barrierreef.org | barrierreef.org
Level 13, 300 Ann Street, Brisbane QLD 4000 | PO Box 2725, Fortitude Valley BC, QLD 4006



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From: Kerri Ryan
Sent: Tuesday, October 3, 2017 8:23 AM
To: Theresa Fyffe <tfyffe@barrierreef.org>; [S.78B(2)]
Subject: QLD Gov Deed of Variation Signed

Hi

Theresa – signed copy.

[S.78B(2)] can you please update version in contracts dbase.

Thanks
Kerri

Published on DES Disclosure Log
RTI Act 2009



Queensland
Government

Deed of Variation

made at Brisbane on the ²⁵ day of September 2017

Between State of Queensland acting through the Department of Environment and Heritage
Protection ABN 46 640 294 485

(Department)

Great Barrier Reef Foundation ACN 090 616 443

(Co-Contributor)

Background

- A. The Department and the Great Barrier Reef Foundation entered into a written agreement dated 22 December 2016 for the purpose to raise funding for a water quality project in a Reef catchment that is agreed by the parties, in accordance with the Collaborative Agreement.
- B. By clause 2 the parties may vary the Agreement by a document signed by or on behalf of each party.
- C. The parties now wish to record their agreement as to the variations and extension of the Agreement in this deed, which consists of:
 - (a) this cover page and the signing page;
 - (b) Schedule 1 – Deed details;
 - (c) Schedule 2 – Terms and conditions; and
 - (d) Annexure 1 – Agreement.
- D. Capitalised words and phrases have the meanings specified in clause 4.



Deed of Variation

Schedule 1 – Deed details

Item 1 Party details

Department:

Party Name: State of Queensland acting through the Department of Environment and Heritage Protection
ABN: ABN 46 640 294 485
Street Address: Level 10, 400 George Street, Brisbane QLD 4000
Contact Officer Name: Ben Hammill
Contact Officer Postal Address: GPO Box 2454 BRISBANE QLD 4001
Contact Officer Telephone: 07 3330 5760
Contact Officer Facsimile: 07 3330 5875

Other Party:

Party Name: Great Barrier Reef Foundation
ACN/ABN: 090 616 443
Street Address: Level 13, 300 Ann Street, Brisbane, 4000
Contact Officer Name: Theresa Fyffe
Contact Officer Postal Address: PO Box 2725, Fortitude Valley BC, QLD, 4000
Contact Officer Telephone: 07 3252 7555
Contact Officer Facsimile: N/A

Item 2 Extension Date

31 March 2020

Item 3 Variations

Variation No.	Clause reference in Agreement	Variation	Effective Date
1	Throughout Agreement	All references to the Reef Water Quality Fund Account in the Agreement are deleted and replaced with Great Barrier Reef Fund Account.	The date the last of the parties signs this deed
2	Schedule 1, Item 3	The Purpose is deleted and replaced with the following Purpose:	The date the last of the parties signs this deed

Variation No.	Clause reference in Agreement	Variation	Effective Date
		<i>"To raise funding for a Reef project that is agreed by the parties, in accordance with the Collaborative Agreement."</i>	
3	Schedule 1, Item 7	<p>The Special Condition in the Agreement is deleted and replaced with the following new Special Condition:</p> <p><i>"This agreement is condition upon the parties entering into the Collaborative Agreement by 31 December 2017 (Condition Precedent). If the Condition Precedent is not satisfied by 31 December 2017, the Department may immediately terminate this agreement at any time by giving notice to this effect to the Co-Contributor."</i></p>	The date the last of the parties signs this deed
4	Schedule 1, Item 4	<p>The instalment payments for the Department and Co-Contributor are amended to read:</p> <p><i>"The instalments will commence in 2017/18 and will conclude in 2019/20."</i></p>	The date the last of the parties signs this deed
5	Schedule 1, Item 5	<p>The Financial Report Submission dates are amended as follows:</p> <p><i>"Financial reports Submission Date - 31 May 2018, 31 May 2019, 28 February 2020."</i></p>	The date the last of the parties signs this deed



Deed of Variation

Schedule 2 – Terms and conditions

1. Variations

- (a) The parties agree that the Agreement is modified, varied, amended or added to in accordance with the Variations.
- (b) Each Variation takes effect on and from the Effective Date.
- (c) In all other respects the Agreement remains unaltered.

2. Extension

Effective on and from the date of this deed, the term of the Agreement is extended to the Extension Date.

3. General

3.1 Further acts

Each party must promptly do all acts and execute and deliver all documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this deed.

3.2 Notices

Each communication (including each notice, consent, approval, request and demand) in connection with this deed to be given by either party to the other must be in writing and delivered by hand, posted by pre-paid post, or sent by facsimile transmission to the address or number specified in Item 1 of Schedule 1 (or any other address or number notified from time to time).

3.3 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

3.4 Expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with preparing, negotiating, executing and performing this deed.

3.5 Governing law

This deed is governed by and will be construed according to the law applying in Queensland.

3.6 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 3.6(a).

4. Definitions and interpretation

In this deed:

- (a) Unless the context indicates a contrary intention, the definitions and rules of interpretation specified in clause 24.1 of the Agreement also apply to this deed.
- (b) **Agreement** means the agreement between the parties as described in the Background to this deed and attached in Annexure 1.
- (c) **Effective Date** means, for each Variation, the date specified for that Variation in Item 3 of Schedule 1.
- (d) **Extension Date** means the date (if any) specified in Item 2 of Schedule 1.
- (e) **Variations** means the variations (if any) specified in Item 3 of Schedule 1.



Deed of Variation

Annexure 1 – Agreement

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RTI Act 2009



Deed of Variation

Executed as a deed

Signed, sealed and delivered for and on behalf of the State of Queensland acting through the Department of Environment and Heritage Protection ABN 46 640 294 485 by

TIM REEVES a person duly
authorised to act in that behalf in the presence of:

S.78B(2)

Signature of witness

Margaret GEORGA
Name of Witness in full

[Signature]
Signature
Date: 18/9/17

Executed by Great Barrier Reef Foundation ACN
090 616 443 in accordance with section 127 of the
Corporations Act 2001 (Cth)

S.78B(2)

Signature of Director/sole Director

Anna Marsden
Name of Director/sole Director in full

Date: 25/9/17

S.78B(2)

Signature of Director/Secretary

KERRI RYAN
Name of Director/Secretary in full

Date: 3/10/17



Queensland
Government

Matched Funds Agreement

made at Brisbane on the 22 day of December 2016

Between State of Queensland acting through the Department of Environment and Heritage
Protection ABN 46 640 294 485
(Department)
Great Barrier Reef Foundation ACN 090 616 443
(Co-Contributor)

Background

- A. The Queensland Government has allocated \$90 million over four years to deliver on projects that will deliver cleaner water for a healthy Great Barrier Reef.
- B. The Department has agreed to Match the Payments raised by the Co-Contributor for the Purpose, to the amount of up to \$1 million each for three years, resulting in a combined total of up to \$6 million.
- C. The parties wish to record the terms and conditions of their agreement, which consists of:
 - (a) This cover page and the signing page;
 - (b) Schedule 1 – Agreement details; and
 - (c) Schedule 2 – Terms and conditions.
- D. Capitalised words and phrases have the meanings specified in clause 24.



Matched Funds Agreement

Schedule 1 – Agreement details

Item 1 Party details

Department:

Party Name: State of Queensland acting through the Department of Environment and Heritage Protection
ABN: 46 640 294 485
Street Address: Level 10, 400 George Street, Brisbane QLD 4000
Contact Officer Name: Ben Hammill
Contact Officer Postal Address: GPO Box 2454 BRISBANE QLD 4001
Contact Officer Telephone: 07 3330 5760
Contact Officer Facsimile: 07 3330 5875
Contact Officer Email (notices cannot be given by email): ben.hammill@ehp.qld.gov.au

Other Party:

Party Name: Great Barrier Reef Foundation
ABN/ACN: 090 616 443
Street Address: Level 13, 300 Ann St, Brisbane, 4000
Contact Officer Name: Theresa Fylfe
Contact Officer Postal Address: PO Box 2725, Fortitude Valley BC, QLD, 4006
Contact Officer Telephone: 07 3252 7555
Contact Officer Facsimile: N/A
Contact Officer Email (notices cannot be given by email): tfylfe@barrierreef.org

Item 2 Term: (clauses 21.1 and 24.1)

Commencement Date: The date the last of the parties signs this agreement
Expiry Date: 31 March 2019

Item 3 Purpose: (clauses 4.1 and 24.1)

To raise funding for a water quality project in a Reef catchment that is agreed by the parties, in accordance with the Collaborative Agreement.

Item 4 Payment: (clauses 3, 5 and 24.1)

The Department will contribute up to \$3 million for the Purpose (ex GST) in three separate instalments of up to \$1 million. The instalments will commence in 2016/17 and will conclude in 2018/19.

The Co-Contributor will contribute up to \$3 million for the Purpose in three separate instalments of up to \$1 million. The instalments will commence in 2016/17 and will conclude in 2018/19.

The Co-Contributor Payments are derived from funds raised in accordance with Item 3 of Schedule 1.

The total Funds will be up to \$6 million.

Item 5 Reporting: (clause 7)

Report	Report contents and form	Submission date
Financial reports	The reports must contain at a minimum: <ul style="list-style-type: none">- the amount of Funds raised by the Co-Contributor for the current financial year;- the total amount of Funds to date;- copies of bank statements for the Reef Water Quality Fund Account;- broad details on allocation of funds to support implementation.	31 May 2017, 31 May 2018, 28 February 2019

Item 6 Insurance: (clause 16)

Public Liability:	\$10,000,000.00	During the Term
Workers' Compensation:	As required by law	During the Term
Professional Liability:	\$1,000,000.00	During the Term and for 7 years after the Expiry Date

Item 7 Special Conditions: (clauses 2 and 24.1)

This agreement is condition upon the parties entering into the Collaborative Agreement by 30 June 2017 ('Condition Precedent').

If the Condition Precedent is not satisfied by 30 June 2017, the Department may immediately terminate this agreement at any time by giving notice to this effect to the Co-Contributor. If the Department terminates this agreement under this special condition then this agreement has no further force or effect.

IMPORTANT: Special Conditions take precedence over the terms of this agreement. Legal advice should be sought on any Special Conditions that are inconsistent with the terms of the agreement or which are significant (e.g. involve intellectual property, warranties, indemnities or liability). If no Special Conditions insert "NIL".



Matched Funds Agreement

Schedule 2 – Terms and conditions

1. Precedence

Where any inconsistency exists between:

- (a) the Special Conditions;
- (b) this Schedule 2;
- (c) Schedule 1 (except the Special Conditions); or
- (d) any other schedules or annexures of this agreement,

the provisions will take precedence in that order to the extent necessary to resolve the inconsistency.

2. Special Conditions

The parties agree to be bound by any Special Conditions.

3. Matched Funds Arrangement

- (a) The parties agree to:
 - (i) provide their Payments for the Purpose, such Payments to be used to support the Individual Projects.
 - (ii) negotiate in good faith to enter into a Collaborative Agreement.
- (b) If the Co-Contributor advises the Department that it cannot Match a Payment, the Department may either:
 - (i) reduce its corresponding Payment to an amount equal to the reduced Co-Contributor Payment; or
 - (ii) withhold a Department Payment until the Co-Contributor has provided its Co-Contributor Payment in accordance with Item 4 of Schedule 1 or other such amount as agreed by the parties,in accordance with clause 5.
- (c) The parties agree to amend the amount of a Payment in accordance with clause 23.5.
- (d) All Payments provided by a party under this agreement must be used for the sole purpose of carrying out the Project.

4. Co-Contributor's obligations

4.1 Performance of the Purpose

The Co-Contributor must:

- (a) demonstrate donation commitments equal to the Co-Contributor Payments in the amounts and in the timeframes specified in Schedule 1;
- (b) use the Funds for the Project;
- (c) carry out the Purpose in accordance with this agreement and with due care and skill;
- (d) not do anything or become involved in any situation which, in the reasonable opinion of the Department, reflects unfavourably upon the State of Queensland;
- (e) comply with:
 - (i) the terms and conditions of this agreement;

- (ii) applicable laws and regulations;
- (iii) standards of professional care and diligence of the industry to which the Co-Contributor belongs; and
- (iv) the Department's reasonable requests, directions and requirements, to the Department's satisfaction; and
- (f) communicate with, report and provide information to the Department's Contact Officer as reasonably required by the Department.

4.2 General obligations

- (a) The Co-Contributor acknowledges and agrees that all its personnel are the Co-Contributor's responsibility including payment of all employee wages and entitlements.
- (b) If the Co-Contributor is aware of an Allegation, then the Co-Contributor must report the Allegation to a relevant authority, including the Queensland Police Service. In this clause Allegation means an allegation against the Recipient or its Representatives in connection with the Funds or the Purpose which raises a reasonable suspicion of misconduct, dishonesty or unlawful behaviour of a serious nature.

4.3 Notifications

The Co-Contributor must promptly notify the Department:

- (a) of any matters that the Co-Contributor reasonably considers may affect the Co-Contributor's ability to carry out the Purpose or meet any other obligations under this deed;
- (b) if the Co-Contributor is unable to carry out the Purpose within the monetary limit of the Co-Contributor's Payment or by the Purpose End Date;
- (c) of any matter that may affect the Co-Contributor's eligibility to continue receiving the Department's Payments;
- (d) of any allegation of misconduct or dishonesty concerning the Co-Contributor or its Representatives and any report made under clause 4.2(b);
- (e) of any change to its details in Item 1 of Schedule 1; or
- (f) of the amount, source and purpose of any additional funds received from a third party for meeting the costs of the Purpose.

4.4 Reef Water Quality Fund Account

- (a) The Co-Contributor must:
 - (i) establish the Reef Water Quality Fund Account in the Co-Contributor's name and to be solely controlled by the Co-Contributor;
 - (ii) ensure that the account referred to in 4.4(a):
 - (A) Is established for the Purpose under this agreement; and
 - (B) can be reported separately from the Co-Contributor's other operational accounts; and
 - (iii) ensure the Reef Water Quality Fund Account is linked to an interest bearing account and that interest is payable subject to the same terms and conditions as agreed with the financial institution with which the monies of the Co-Contributor are deposited, and that interest on Funds can be reported separately.

4.5 Management of the Account

- (a) The Co-Contributor must:
 - (i) manage the Reef Water Quality Fund Account in accordance with the terms of this agreement;
 - (ii) separately record and account for all transactions to and from the Reef Water Quality Fund Account; and

- (iii) manage all payments of funds from the Reef Water Quality Fund Account to Recipients in accordance with the Collaborative Agreement.

4.6 Use of the Department's Payments

- (a) Department Payments provided under this agreement;
 - (i) must only be used for the purposes of carrying out Individual Projects and performing this agreement, consistent with the Purpose;
 - (ii) must not be used to cover the cost of any activities completed prior to the execution of this agreement;
 - (iii) must not, unless agreed by the Department in writing, be used to cover the cost of any activities commenced but not yet completed prior to the execution of this agreement;
 - (iv) are not to be applied towards administrative and other general costs of the Co-Contributor unless agreed by the Department; and
 - (v) must not, unless the prior written approval of the Department has been obtained, be used in a manner which is inconsistent with the Purpose.

5. Department's Payment

5.1 Department's obligations

- (a) The Department will pay the Department's Payments into the Reef Water Quality Fund Account in the amounts and on the dates specified in Item 4 of Schedule 1.
- (b) The Department may in its absolute discretion withhold a Payment to the Co-Contributor until:
 - (i) the Co-Contributor has shown to the Department's satisfaction (allowing the Department reasonable time to assess its satisfaction) that it has met all other Payments due on or before the payment date for a Co-Contributor's Payment;
 - (ii) the Co-Contributor has issued a tax invoice to the Department for the Department's Payment;
 - (iii) the Co-Contributor has submitted to the Department, to the Department's satisfaction, all Reports due on or before the payment date for a Co-Contributor's Payment; and
 - (iv) the Department is reasonably satisfied that the Co-Contributor is not otherwise in breach of this agreement.
- (c) Any Payment to the Co-Contributor by the Department is not an admission or acceptance by the Department that the Recipient has complied with this agreement.

5.2 No further funding

- (a) The Co-Contributor acknowledges that the Department has no obligation to provide the Co-Contributor with funding or assistance of any kind:
 - (i) in excess of the Department's Payments; or
 - (ii) beyond the Term.
- (b) For the avoidance of doubt, the Co-Contributor is responsible for acquiring and/or providing any additional funds, materials or equipment in excess of the Funds required to carry out or complete the Purpose.

6. Management

- (a) Each party must nominate a Contact Officer responsible for:
 - (i) receiving communications;
 - (ii) issuing and signing notices; and
 - (iii) responding to requests or directions,on behalf of that party.

- (b) A party may, from time to time, change the Contact Officer by written notice to the other party in accordance with clause 22.
- (c) The Contact Officers will meet to review the performance of this agreement upon reasonable written notice given by either party.

7. Reporting

The Co-Contributor must:

- (a) submit all Reports to the Department in the form, containing the information and on the dates specified in Item 5 of Schedule 1 unless the Department directs otherwise in writing;
- (b) complete each Report to the Department's satisfaction and the Department will return a Report (if necessary) to the Co-Contributor for satisfactory completion within a reasonable time; and
- (c) provide to the Department any other information or material about the Co-Contributor, or any other matter in connection with this agreement as requested in writing by the Department within a reasonable time specified by the Department in its request.

8. Records

The Co-Contributor must:

- (a) keep proper and adequate records, accounts and supporting documents in accordance with generally accepted accounting principles and as required by law, about:
 - (i) all aspects of this agreement, including records about the performance of this agreement and whether time frames and performance requirements for this agreement are met; and
 - (ii) its affairs generally,
 in secure storage for at least 7 years after the Expiry Date; and
- (b) comply with any additional recordkeeping obligations specified in this agreement.

9. Audit and access

9.1 Access to Co-Contributor's premises and records

- (a) The Co-Contributor will give, and will procure that all of its Representatives give, upon reasonable notice and during normal business hours, full and free access and reasonable assistance to the Department, its Representatives and nominated auditors to:
 - (i) speak to the persons associated with the performance of this agreement;
 - (ii) examine, inspect and copy any material, including any books and records, in the possession of the Co-Contributor which is relevant to this agreement, including providing all necessary facilities for that purpose;
 - (iii) examine and inspect the performance of the Co-Contributor's obligations under this agreement; and
 - (iv) locate and make copies of any of the Co-Contributor's accounts, records, documents and other material that relate directly or indirectly to [performance of this agreement].
- (b) The Department's right of access under clause 9.1(a) may be exercised for any reasonable purpose relating to this agreement, including for financial or compliance audits, or reviews of the Co-Contributor's performance of this agreement.
- (c) When accessing premises and/or records in accordance with clause 9.1(a), the Department will use its best endeavours to minimise interference to the Co-Contributor's employees and the conduct of its obligations under this agreement.
- (d) For the purposes of this clause 9 the Department's nominated auditor may be a person with suitable qualifications as determined by the Department.

9.2 Other information to be provided

The Co-Contributor must promptly provide any information requested in writing by the Department, its Representatives or its nominated auditors.

10. Subcontracting

- (a) The Co-Contributor must not subcontract the whole, or any part, of the Co-Contributor's obligations under this agreement unless agreed in writing by the Department.

11. Intellectual Property Rights

- (a) Nothing in this agreement affects ownership of Background IP.
- (b) Each party warrants that to the best of its knowledge and belief at the Commencement Date, it owns its Background IP, or otherwise has the right to use its Background IP in accordance with this agreement.
- (c) All rights in and title to the Contract Material will vest, upon creation, in the Co-Contributor, and the Co-Contributor will do all things necessary to ensure the vesting of the Contract Material in accordance with this clause 11(c).
- (d) The Co-Contributor grants to the Department a non-exclusive, worldwide, perpetual, irrevocable, royalty-free licence (including a right to sub-license) to use, communicate, reproduce, publish, adapt and modify the Contract Material and the Co-Contributor's Background IP.
- (e) The Department grants to the Co-Contributor a non-exclusive, non-transferable, royalty-free licence to use the Department's Background IP solely for the purposes of carrying out the Activity and exercising its rights in the Contract Material (insofar as the Department's Background IP forms part of the Contract Material).

12. Publication

Before the Co-Contributor may release a public statement or publish promotional material in any media about the Purpose, the Co-Contributor must:

- (a) at least 10 Business Days before the proposed statement or publication, provide to the Department a copy of the proposed statement or publication; and
- (b) comply with all requests, amendments or conditions that the Department may reasonably require by written notice to the Co-Contributor.

13. Conflict of Interest

- (a) The Co-Contributor warrants that, to the best of its knowledge and belief, after making diligent inquiries as at the date of signing this agreement, no Conflict of Interest exists.
- (b) The Co-Contributor must not have, and must take all reasonable measures to ensure its Representatives do not have a Conflict of Interest.
- (c) If, during the Term, a Conflict of Interest arises, or appears likely to arise, the Co-Contributor will notify the Department immediately in writing and to take such steps to resolve or otherwise deal with the conflict to the Department's satisfaction.
- (d) If the Department is given notice of a Conflict of Interest pursuant to clause 13(c) or if the Department otherwise identifies that a Conflict of Interest exists, the Department may:
 - (i) direct the Co-Contributor as to how to manage the Conflict of Interest and the Co-Contributor must comply with any reasonable direction so given by the Department; or
 - (ii) terminate this agreement in accordance with clause 21.3.
- (e) The Co-Contributor must keep a record of each Conflict of Interest that arises and how it was managed.

14. Confidentiality

14.1 Confidential Information

Subject to clause 14.2, a party must not:

- (a) disclose the other party's Confidential Information to a third party; or

- (b) use the other party's Confidential Information other than for the purpose of performing this agreement.

14.2 Exceptions

A party may disclose the other party's Confidential Information:

- (a) with the other party's prior written consent;
- (b) to a professional adviser, financial adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential;
- (c) to any of its Representatives who are bound to keep the information confidential and to whom it is necessary to disclose the information;
- (d) to comply with the law, or a requirement of a regulatory body (including any relevant stock exchange);
- (e) to the extent necessary to enforce its rights or defend a claim or action under this agreement; and
- (f) where that party is the Department:
 - (i) to the responsible Minister administering the Department and their personal and departmental advisers;
 - (ii) in response to a request by the Parliament or a Committee of the Parliament of the State of Queensland;
 - (iii) any Commonwealth department, Queensland Government department, agency, authority or Minister; or
 - (iv) where disclosure is required to be made in accordance with established governmental policies, procedures or for public accountability purposes.

14.3 Breach of confidentiality

- (a) If a party becomes aware of a suspected or actual breach of this clause 14, the party will immediately notify the other party and take reasonable steps required to prevent or stop the suspected or actual breach.
- (b) The parties acknowledge and accept that damages will be an inadequate remedy for a breach of this clause 14.

14.4 Return of Confidential Information

The Receiver will return or destroy (at the Discloser's discretion) material containing Confidential Information when it is no longer required by the Receiver, or when otherwise directed by the Discloser.

14.5 Co-Contributor's undertaking

- (a) The Co-Contributor must make every reasonable effort to ensure that its Representatives and volunteers are aware of and comply with the obligations of confidentiality in this clause 14.
- (b) The Department may, at any time, require the Co-Contributor to arrange for its Representatives and volunteers engaged in the performance of the Purpose, to give written undertakings in a form reasonably required by the Department relating to the non-disclosure of Confidential Information under this clause 14.

15. Privacy and Personal Information

- (a) This clause 15 applies where this agreement amounts to a "service arrangement" under the *Information Privacy Act 2009* (Qld).
- (b) For the purpose of this clause 15, Personal Information has the meaning given in the *Information Privacy Act 2009* (Qld).
- (c) If the Co-Contributor collects or has access to Personal Information in order to undertake the Purpose, the Co-Contributor must:

- (i) comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under this agreement, as if the Co-Contributor was the Department;
 - (ii) ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
 - (iii) not use Personal Information other than for the Purpose, unless required or authorised by law;
 - (iv) not disclose Personal Information without the consent of the Department, unless required or authorised by law;
 - (v) not transfer Personal Information outside of Australia without the consent of the Department;
 - (vi) fully co-operate with the Department to enable the Department to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
 - (vii) comply with such other privacy and security measures as the Department reasonably advises the Co-Contributor in writing from time to time.
- (d) The Co-Contributor must immediately notify the Department on becoming aware of any breach of clause 15(c).
- (e) On request by the Department, the Co-Contributor must obtain from its Representatives engaged for the purposes of this agreement, an executed deed of privacy in a form acceptable to the Department.

16. Insurance

- (a) The Co-Contributor must effect and maintain Insurance policies for the types, amounts and for the periods specified in Item 6 of Schedule 1 with an insurer and on terms approved by the Department (such approval not to be unreasonably withheld).
- (b) Upon reasonable request, the Co-Contributor must provide the Department with evidence in a form acceptable to the Department of the terms and currency of the insurance required under clause 16(a), including copies of insurance policies and any endorsements or amendment to such policies.

17. Warranty

- (a) The Co-Contributor warrants and represents to the Department that:
 - (i) it will provide the Co-contributor's Payments; and
 - (ii) it has, and will ensure that its Key Personnel and other Representatives have, the necessary qualifications, skills and expertise to deliver the Services;
- (b) To the full extent permitted by law, all conditions and warranties not expressly stated in this agreement are excluded, or if unable to be excluded then limited to the fullest extent permitted by law.

18. Liability and indemnity

18.1 Release

The Co-Contributor releases to the full extent permitted by law, the Department and its Representatives from all actions, claims, proceedings or demands and in respect of any loss, death, injury, illness or damage (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) arising from or in connection with this agreement.

18.2 No liability for consequential or indirect loss

The Department and its Representatives will not in any circumstances (including for negligence) be liable for any loss of revenue, loss of profit, loss of anticipated savings or business, loss of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of

data or goodwill, loss of reputation or any indirect or consequential loss whether arising in contract, tort (including negligence) or otherwise, in connection with this agreement.

18.3 Indemnity

- (a) The Co-Contributor is liable for and indemnifies the Department and its Representatives against all liability, loss, costs and expenses (including any actions, claims, proceedings or demand brought by any third party, and any legal fees, costs and disbursements on a solicitor and own client basis) arising from or incurred in connection with:
 - (i) the Purpose;
 - (ii) any default by the Co-Contributor or the Co-Contributor's Representatives under this agreement;
 - (iii) any unlawful, wilful or negligent act or omission of the Co-Contributor, the Co-Contributor's Representatives or any person for whose conduct the Co-Contributor is liable;
 - (iv) personal injury (including sickness and death) or property damage or loss in connection with the performance (or attempted or purported performance or non-performance) of this agreement or a breach of this agreement by the Co-Contributor; or
 - (v) any infringement or alleged infringement of any Intellectual Property Rights or Moral Rights.
- (b) The Co-Contributor's liability to indemnify the Department under clause 18.3(a) will be reduced proportionally to the extent that any negligent act or omission or breach of this agreement by the Department caused the loss or liability.
- (c) The indemnity granted in clause 18.3(a) is in addition to and not exclusive of any other remedies the Department may have against the Co-Contributor at law.

18.4 No expense required

It is not necessary for the Department to incur expense or to make a payment before enforcing a right of indemnity conferred by this agreement.

19. GST

- (a) Words defined in the GST Law have the same meaning in this clause 19.
- (b) If a party is required under this agreement to reimburse or pay to another party an amount calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or an entity on whose behalf the party is acting) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (c) If GST is payable by an entity (Supplier) in relation to any supply that it makes under or in connection with this agreement, the parties agree that:
 - (i) any consideration (including the value of any non-monetary consideration) provided for that supply under or in connection with this agreement other than under this clause 19(c) (Agreed Amount) is exclusive of GST;
 - (ii) an additional amount will be payable by the party providing consideration for that supply (Receiver) equal to the amount of GST payable by the Supplier on that supply;
 - (iii) the additional amount is payable at the same time as any part of the Agreed Amount is to be first provided for that supply and the Supplier will provide a tax invoice to the Receiver in respect of that supply, no later than that time; and
 - (iv) to the extent, if any, that any consideration (or part thereof) is specified in this agreement to be inclusive of GST, that consideration (or the relevant part) will be excluded from the Agreed Amount for the purposes of calculating the additional amount under clause 19(c)(ii).

20. Dispute resolution

20.1 Dispute resolution process

- (a) Subject to clause 20.3, the parties will adhere to the following procedure in relation to disputes arising from this agreement, prior to the commencement of litigation or other external dispute resolution procedure.
- (b) The Contact Officer for a party may notify the other in writing of the occurrence of a dispute (Dispute Notice) and the Contact Officers will try to resolve the dispute through negotiation.
- (c) If the Contact Officers are unable to resolve the dispute within 15 Business Days from the receipt of the Dispute Notice, the dispute will be referred to:
 - (i) for the Co-Contributor, the person holding the position of Chief Executive Officer (or equivalent); and
 - (ii) for the Department, the Deputy Director General or the Director General of the Department,for resolution.
- (d) If the dispute is not resolved within 15 Business Days after its referral to the representatives of each of the parties listed in clause 20.1(c), either party may refer the dispute to a mediator agreed by the parties with costs to be shared equally between the parties.
- (e) If the parties cannot agree upon a mediator, either party may request the President of the Queensland Law Society to nominate a mediator.

20.2 Continuity during dispute

Notwithstanding the existence of a dispute, each party will continue to perform its obligations under this agreement.

20.3 Urgent interlocutory relief

Nothing in this clause prevents either party from commencing court proceedings relating to any dispute arising from this agreement at any time where that party seeks urgent interlocutory relief.

21. Term and termination

21.1 Term

This agreement will remain in force for the Term.

21.2 Termination for convenience

- (a) The Department may, at any time, by reasonable written notice, terminate this agreement for convenience, including for a Machinery of Government Change.
- (b) If this agreement is terminated by the Department under clause 21.2(a), the Co-Contributor will be entitled to the reasonable costs (if any) that have been or will be incurred by the Co-Contributor as a direct result of the termination of the agreement and which the Co-Contributor cannot recoup or avoid and which would not otherwise have been incurred by the Co-Contributor if the agreement had continued until the expiry of the Term.
- (c) For the avoidance of doubt, clauses 18.2 and 18.3 apply to any termination of this agreement under clause 21.2(a).

21.3 Termination for breach

- (a) The Department may terminate this agreement by written notice with immediate effect if the Co-Contributor:
 - (i) breaches a term of this agreement which is not capable of being remedied; or
 - (ii) breaches a term of this agreement which is capable of being remedied and fails to remedy that breach within 30 days after receiving notice requiring it to do so;
 - (iii) becomes subject to any form of external administration;
 - (iv) enters into an arrangement with the Co-Contributor's creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or

- (v) is wound up, voluntarily or involuntarily.
- (b) For the avoidance of doubt, clause 18.2 applies to any termination of this agreement under clause 21.3.

21.4 Obligations after termination or expiration

- (a) The Co-Contributor must, upon termination or expiry of this agreement, provide all assistance requested by the Department to facilitate the smooth transition of any relevant information, knowledge or systems from the Co-Contributor to the Department or to a third party, including (if requested by the Department) development of and compliance with a transitional plan.
- (b) Within 10 Business Days of the termination or expiry of this agreement, the Co-Contributor must deliver to the Department:
 - (i) all Reports and documents due under this agreement as at the date of termination or expiration;
 - (ii) a final Financial Report in accordance with any requirements specified in Item 5 of Schedule 1, and detailing the present status of the performance of obligations under the agreement, the extent of achievement of the Purpose, the level of success in meeting stated objectives and any incidental results and benefits of the Purpose.

21.5 Pre-existing rights and survival

- (a) Termination in accordance with this clause 21 is without prejudice to any rights of either party under this agreement existing at the date of termination.
- (b) Clauses 7, 8, 14, 15, 16, 17, 18, 20, 21.4, 21.5 and 23 survive expiration or termination of this agreement for any reason.

22. Notices

Each communication (including each notice, consent, approval, request and demand) in connection with this agreement to be given by either party to the other:

- (a) must be in writing;
- (b) must be signed by the party making it (or by a person duly authorised by that party);
- (c) must be addressed in accordance with Item 1 of Schedule 1 or as otherwise notified from time to time;
- (d) must be delivered to that address by hand, or posted by pre-paid post to the address, or sent by facsimile transmission to the number of the addressee, in accordance with clause 22(c);
- (e) is taken to have been received by the addressee:
 - (i) where sent by pre-paid post – on the fifth day after the date of posting;
 - (ii) where sent by facsimile transmission – at the time in the place to which it is sent equivalent to the time recorded on the transmitting machine from which it was sent;
 - (iii) where hand delivered – on delivery,

but if the communication is taken to have been received on a day that is not a Business Day or later than 5.00 pm on a Business Day, the communication is taken to have been received at 9.00 am on the next Business Day.

23. General

23.1 Entire agreement

To the extent permitted by law, in relation to its subject matter, this agreement:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

23.2 No relationship

- (a) Nothing contained in this agreement will be taken as giving rise to any employment, agency, partnership or joint venture relationship between the parties.
- (b) The Co-Contributor (including its Representatives):
 - (i) has no authority or power, and must not purport to have the authority or power, to bind the Department or make representations on behalf of the Department;
 - (ii) must not hold itself out or engage in any conduct or make any representation which may suggest to any person that the Co-Contributor is for any purpose an employee, agent, partner or joint venturer with the Department; and
 - (iii) must not represent to any person that the Department is anything other than as a financial contributor for the Purpose.

23.3 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this agreement except for representations or inducements expressly set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this agreement.

23.4 Assignment

The Co-Contributor must not assign, novate or subcontract the whole or any part of this agreement without the prior written consent of the Department.

23.5 Amendments

This agreement may only be varied by a document signed by or on behalf of each party.

23.6 Further acts and documents

Each party must promptly do all acts and deliver all documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this agreement.

23.7 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement.
- (b) A waiver or consent given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or any other term of this agreement.

23.8 Consents

A consent required under this agreement from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this agreement expressly provides otherwise.

23.9 Severance

If at any time a provision of this agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this agreement; or

- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any provision of this agreement.

23.10 Counterparts

This agreement may be signed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

23.11 Expenses

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

23.12 Continuing obligation

Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement.

23.13 Governing law

This agreement is governed by and will be construed according to the law applying in Queensland.

23.14 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 23.14(a).

23.15 No fettering

Nothing contained in this agreement will fetter, act as an estoppel or as an agreement about the exercise of discretion or the making of a decision or subordinate legislation under any law by the State of Queensland and its Representatives.

24. Definitions and interpretation

24.1 Definitions

In this agreement:

Background IP means Intellectual Property Rights which are made available by a party for the purpose of carrying out the Purpose and that are:

- (a) in existence at the Commencement Date; or
- (b) brought into existence after the Commencement Date other than as a result of the performance of the Purpose.

Business Day means a day that is not a Saturday, Sunday or a public holiday in Brisbane.

Co-Contributor Payments means the payments the Co-Contributor will contribute toward the Purpose for the Project in accordance with Item 4 of Schedule 1.

Collaborative Agreement means the agreement to be entered into by the parties which will contain details for how the Individual Projects will be funded and managed to fulfil the Purpose.

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

Confidential Information means all information, trade secrets and knowledge of or disclosed by a party (Discloser) to another party (Receiver) that:

- (a) is by its nature confidential;
- (b) is designated or marked by the Discloser as confidential; or
- (c) the Receiver knows or ought to know is confidential,

and includes the terms of this agreement and any information provided or received by a party pursuant to this agreement, but does not include information which:

- (d) is or becomes public knowledge other than by breach of this agreement or any other confidentiality obligation; or
- (e) is independently developed by a party while having no knowledge of or access to the other party's Confidential Information.

Conflict of Interest means having an interest (whether personal, financial or otherwise) which conflicts or which may reasonably be perceived as conflicting with the Co-Contributor's ability to perform its obligations under this agreement fairly, objectively and independently.

Contact means the contact person for each party specified in Item 1 of Schedule 1.

Contact Officer means the contact person for each party specified in Item 1 of Schedule 1.

Contract Material means any material including Intellectual Property Rights, created, written or otherwise brought into existence by or on behalf of the Co-Contributor in the course of carrying out the Purpose.

Department Payments the payments the Department will contribute toward the Purpose with Item 4 of Schedule 1.

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

Funds means the total of Department Payments and Co-Contributor Payments that the Department and the Co-Contributor will provide toward the Purpose in accordance with Item 4 of Schedule 1.

GST means a goods and services tax or any similar tax, levy or impost imposed by the Commonwealth of Australia.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Individual Projects means the projects supporting the Purpose as determined in accordance with the Collaborative Agreement.

Intellectual Property Rights means all intellectual property rights, whether created before or after the Commencement Date, including:

- (a) plant breeder's rights, patents, copyright, rights in circuit layouts, trade marks, registered designs and any right to have Confidential Information kept confidential;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) that may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.

Machinery of Government Change means a change to the title, structure, functions or operations of the Department or a part of the Department (including corporatisation) as a result of an order made under the *Constitution of Queensland 2001* (Qld) or other Queensland legislation.

Match means, in relation to the Funds, the contributing proportions the parties agree to contribute for the Purpose, being calculated on a 1:1 ratio.

Moral Rights means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined by and granted under the *Copyright Act 1968* (Cth), and any similar rights existing under foreign laws.

Moral Rights Consent means a written consent to any act or omission of the Department or its Representatives in relation to the Purpose which would otherwise constitute an infringement of that person's Moral Rights.

Payment means either a Department's Payment or a Co-Contributor's Payment, as the context required.

Recipient means the recipient for funding for an Individual Project.

Reef Water Quality Fund Account means the bank account set up by the Co-Contributor in accordance with clause 4.4 of this agreement.

Reports means the reports specified in Item 5 of Schedule 1.

Representative means an employee, agent, officer, director, contractor, subcontractor or other authorised representative of a party.

Special Conditions means any special conditions specified in Item 7 of Schedule 1.

Term means the period commencing on the Commencement Date and ending on the Expiry Date, unless terminated earlier in accordance with clause 21.

24.2 Interpretation

In this agreement:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention;
- (b) if more than one person is identified as the Co-Contributor then that expression refers to them, and the obligations of the Co-Contributor under this agreement bind them, jointly and severally;
- (c) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (where incorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a reference to a party, clause, schedule, attachment or annexure is a reference to a party, clause, schedule, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, attachments and annexures to it;
- (h) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) includes in any form is not a word of limitation;
- (k) a reference to \$ or dollar is to Australian currency; and
- (l) no rule of construction will apply to a provision of this agreement to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it.



Matched Funding Agreement

Executed as an agreement

Signed for and on behalf of the State of Queensland
acting through the Department of Environment and
Heritage Protection ABN 46 640 294 485 by

TIM NEVES a
person duly authorised to act in that behalf in the
presence

S.78B(2)

Signature of witness

Margaret Green

Name of Witness in full

Executed by Great Barrier Reef Foundation ACN 090
616 443 in accordance with section 127 of the
Corporations Act 2001 (Cth)

Signature

Date:

19/12/16

S.78B(2)

Signature of Director/sole Director

Anna Marsden

Name of Director/sole Director in full

S.78B(2)

Signature of Director/Secretary

PHILIP STRACHAN

Name of Director/Secretary in full

Date:

22/12/16

From: HAMMILL Ben [Ben.Hammill@des.qld.gov.au]
Sent: Thursday, 12 October 2017 9:50 AM
To: 'Theresa Fyffe'
CC: KENYON Kirstin; MEHRTENS Jodie
Subject: Matched Funding Agreement - Reef Islands Project
Attachments: Qld Gov Deed of Variation Match Funds Sep 2017.pdf

Importance: High

Hi Theresa

Now that we have the Matching Funding Agreement Deed of Variation between GBRF and EHP executed it's a good time to meet up and discuss progressing the Reef Islands project

Kirstin and I are currently available next Monday and Tuesday afternoon or Wednesday morning for a catch-up.

Please let me know if any of these times are suitable and I will arrange a meeting.

Cheers

Ben

From: Theresa Fyffe [<mailto:tfyffe@barrierreef.org>]
Sent: Thursday, 5 October 2017 8:54 AM
To: HAMMILL Ben <Ben.Hammill@ehp.qld.gov.au>
Cc: Petra Lundgren <plundgren@barrierreef.org>
Subject: FW: QLD Gov Deed of Variation Signed

Hi Ben,
Please see attached the matched funding agreement executed by GBRF.
Thanks
Theresa

Theresa Fyffe
Director Projects & Partnerships | Great Barrier Reef Foundation

d + 61 7 3064 0872 | m S.78B(2) | e tfyffe@barrierreef.org | barrierreef.org
Level 13, 300 Ann Street, Brisbane QLD 4000 | PO Box 2725, Fortitude Valley BC, QLD 4006



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From: Kerri Ryan

Sent: Tuesday, October 3, 2017 8:23 AM

To: Theresa Fyffe <tfyffe@barrierreef.org>;

S.78B(2)

Subject: QLD Gov Deed of Variation Signed

Hi

Theresa – signed copy.

S.78B(2) can you please update version in contracts dbase.

Thanks
Kerri



Queensland
Government

Deed of Variation

made at Brisbane on the ²⁵ day of September 2017

Between State of Queensland acting through the Department of Environment and Heritage
Protection ABN 46 640 294 485

(Department)

Great Barrier Reef Foundation ACN 090 616 443

(Co-Contributor)

Background

- A. The Department and the Great Barrier Reef Foundation entered into a written agreement dated 22 December 2016 for the purpose to raise funding for a water quality project in a Reef catchment that is agreed by the parties, in accordance with the Collaborative Agreement.
- B. By clause 2 the parties may vary the Agreement by a document signed by or on behalf of each party.
- C. The parties now wish to record their agreement as to the variations and extension of the Agreement in this deed, which consists of:
 - (a) this cover page and the signing page;
 - (b) Schedule 1 – Deed details;
 - (c) Schedule 2 – Terms and conditions; and
 - (d) Annexure 1 – Agreement.
- D. Capitalised words and phrases have the meanings specified in clause 4.



Deed of Variation

Schedule 1 – Deed details

Item 1 Party details

Department:

Party Name: State of Queensland acting through the Department of Environment and Heritage Protection
ABN: ABN 46 640 294 485
Street Address: Level 10, 400 George Street, Brisbane QLD 4000
Contact Officer Name: Ben Hammill
Contact Officer Postal Address: GPO Box 2454 BRISBANE QLD 4001
Contact Officer Telephone: 07 3330 5760
Contact Officer Facsimile: 07 3330 5875

Other Party:

Party Name: Great Barrier Reef Foundation
ACN/ABN: 090 616 443
Street Address: Level 13, 300 Ann Street, Brisbane, 4000
Contact Officer Name: Theresa Fyffe
Contact Officer Postal Address: PO Box 2725, Fortitude Valley BC, QLD, 4000
Contact Officer Telephone: 07 3252 7555
Contact Officer Facsimile: N/A

Item 2 Extension Date

31 March 2020

Item 3 Variations

Variation No.	Clause reference in Agreement	Variation	Effective Date
1	Throughout Agreement	All references to the Reef Water Quality Fund Account in the Agreement are deleted and replaced with Great Barrier Reef Fund Account.	The date the last of the parties signs this deed
2	Schedule 1, Item 3	The Purpose is deleted and replaced with the following Purpose:	The date the last of the parties signs this deed

Variation No.	Clause reference in Agreement	Variation	Effective Date
		<i>"To raise funding for a Reef project that is agreed by the parties, in accordance with the Collaborative Agreement."</i>	
3	Schedule 1, Item 7	<p>The Special Condition in the Agreement is deleted and replaced with the following new Special Condition:</p> <p><i>"This agreement is condition upon the parties entering into the Collaborative Agreement by 31 December 2017 (Condition Precedent). If the Condition Precedent is not satisfied by 31 December 2017, the Department may immediately terminate this agreement at any time by giving notice to this effect to the Co-Contributor."</i></p>	The date the last of the parties signs this deed
4	Schedule 1, Item 4	<p>The instalment payments for the Department and Co-Contributor are amended to read:</p> <p><i>"The instalments will commence in 2017/18 and will conclude in 2019/20."</i></p>	The date the last of the parties signs this deed
5	Schedule 1, Item 5	<p>The Financial Report Submission dates are amended as follows:</p> <p><i>"Financial reports Submission Date - 31 May 2018, 31 May 2019, 28 February 2020."</i></p>	The date the last of the parties signs this deed



Deed of Variation

Schedule 2 – Terms and conditions

1. Variations

- (a) The parties agree that the Agreement is modified, varied, amended or added to in accordance with the Variations.
- (b) Each Variation takes effect on and from the Effective Date.
- (c) In all other respects the Agreement remains unaltered.

2. Extension

Effective on and from the date of this deed, the term of the Agreement is extended to the Extension Date.

3. General

3.1 Further acts

Each party must promptly do all acts and execute and deliver all documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this deed.

3.2 Notices

Each communication (including each notice, consent, approval, request and demand) in connection with this deed to be given by either party to the other must be in writing and delivered by hand, posted by pre-paid post, or sent by facsimile transmission to the address or number specified in Item 1 of Schedule 1 (or any other address or number notified from time to time).

3.3 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

3.4 Expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with preparing, negotiating, executing and performing this deed.

3.5 Governing law

This deed is governed by and will be construed according to the law applying in Queensland.

3.6 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 3.6(a).

4. Definitions and interpretation

In this deed:

- (a) Unless the context indicates a contrary intention, the definitions and rules of interpretation specified in clause 24.1 of the Agreement also apply to this deed.
- (b) **Agreement** means the agreement between the parties as described in the Background to this deed and attached in Annexure 1.
- (c) **Effective Date** means, for each Variation, the date specified for that Variation in Item 3 of Schedule 1.
- (d) **Extension Date** means the date (if any) specified in Item 2 of Schedule 1.
- (e) **Variations** means the variations (if any) specified in Item 3 of Schedule 1.



Deed of Variation

Annexure 1 – Agreement

Published on DES Disclosure Log
RTI Act 2009



Deed of Variation

Executed as a deed

Signed, sealed and delivered for and on behalf of the State of Queensland acting through the Department of Environment and Heritage Protection ABN 46 640 294 485 by

TIM REEVES a person duly
authorised to act in that behalf in the presence of:

S.78B(2)

Signature of witness

Margaret GEORGA
Name of Witness in full

Signature

Date:

18/9/17

Executed by Great Barrier Reef Foundation ACN
090 616 443 in accordance with section 127 of the
Corporations Act 2001 (Cth)

S.78B(2)

Signature of Director/sole Director

Anna Marsden

Name of Director/sole Director in full

Date:

25/9/17

S.78B(2)

Signature of Director/Secretary

KERRI RYAN

Name of Director/Secretary in full

Date:

3/10/17



Matched Funds Agreement

made at Brisbane on the 22 day of December 2016

Between State of Queensland acting through the Department of Environment and Heritage
Protection ABN 46 640 294 485
(Department)
Great Barrier Reef Foundation ACN 090 616 443
(Co-Contributor)

Background

- A. The Queensland Government has allocated \$90 million over four years to deliver on projects that will deliver cleaner water for a healthy Great Barrier Reef.
- B. The Department has agreed to Match the Payments raised by the Co-Contributor for the Purpose, to the amount of up to \$1 million each for three years, resulting in a combined total of up to \$6 million.
- C. The parties wish to record the terms and conditions of their agreement, which consists of:
 - (a) This cover page and the signing page;
 - (b) Schedule 1 – Agreement details; and
 - (c) Schedule 2 – Terms and conditions.
- D. Capitalised words and phrases have the meanings specified in clause 24.



Matched Funds Agreement

Schedule 1 – Agreement details

Item 1 Party details

Department:

Party Name: State of Queensland acting through the Department of Environment and Heritage Protection
ABN: 46 640 294 485
Street Address: Level 10, 400 George Street, Brisbane QLD 4000
Contact Officer Name: Ben Hammill
Contact Officer Postal Address: GPO Box 2454 BRISBANE QLD 4001
Contact Officer Telephone: 07 3330 5760
Contact Officer Facsimile: 07 3330 5875
Contact Officer Email (notices cannot be given by email): ben.hammill@ehp.qld.gov.au

Other Party:

Party Name: Great Barrier Reef Foundation
ABN/ACN: 090 616 443
Street Address: Level 13, 300 Ann St, Brisbane, 4000
Contact Officer Name: Theresa Fylfe
Contact Officer Postal Address: PO Box 2725, Fortitude Valley BC, QLD, 4006
Contact Officer Telephone: 07 3252 7555
Contact Officer Facsimile: N/A
Contact Officer Email (notices cannot be given by email): tfylfe@barrierreef.org

Item 2 Term: (clauses 21.1 and 24.1)

Commencement Date: The date the last of the parties signs this agreement
Expiry Date: 31 March 2019

Item 3 Purpose: (clauses 4.1 and 24.1)

To raise funding for a water quality project in a Reef catchment that is agreed by the parties, in accordance with the Collaborative Agreement.

Item 4 Payment: (clauses 3, 5 and 24.1)

The Department will contribute up to \$3 million for the Purpose (ex GST) in three separate instalments of up to \$1 million. The instalments will commence in 2016/17 and will conclude in 2018/19.

The Co-Contributor will contribute up to \$3 million for the Purpose in three separate instalments of up to \$1 million. The instalments will commence in 2016/17 and will conclude in 2018/19.

The Co-Contributor Payments are derived from funds raised in accordance with Item 3 of Schedule 1.

The total Funds will be up to \$6 million.

Item 5 Reporting: (clause 7)

Report	Report contents and form	Submission date
Financial reports	The reports must contain at a minimum: <ul style="list-style-type: none">- the amount of Funds raised by the Co-Contributor for the current financial year;- the total amount of Funds to date;- copies of bank statements for the Reef Water Quality Fund Account;- broad details on allocation of funds to support implementation.	31 May 2017, 31 May 2018, 28 February 2019

Item 6 Insurance: (clause 16)

Public Liability:	\$10,000,000.00	During the Term
Workers' Compensation:	As required by law	During the Term
Professional Liability:	\$1,000,000.00	During the Term and for 7 years after the Expiry Date

Item 7 Special Conditions: (clauses 2 and 24.1)

This agreement is condition upon the parties entering into the Collaborative Agreement by 30 June 2017 ('Condition Precedent').

If the Condition Precedent is not satisfied by 30 June 2017, the Department may immediately terminate this agreement at any time by giving notice to this effect to the Co-Contributor. If the Department terminates this agreement under this special condition then this agreement has no further force or effect.

IMPORTANT: Special Conditions take precedence over the terms of this agreement. Legal advice should be sought on any Special Conditions that are inconsistent with the terms of the agreement or which are significant (e.g. involve intellectual property, warranties, indemnities or liability). If no Special Conditions insert "NIL".



Matched Funds Agreement

Schedule 2 – Terms and conditions

1. Precedence

Where any inconsistency exists between:

- (a) the Special Conditions;
- (b) this Schedule 2;
- (c) Schedule 1 (except the Special Conditions); or
- (d) any other schedules or annexures of this agreement,

the provisions will take precedence in that order to the extent necessary to resolve the inconsistency.

2. Special Conditions

The parties agree to be bound by any Special Conditions.

3. Matched Funds Arrangement

- (a) The parties agree to:
 - (i) provide their Payments for the Purpose, such Payments to be used to support the Individual Projects.
 - (ii) negotiate in good faith to enter into a Collaborative Agreement.
- (b) If the Co-Contributor advises the Department that it cannot Match a Payment, the Department may either:
 - (i) reduce its corresponding Payment to an amount equal to the reduced Co-Contributor Payment; or
 - (ii) withhold a Department Payment until the Co-Contributor has provided its Co-Contributor Payment in accordance with Item 4 of Schedule 1 or other such amount as agreed by the parties,in accordance with clause 5.
- (c) The parties agree to amend the amount of a Payment in accordance with clause 23.5.
- (d) All Payments provided by a party under this agreement must be used for the sole purpose of carrying out the Project.

4. Co-Contributor's obligations

4.1 Performance of the Purpose

The Co-Contributor must:

- (a) demonstrate donation commitments equal to the Co-Contributor Payments in the amounts and in the timeframes specified in Schedule 1;
- (b) use the Funds for the Project;
- (c) carry out the Purpose in accordance with this agreement and with due care and skill;
- (d) not do anything or become involved in any situation which, in the reasonable opinion of the Department, reflects unfavourably upon the State of Queensland;
- (e) comply with:
 - (i) the terms and conditions of this agreement;

- (ii) applicable laws and regulations;
- (iii) standards of professional care and diligence of the industry to which the Co-Contributor belongs; and
- (iv) the Department's reasonable requests, directions and requirements, to the Department's satisfaction; and
- (f) communicate with, report and provide information to the Department's Contact Officer as reasonably required by the Department.

4.2 General obligations

- (a) The Co-Contributor acknowledges and agrees that all its personnel are the Co-Contributor's responsibility including payment of all employee wages and entitlements.
- (b) If the Co-Contributor is aware of an Allegation, then the Co-Contributor must report the Allegation to a relevant authority, including the Queensland Police Service. In this clause Allegation means an allegation against the Recipient or its Representatives in connection with the Funds or the Purpose which raises a reasonable suspicion of misconduct, dishonesty or unlawful behaviour of a serious nature.

4.3 Notifications

The Co-Contributor must promptly notify the Department:

- (a) of any matters that the Co-Contributor reasonably considers may affect the Co-Contributor's ability to carry out the Purpose or meet any other obligations under this deed;
- (b) if the Co-Contributor is unable to carry out the Purpose within the monetary limit of the Co-Contributor's Payment or by the Purpose End Date;
- (c) of any matter that may affect the Co-Contributor's eligibility to continue receiving the Department's Payments;
- (d) of any allegation of misconduct or dishonesty concerning the Co-Contributor or its Representatives and any report made under clause 4.2(b);
- (e) of any change to its details in Item 1 of Schedule 1; or
- (f) of the amount, source and purpose of any additional funds received from a third party for meeting the costs of the Purpose.

4.4 Reef Water Quality Fund Account

- (a) The Co-Contributor must:
 - (i) establish the Reef Water Quality Fund Account in the Co-Contributor's name and to be solely controlled by the Co-Contributor;
 - (ii) ensure that the account referred to in 4.4(a):
 - (A) Is established for the Purpose under this agreement; and
 - (B) can be reported separately from the Co-Contributor's other operational accounts; and
 - (iii) ensure the Reef Water Quality Fund Account is linked to an interest bearing account and that interest is payable subject to the same terms and conditions as agreed with the financial institution with which the monies of the Co-Contributor are deposited, and that interest on Funds can be reported separately.

4.5 Management of the Account

- (a) The Co-Contributor must:
 - (i) manage the Reef Water Quality Fund Account in accordance with the terms of this agreement;
 - (ii) separately record and account for all transactions to and from the Reef Water Quality Fund Account; and

- (iii) manage all payments of funds from the Reef Water Quality Fund Account to Recipients in accordance with the Collaborative Agreement.

4.6 Use of the Department's Payments

- (a) Department Payments provided under this agreement;
 - (i) must only be used for the purposes of carrying out Individual Projects and performing this agreement, consistent with the Purpose;
 - (ii) must not be used to cover the cost of any activities completed prior to the execution of this agreement;
 - (iii) must not, unless agreed by the Department in writing, be used to cover the cost of any activities commenced but not yet completed prior to the execution of this agreement;
 - (iv) are not to be applied towards administrative and other general costs of the Co-Contributor unless agreed by the Department; and
 - (v) must not, unless the prior written approval of the Department has been obtained, be used in a manner which is inconsistent with the Purpose.

5. Department's Payment

5.1 Department's obligations

- (a) The Department will pay the Department's Payments into the Reef Water Quality Fund Account in the amounts and on the dates specified in Item 4 of Schedule 1.
- (b) The Department may in its absolute discretion withhold a Payment to the Co-Contributor until:
 - (i) the Co-Contributor has shown to the Department's satisfaction (allowing the Department reasonable time to assess its satisfaction) that it has met all other Payments due on or before the payment date for a Co-Contributor's Payment;
 - (ii) the Co-Contributor has issued a tax invoice to the Department for the Department's Payment;
 - (iii) the Co-Contributor has submitted to the Department, to the Department's satisfaction, all Reports due on or before the payment date for a Co-Contributor's Payment; and
 - (iv) the Department is reasonably satisfied that the Co-Contributor is not otherwise in breach of this agreement.
- (c) Any Payment to the Co-Contributor by the Department is not an admission or acceptance by the Department that the Recipient has complied with this agreement.

5.2 No further funding

- (a) The Co-Contributor acknowledges that the Department has no obligation to provide the Co-Contributor with funding or assistance of any kind:
 - (i) in excess of the Department's Payments; or
 - (ii) beyond the Term.
- (b) For the avoidance of doubt, the Co-Contributor is responsible for acquiring and/or providing any additional funds, materials or equipment in excess of the Funds required to carry out or complete the Purpose.

6. Management

- (a) Each party must nominate a Contact Officer responsible for:
 - (i) receiving communications;
 - (ii) issuing and signing notices; and
 - (iii) responding to requests or directions,on behalf of that party.

- (b) A party may, from time to time, change the Contact Officer by written notice to the other party in accordance with clause 22.
- (c) The Contact Officers will meet to review the performance of this agreement upon reasonable written notice given by either party.

7. Reporting

The Co-Contributor must:

- (a) submit all Reports to the Department in the form, containing the information and on the dates specified in Item 5 of Schedule 1 unless the Department directs otherwise in writing;
- (b) complete each Report to the Department's satisfaction and the Department will return a Report (if necessary) to the Co-Contributor for satisfactory completion within a reasonable time; and
- (c) provide to the Department any other information or material about the Co-Contributor, or any other matter in connection with this agreement as requested in writing by the Department within a reasonable time specified by the Department in its request.

8. Records

The Co-Contributor must:

- (a) keep proper and adequate records, accounts and supporting documents in accordance with generally accepted accounting principles and as required by law, about:
 - (i) all aspects of this agreement, including records about the performance of this agreement and whether time frames and performance requirements for this agreement are met; and
 - (ii) its affairs generally,
 in secure storage for at least 7 years after the Expiry Date; and
- (b) comply with any additional recordkeeping obligations specified in this agreement.

9. Audit and access

9.1 Access to Co-Contributor's premises and records

- (a) The Co-Contributor will give, and will procure that all of its Representatives give, upon reasonable notice and during normal business hours, full and free access and reasonable assistance to the Department, its Representatives and nominated auditors to:
 - (i) speak to the persons associated with the performance of this agreement;
 - (ii) examine, inspect and copy any material, including any books and records, in the possession of the Co-Contributor which is relevant to this agreement, including providing all necessary facilities for that purpose;
 - (iii) examine and inspect the performance of the Co-Contributor's obligations under this agreement; and
 - (iv) locate and make copies of any of the Co-Contributor's accounts, records, documents and other material that relate directly or indirectly to [performance of this agreement].
- (b) The Department's right of access under clause 9.1(a) may be exercised for any reasonable purpose relating to this agreement, including for financial or compliance audits, or reviews of the Co-Contributor's performance of this agreement.
- (c) When accessing premises and/or records in accordance with clause 9.1(a), the Department will use its best endeavours to minimise interference to the Co-Contributor's employees and the conduct of its obligations under this agreement.
- (d) For the purposes of this clause 9 the Department's nominated auditor may be a person with suitable qualifications as determined by the Department.

9.2 Other information to be provided

The Co-Contributor must promptly provide any information requested in writing by the Department, its Representatives or its nominated auditors.

10. Subcontracting

- (a) The Co-Contributor must not subcontract the whole, or any part, of the Co-Contributor's obligations under this agreement unless agreed in writing by the Department.

11. Intellectual Property Rights

- (a) Nothing in this agreement affects ownership of Background IP.
- (b) Each party warrants that to the best of its knowledge and belief at the Commencement Date, it owns its Background IP, or otherwise has the right to use its Background IP in accordance with this agreement.
- (c) All rights in and title to the Contract Material will vest, upon creation, in the Co-Contributor, and the Co-Contributor will do all things necessary to ensure the vesting of the Contract Material in accordance with this clause 11(c).
- (d) The Co-Contributor grants to the Department a non-exclusive, worldwide, perpetual, irrevocable, royalty-free licence (including a right to sub-license) to use, communicate, reproduce, publish, adapt and modify the Contract Material and the Co-Contributor's Background IP.
- (e) The Department grants to the Co-Contributor a non-exclusive, non-transferable, royalty-free licence to use the Department's Background IP solely for the purposes of carrying out the Activity and exercising its rights in the Contract Material (insofar as the Department's Background IP forms part of the Contract Material).

12. Publication

Before the Co-Contributor may release a public statement or publish promotional material in any media about the Purpose, the Co-Contributor must:

- (a) at least 10 Business Days before the proposed statement or publication, provide to the Department a copy of the proposed statement or publication; and
- (b) comply with all requests, amendments or conditions that the Department may reasonably require by written notice to the Co-Contributor.

13. Conflict of Interest

- (a) The Co-Contributor warrants that, to the best of its knowledge and belief, after making diligent inquiries as at the date of signing this agreement, no Conflict of Interest exists.
- (b) The Co-Contributor must not have, and must take all reasonable measures to ensure its Representatives do not have a Conflict of Interest.
- (c) If, during the Term, a Conflict of Interest arises, or appears likely to arise, the Co-Contributor will notify the Department immediately in writing and to take such steps to resolve or otherwise deal with the conflict to the Department's satisfaction.
- (d) If the Department is given notice of a Conflict of Interest pursuant to clause 13(c) or if the Department otherwise identifies that a Conflict of Interest exists, the Department may:
 - (i) direct the Co-Contributor as to how to manage the Conflict of Interest and the Co-Contributor must comply with any reasonable direction so given by the Department; or
 - (ii) terminate this agreement in accordance with clause 21.3.
- (e) The Co-Contributor must keep a record of each Conflict of Interest that arises and how it was managed.

14. Confidentiality

14.1 Confidential Information

Subject to clause 14.2, a party must not:

- (a) disclose the other party's Confidential Information to a third party; or

- (b) use the other party's Confidential Information other than for the purpose of performing this agreement.

14.2 Exceptions

A party may disclose the other party's Confidential Information:

- (a) with the other party's prior written consent;
- (b) to a professional adviser, financial adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential;
- (c) to any of its Representatives who are bound to keep the information confidential and to whom it is necessary to disclose the information;
- (d) to comply with the law, or a requirement of a regulatory body (including any relevant stock exchange);
- (e) to the extent necessary to enforce its rights or defend a claim or action under this agreement; and
- (f) where that party is the Department:
 - (i) to the responsible Minister administering the Department and their personal and departmental advisers;
 - (ii) in response to a request by the Parliament or a Committee of the Parliament of the State of Queensland;
 - (iii) any Commonwealth department, Queensland Government department, agency, authority or Minister; or
 - (iv) where disclosure is required to be made in accordance with established governmental policies, procedures or for public accountability purposes.

14.3 Breach of confidentiality

- (a) If a party becomes aware of a suspected or actual breach of this clause 14, the party will immediately notify the other party and take reasonable steps required to prevent or stop the suspected or actual breach.
- (b) The parties acknowledge and accept that damages will be an inadequate remedy for a breach of this clause 14.

14.4 Return of Confidential Information

The Receiver will return or destroy (at the Discloser's discretion) material containing Confidential Information when it is no longer required by the Receiver, or when otherwise directed by the Discloser.

14.5 Co-Contributor's undertaking

- (a) The Co-Contributor must make every reasonable effort to ensure that its Representatives and volunteers are aware of and comply with the obligations of confidentiality in this clause 14.
- (b) The Department may, at any time, require the Co-Contributor to arrange for its Representatives and volunteers engaged in the performance of the Purpose, to give written undertakings in a form reasonably required by the Department relating to the non-disclosure of Confidential Information under this clause 14.

15. Privacy and Personal Information

- (a) This clause 15 applies where this agreement amounts to a "service arrangement" under the *Information Privacy Act 2009* (Qld).
- (b) For the purpose of this clause 15, Personal Information has the meaning given in the *Information Privacy Act 2009* (Qld).
- (c) If the Co-Contributor collects or has access to Personal Information in order to undertake the Purpose, the Co-Contributor must:

- (i) comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under this agreement, as if the Co-Contributor was the Department;
 - (ii) ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
 - (iii) not use Personal Information other than for the Purpose, unless required or authorised by law;
 - (iv) not disclose Personal Information without the consent of the Department, unless required or authorised by law;
 - (v) not transfer Personal Information outside of Australia without the consent of the Department;
 - (vi) fully co-operate with the Department to enable the Department to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
 - (vii) comply with such other privacy and security measures as the Department reasonably advises the Co-Contributor in writing from time to time.
- (d) The Co-Contributor must immediately notify the Department on becoming aware of any breach of clause 15(c).
- (e) On request by the Department, the Co-Contributor must obtain from its Representatives engaged for the purposes of this agreement, an executed deed of privacy in a form acceptable to the Department.

16. Insurance

- (a) The Co-Contributor must effect and maintain Insurance policies for the types, amounts and for the periods specified in Item 6 of Schedule 1 with an insurer and on terms approved by the Department (such approval not to be unreasonably withheld).
- (b) Upon reasonable request, the Co-Contributor must provide the Department with evidence in a form acceptable to the Department of the terms and currency of the insurance required under clause 16(a), including copies of insurance policies and any endorsements or amendment to such policies.

17. Warranty

- (a) The Co-Contributor warrants and represents to the Department that:
 - (i) it will provide the Co-contributor's Payments; and
 - (ii) it has, and will ensure that its Key Personnel and other Representatives have, the necessary qualifications, skills and expertise to deliver the Services;
- (b) To the full extent permitted by law, all conditions and warranties not expressly stated in this agreement are excluded, or if unable to be excluded then limited to the fullest extent permitted by law.

18. Liability and indemnity

18.1 Release

The Co-Contributor releases to the full extent permitted by law, the Department and its Representatives from all actions, claims, proceedings or demands and in respect of any loss, death, injury, illness or damage (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) arising from or in connection with this agreement.

18.2 No liability for consequential or indirect loss

The Department and its Representatives will not in any circumstances (including for negligence) be liable for any loss of revenue, loss of profit, loss of anticipated savings or business, loss of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of

data or goodwill, loss of reputation or any indirect or consequential loss whether arising in contract, tort (including negligence) or otherwise, in connection with this agreement.

18.3 Indemnity

- (a) The Co-Contributor is liable for and indemnifies the Department and its Representatives against all liability, loss, costs and expenses (including any actions, claims, proceedings or demand brought by any third party, and any legal fees, costs and disbursements on a solicitor and own client basis) arising from or incurred in connection with:
 - (i) the Purpose;
 - (ii) any default by the Co-Contributor or the Co-Contributor's Representatives under this agreement;
 - (iii) any unlawful, wilful or negligent act or omission of the Co-Contributor, the Co-Contributor's Representatives or any person for whose conduct the Co-Contributor is liable;
 - (iv) personal injury (including sickness and death) or property damage or loss in connection with the performance (or attempted or purported performance or non-performance) of this agreement or a breach of this agreement by the Co-Contributor; or
 - (v) any infringement or alleged infringement of any Intellectual Property Rights or Moral Rights.
- (b) The Co-Contributor's liability to indemnify the Department under clause 18.3(a) will be reduced proportionally to the extent that any negligent act or omission or breach of this agreement by the Department caused the loss or liability.
- (c) The indemnity granted in clause 18.3(a) is in addition to and not exclusive of any other remedies the Department may have against the Co-Contributor at law.

18.4 No expense required

It is not necessary for the Department to incur expense or to make a payment before enforcing a right of indemnity conferred by this agreement.

19. GST

- (a) Words defined in the GST Law have the same meaning in this clause 19.
- (b) If a party is required under this agreement to reimburse or pay to another party an amount calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or an entity on whose behalf the party is acting) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (c) If GST is payable by an entity (Supplier) in relation to any supply that it makes under or in connection with this agreement, the parties agree that:
 - (i) any consideration (including the value of any non-monetary consideration) provided for that supply under or in connection with this agreement other than under this clause 19(c) (Agreed Amount) is exclusive of GST;
 - (ii) an additional amount will be payable by the party providing consideration for that supply (Receiver) equal to the amount of GST payable by the Supplier on that supply;
 - (iii) the additional amount is payable at the same time as any part of the Agreed Amount is to be first provided for that supply and the Supplier will provide a tax invoice to the Receiver in respect of that supply, no later than that time; and
 - (iv) to the extent, if any, that any consideration (or part thereof) is specified in this agreement to be inclusive of GST, that consideration (or the relevant part) will be excluded from the Agreed Amount for the purposes of calculating the additional amount under clause 19(c)(ii).

20. Dispute resolution

20.1 Dispute resolution process

- (a) Subject to clause 20.3, the parties will adhere to the following procedure in relation to disputes arising from this agreement, prior to the commencement of litigation or other external dispute resolution procedure.
- (b) The Contact Officer for a party may notify the other in writing of the occurrence of a dispute (Dispute Notice) and the Contact Officers will try to resolve the dispute through negotiation.
- (c) If the Contact Officers are unable to resolve the dispute within 15 Business Days from the receipt of the Dispute Notice, the dispute will be referred to:
 - (i) for the Co-Contributor, the person holding the position of Chief Executive Officer (or equivalent); and
 - (ii) for the Department, the Deputy Director General or the Director General of the Department,for resolution.
- (d) If the dispute is not resolved within 15 Business Days after its referral to the representatives of each of the parties listed in clause 20.1(c), either party may refer the dispute to a mediator agreed by the parties with costs to be shared equally between the parties.
- (e) If the parties cannot agree upon a mediator, either party may request the President of the Queensland Law Society to nominate a mediator.

20.2 Continuity during dispute

Notwithstanding the existence of a dispute, each party will continue to perform its obligations under this agreement.

20.3 Urgent interlocutory relief

Nothing in this clause prevents either party from commencing court proceedings relating to any dispute arising from this agreement at any time where that party seeks urgent interlocutory relief.

21. Term and termination

21.1 Term

This agreement will remain in force for the Term.

21.2 Termination for convenience

- (a) The Department may, at any time, by reasonable written notice, terminate this agreement for convenience, including for a Machinery of Government Change.
- (b) If this agreement is terminated by the Department under clause 21.2(a), the Co-Contributor will be entitled to the reasonable costs (if any) that have been or will be incurred by the Co-Contributor as a direct result of the termination of the agreement and which the Co-Contributor cannot recoup or avoid and which would not otherwise have been incurred by the Co-Contributor if the agreement had continued until the expiry of the Term.
- (c) For the avoidance of doubt, clauses 18.2 and 18.3 apply to any termination of this agreement under clause 21.2(a).

21.3 Termination for breach

- (a) The Department may terminate this agreement by written notice with immediate effect if the Co-Contributor:
 - (i) breaches a term of this agreement which is not capable of being remedied; or
 - (ii) breaches a term of this agreement which is capable of being remedied and fails to remedy that breach within 30 days after receiving notice requiring it to do so;
 - (iii) becomes subject to any form of external administration;
 - (iv) enters into an arrangement with the Co-Contributor's creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or

- (v) is wound up, voluntarily or involuntarily.
- (b) For the avoidance of doubt, clause 18.2 applies to any termination of this agreement under clause 21.3.

21.4 Obligations after termination or expiration

- (a) The Co-Contributor must, upon termination or expiry of this agreement, provide all assistance requested by the Department to facilitate the smooth transition of any relevant information, knowledge or systems from the Co-Contributor to the Department or to a third party, including (if requested by the Department) development of and compliance with a transitional plan.
- (b) Within 10 Business Days of the termination or expiry of this agreement, the Co-Contributor must deliver to the Department:
 - (i) all Reports and documents due under this agreement as at the date of termination or expiration;
 - (ii) a final Financial Report in accordance with any requirements specified in Item 5 of Schedule 1, and detailing the present status of the performance of obligations under the agreement, the extent of achievement of the Purpose, the level of success in meeting stated objectives and any incidental results and benefits of the Purpose.

21.5 Pre-existing rights and survival

- (a) Termination in accordance with this clause 21 is without prejudice to any rights of either party under this agreement existing at the date of termination.
- (b) Clauses 7, 8, 14, 15, 16, 17, 18, 20, 21.4, 21.5 and 23 survive expiration or termination of this agreement for any reason.

22. Notices

Each communication (including each notice, consent, approval, request and demand) in connection with this agreement to be given by either party to the other:

- (a) must be in writing;
- (b) must be signed by the party making it (or by a person duly authorised by that party);
- (c) must be addressed in accordance with Item 1 of Schedule 1 or as otherwise notified from time to time;
- (d) must be delivered to that address by hand, or posted by pre-paid post to the address, or sent by facsimile transmission to the number of the addressee, in accordance with clause 22(c);
- (e) is taken to have been received by the addressee:
 - (i) where sent by pre-paid post – on the fifth day after the date of posting;
 - (ii) where sent by facsimile transmission – at the time in the place to which it is sent equivalent to the time recorded on the transmitting machine from which it was sent;
 - (iii) where hand delivered – on delivery,

but if the communication is taken to have been received on a day that is not a Business Day or later than 5.00 pm on a Business Day, the communication is taken to have been received at 9.00 am on the next Business Day.

23. General

23.1 Entire agreement

To the extent permitted by law, in relation to its subject matter, this agreement:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

23.2 No relationship

- (a) Nothing contained in this agreement will be taken as giving rise to any employment, agency, partnership or joint venture relationship between the parties.
- (b) The Co-Contributor (including its Representatives):
 - (i) has no authority or power, and must not purport to have the authority or power, to bind the Department or make representations on behalf of the Department;
 - (ii) must not hold itself out or engage in any conduct or make any representation which may suggest to any person that the Co-Contributor is for any purpose an employee, agent, partner or joint venturer with the Department; and
 - (iii) must not represent to any person that the Department is anything other than as a financial contributor for the Purpose.

23.3 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this agreement except for representations or inducements expressly set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this agreement.

23.4 Assignment

The Co-Contributor must not assign, novate or subcontract the whole or any part of this agreement without the prior written consent of the Department.

23.5 Amendments

This agreement may only be varied by a document signed by or on behalf of each party.

23.6 Further acts and documents

Each party must promptly do all acts and deliver all documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this agreement.

23.7 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement.
- (b) A waiver or consent given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or any other term of this agreement.

23.8 Consents

A consent required under this agreement from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this agreement expressly provides otherwise.

23.9 Severance

If at any time a provision of this agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this agreement; or

- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any provision of this agreement.

23.10 Counterparts

This agreement may be signed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

23.11 Expenses

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

23.12 Continuing obligation

Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement.

23.13 Governing law

This agreement is governed by and will be construed according to the law applying in Queensland.

23.14 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 23.14(a).

23.15 No fettering

Nothing contained in this agreement will fetter, act as an estoppel or as an agreement about the exercise of discretion or the making of a decision or subordinate legislation under any law by the State of Queensland and its Representatives.

24. Definitions and interpretation

24.1 Definitions

In this agreement:

Background IP means Intellectual Property Rights which are made available by a party for the purpose of carrying out the Purpose and that are:

- (a) in existence at the Commencement Date; or
- (b) brought into existence after the Commencement Date other than as a result of the performance of the Purpose.

Business Day means a day that is not a Saturday, Sunday or a public holiday in Brisbane.

Co-Contributor Payments means the payments the Co-Contributor will contribute toward the Purpose for the Project in accordance with Item 4 of Schedule 1.

Collaborative Agreement means the agreement to be entered into by the parties which will contain details for how the Individual Projects will be funded and managed to fulfil the Purpose.

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

Confidential Information means all information, trade secrets and knowledge of or disclosed by a party (Discloser) to another party (Receiver) that:

- (a) is by its nature confidential;
- (b) is designated or marked by the Discloser as confidential; or
- (c) the Receiver knows or ought to know is confidential,

and includes the terms of this agreement and any information provided or received by a party pursuant to this agreement, but does not include information which:

- (d) is or becomes public knowledge other than by breach of this agreement or any other confidentiality obligation; or
- (e) is independently developed by a party while having no knowledge of or access to the other party's Confidential Information.

Conflict of Interest means having an interest (whether personal, financial or otherwise) which conflicts or which may reasonably be perceived as conflicting with the Co-Contributor's ability to perform its obligations under this agreement fairly, objectively and independently.

Contact means the contact person for each party specified in Item 1 of Schedule 1.

Contact Officer means the contact person for each party specified in Item 1 of Schedule 1.

Contract Material means any material including Intellectual Property Rights, created, written or otherwise brought into existence by or on behalf of the Co-Contributor in the course of carrying out the Purpose.

Department Payments the payments the Department will contribute toward the Purpose with Item 4 of Schedule 1.

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

Funds means the total of Department Payments and Co-Contributor Payments that the Department and the Co-Contributor will provide toward the Purpose in accordance with Item 4 of Schedule 1.

GST means a goods and services tax or any similar tax, levy or impost imposed by the Commonwealth of Australia.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Individual Projects means the projects supporting the Purpose as determined in accordance with the Collaborative Agreement.

Intellectual Property Rights means all intellectual property rights, whether created before or after the Commencement Date, including:

- (a) plant breeder's rights, patents, copyright, rights in circuit layouts, trade marks, registered designs and any right to have Confidential Information kept confidential;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) that may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.

Machinery of Government Change means a change to the title, structure, functions or operations of the Department or a part of the Department (including corporatisation) as a result of an order made under the *Constitution of Queensland 2001* (Qld) or other Queensland legislation.

Match means, in relation to the Funds, the contributing proportions the parties agree to contribute for the Purpose, being calculated on a 1:1 ratio.

Moral Rights means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined by and granted under the *Copyright Act 1968* (Cth), and any similar rights existing under foreign laws.

Moral Rights Consent means a written consent to any act or omission of the Department or its Representatives in relation to the Purpose which would otherwise constitute an infringement of that person's Moral Rights.

Payment means either a Department's Payment or a Co-Contributor's Payment, as the context required.

Recipient means the recipient for funding for an Individual Project.

Reef Water Quality Fund Account means the bank account set up by the Co-Contributor in accordance with clause 4.4 of this agreement.

Reports means the reports specified in Item 5 of Schedule 1.

Representative means an employee, agent, officer, director, contractor, subcontractor or other authorised representative of a party.

Special Conditions means any special conditions specified in Item 7 of Schedule 1.

Term means the period commencing on the Commencement Date and ending on the Expiry Date, unless terminated earlier in accordance with clause 21.

24.2 Interpretation

In this agreement:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention;
- (b) if more than one person is identified as the Co-Contributor then that expression refers to them, and the obligations of the Co-Contributor under this agreement bind them, jointly and severally;
- (c) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (where incorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a reference to a party, clause, schedule, attachment or annexure is a reference to a party, clause, schedule, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, attachments and annexures to it;
- (h) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) includes in any form is not a word of limitation;
- (k) a reference to \$ or dollar is to Australian currency; and
- (l) no rule of construction will apply to a provision of this agreement to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it.



Matched Funding Agreement

Executed as an agreement

Signed for and on behalf of the State of Queensland
acting through the Department of Environment and
Heritage Protection ABN 46 640 294 485 by

TIM NEVES a
person duly authorised to act in that behalf in the
pres

S.78B(2)

Signature of witness

Margaret Green

Name of Witness in full

Executed by Great Barrier Reef Foundation ACN 090
616 443 in accordance with section 127 of the
Corporations Act 2001 (Cth)

Signature

Date:

19/12/16

S.78B(2)

Signature of Director/sole Director

Anna Marsden

Name of Director/sole Director in full

21/12/16

S.78B(2)

Signature of Director/Secretary

PHILIP S.78B(2) STRACHAN

Name of Director/Secretary in full

Date: 22/12/16

From: HAMMILL Ben [Ben.Hammill@des.qld.gov.au]
Sent: Tuesday, 24 October 2017 2:36 PM
To: 'Theresa Fyffe'
CC: 'Petra Lundgren'; KENYON Kirstin
Subject: Draft Collaborative Agreement - GBRF
Attachments: draft-GBRF-collaborative-agreement.docx; Funding instalments table.docx

Hi Theresa

I have drafted a Collaborative Agreement for the Reef Islands project within the Template provided by our In-house Legal Services.

Can you please review the document and get back to me with any changes you would like made or concerns you might have.

Please note that I have included a funding table as a separate attachment which will be inserted into the agreement in Schedule 2 Item 5. Can you please look over this table as well.

In Schedule 2 Item 5, can you please add the details of relevant GBRF staff that you would like involved in the Project Committee. This list can change over time, but it is good to establish from the outset the number of representatives from each organisation and the level of representation.

Feel free to contact me if you require any clarification.

Cheers

Ben Hammill |Principal Project Officer
Reef Partnerships
Office of the Great Barrier Reef
T: (07) 3330 5760 | F: (07) 3330 5875
E: ben.hammill@ehp.qld.gov.au

Department of Environment and Heritage Protection
Queensland Government
Level 10 400 George Street, Brisbane Q 4000
GPO Box 2454 , Brisbane, QLD 4001



Collaborative Agreement

made at Brisbane on the day of 2017

Between State of Queensland acting through the Department of Environment and Heritage Protection ABN 46 640 294 485

(Department)

Great Barrier Reef Foundation CAN 090 616 443

(Collaborator)

Background

- A. The parties intend collaborating together on the Project.
- B. The Department has agreed to match the payments raised by the Collaborator to the amount of up to \$1 million each year for three years, resulting in a combined total of up to \$6 million. Both parties have agreed to direct this funding towards the Reef Islands project. The Reef Islands project .
- C. The parties have agreed to conduct the Project in accordance with the terms and conditions of this agreement, which consists of:
 - (a) this cover page and the signing page;
 - (b) Schedule 1 – Agreement details;
 - (c) Schedule 2 – Project Plan; [and]
 - (d) Schedule 3 – Terms and conditions[.]; and]
- D. Capitalised words and phrases have the meanings specified in clause 30.

Ref: [insert Department reference number, if any]



Collaborative Agreement

Schedule 1 – Agreement details

Item 1 Party details

Department:

Party Name: State of Queensland acting through the Department of Environment and Heritage Protection

ABN: 46 640 294 485

Street Address: Level 10, 400 George Street, BRISBANE QLD 4000

Contact Name: Ben Hammill

Contact Postal Address: GPO Box 2454 BRISBANE QLD 4001

Contact Telephone: 07 3330 5760

Contact Facsimile: N/A

Contact Email (notices cannot be given by email): ben.hammill@ehp.qld.gov.au

Collaborator:

Party Name: Great Barrier Reef Foundation

ABN/ACN: 090 616 443

Street Address: Level 13, 300 Ann Street, BRISBANE 4000

Contact Name: Theresa Fyffe

Contact Postal Address: PO Box 2725, Fortitude Valley BC, QLD, 4006

Contact Telephone: 07 3252 7555

Contact Facsimile: N/A

Contact Email (notices cannot be given by email): tfyffe@barrierreef.org

Item 2 Term: (clauses 27.1 and 30.1)

Commencement Date: The date the last party to sign this agreement does so.

Expiry Date: 30 November 2020

Item 3 Background IP: (clause 11)

Background IP of the Department: Not applicable

Background IP of the Collaborator: Not applicable

Item 4 Ownership of Project IP: (clauses 12, 13 and 14)

The parties jointly own the Project IP in the following proportions:

Department – 50%

Collaborator – 50%

Item 5 Additional Licence: (clauses 13.1(c) and 30.1)

Will the IP Owner grant an Additional Licence? No

Item 6 Confidential Information: (clauses 17 and 30.1)

Confidential Information of Not applicable
the Department:

Confidential Information of Not applicable
the Collaborator:

Item 7 Insurance: (clause 19)

Public Liability covering legal liability to third parties for bodily injury or property damage:	[\$10,000,000.00]	During the Term
Workers' Compensation:	As required by law	During the Term
Professional indemnity appropriate and relevant to the conduct of the Project:	[\$1,000,000.00]	7 years after the Expiry Date

Item 8 Special Conditions: (clauses 2 and 30.1)

Nil

IMPORTANT: Special Conditions take precedence over the terms of this agreement. Legal advice should be sought on any Special Conditions that are inconsistent with the terms of the agreement or which are significant (e.g. involve intellectual property, warranties, indemnities or liability). If no Special Conditions insert "NIL".



Collaborative Agreement

Schedule 2 – Project Plan

Item 1 Project: (clauses 3 and 30.1)

The Project is the Reef Islands Project. The project will focus on protecting the Reef's refuges - namely its islands - while the impact of climate mitigation and adaption strategies are delivered. Five island groups have been prioritised based on an assessment of the Great Barrier Reef islands undertaken by Queensland Parks and Wildlife and the Great Barrier Reef Marine Park Authority. This assessment considered both the biodiversity and conservation value of each island and the threat level to these values due to global and local stressors. The project is a collaboration between the Queensland Government and the Collaborator to achieve the objectives.

Item 2 Objectives: (clauses 3 and 30.1)

- Maximise ecosystem resilience to climate change and other stressors
- Enhance natural vegetation communities
- Minimise impacts of introduced flora and fauna
- Maximise breeding opportunities for important coastal birds and marine turtle species while having regard to existing footprint and uses
- Enhance the resilience of adjoining coral reefs.

Item 3 Methodology: (clause 3)

- Develop a detailed resilience map for each island area and its adjoining coral reefs, including local scale hydrodynamic and ocean chemistry.
- Model predicted impacts of climate change on island geomorphology and ecosystems, including potential range expansions of critical species
- Strengthen island condition and trend monitoring and reporting to support a complete adaptive management approach for islands and deliver more resilient island ecosystems.
- Pilot novel, cost-efficient monitoring platforms and methods such as acoustic monitoring of birds' nests to record hatchling success, under and above water automated vehicles, drones, thermal-imaging, automated image analyses via machine learning etc.
- Develop detailed vegetation and geomorphological maps including sand budgets
- Restoration/accelerated recovery of key habitats both in water and on land
- Strengthen stewardship activities with communities and reef businesses
- Increase indigenous engagement and indigenous management opportunities
- Develop carbon budgets for each island and explore ways to decrease carbon footprints - e.g. carbon neutral GBR islands.

Item 4 Responsibilities: (clauses 3 and 30.1)

Responsibilities of the Department:

The Department will provide:

- funding to the Collaborator to undertake the Project and monitoring the Project to ensure it meets specified milestones;
- the Project plan template and will provide support in co-designing the Project, including technical advice as required; and
- relevant participation in the Project Committee.

Responsibilities of the Collaborator:

The Collaborator will:

- manage the Project, including Project design, delivery, monitoring, evaluation and communications;
- design the Project in collaboration with the Department and other stakeholders;



Collaborative Agreement

- be responsible for fundraising to match the monetary Contribution of the Department (\$3 million); and
- Lead and convene the Project Committee

Item 5 Contributions: (clauses 3, 7 and 30.1)

Contributions of the Department: Monetary Contribution of \$3,000,000 (excl. GST) as set out below

Contributions of the Collaborator: Monetary Contribution of \$3,000,000 (excl. GST) as set out below
In- kind Contribution necessary to deliver the Project

*Insert funding break down table here!!!

Item 6 Milestones: (clauses 3 and 30.1)

No.	Milestone	Milestone Date
1	Hold forum to explore management and remediation options	28 February 2018
2	Produce a work program for the Project	15 April 2018
3	Produce a communication and engagement strategy	15 April 2018
4	Agreed monitoring and evaluation plan in place	30 May 2018
5	Agree on delivery arrangements, including options for traditional owner engagement	30 June 2018
6	Commence on ground management and remediation activities on Lady Elliot Island as informed by Milestone 1, Milestone 2 and Milestone 5	31 July 2018
7	Ongoing communication of outcomes from the Project, including visualisations, videos etc.	September and March each year of the project commencing in September 2018
8	Synthesise initial outcomes of the project	30 March 2019
9	Agree on whether to expand the scope beyond Lady Elliot Island	30 May 2019
10	Synthesise final outcomes of the project	30 May 2020

Item 7 Budget: (clauses 3 and 30.1)

* GBRF to insert budget break down. EHP to provide an example

Item 8 Site: (clauses 3 and 30.1)

The project will initially focus on Lady Elliot Island, with scope to expand to the Whitsunday Islands National Park, Hinchinbrook Island National Park and the Michaelmas and Upolu Cays National Park. A decision will be made by the Project Committee on whether to expand the scope beyond Lady Elliot Island following the initial implementation phase.

Item 9 Key Personnel: (clauses 3.3 and 30.1)

Key Person 1: Kirstin Kenyon, Director from the Department
Key Person 2: Rachel D'Arcy, Manager from the Department
Key Person 3: Ben Hammill, Principal Project Officer from the Department
Key Person 4: Jodie Mehrtens, Senior Scientific Officer from the Department
Key Person 5: Theresa Fyffe, Director from the Collaborator
Key Person 6: GBRF to add details
Key Person 7: GBRF to add details

Item 10 Project Leader: (clauses 4 and 30.1)

Theresa Fyffe, Director of Projects and Partnerships from the Collaborator

Item 11 Project Committee: (clauses 5 and 30.1)

Will the parties establish a Project Committee? Yes

If yes, the Project Committee will be comprised of: The Key Personnel set out in Item 9 above.

Frequency of Project Committee meetings: Quarterly

Item 12 Reporting: (clauses 8 and 30.1)

Report Description	Reporting Period	Report requirements	Due date
6 monthly Progress Reports	Initially from the Commencement Date to 31 March 2018 and then every 6 months during the Term	Assessment of progress toward the Milestone and financial performance	30 March and 31 September of each year during the Term
Annual Audit Report	Annually during the Term	Financial audit report for the period from the Commencement Date to 30 June 2018 and then for each subsequent financial year ending 30 June during the Term	31 October each year during the Term

Final Report	The Term	Final assessment against all Milestone and financial performance	30 May 2020
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Collaborative Agreement

Schedule 3 – Terms and conditions

1. Precedence

Where any inconsistency exists between:

- (a) the Special Conditions;
- (b) this Schedule 3;
- (c) Schedule 1 (except the Special Conditions);
- (d) Schedule 2; or
- (e) any other schedules or annexures of this agreement,

the provisions will take precedence in that order to the extent necessary to resolve the inconsistency.

2. Special Conditions

The parties agree to be bound by any Special Conditions.

3. Project

3.1 Nature of the Project

Each party acknowledges that the Project involves the conduct of genuine research and that the outcomes of the Project are not yet known.

3.2 Conduct of the Project

Each party must:

- (a) conduct the Project and meet its Responsibilities in accordance with Schedule 2;
- (b) conduct the Project in accordance with generally accepted professional, scientific and ethical principles and standards;
- (c) obtain and/or comply with any statutory ethical clearances required for the conduct of the Project including any required animal ethics clearances;
- (d) make its Contributions on the terms and at the times set out Item 5 of Schedule 2 or as otherwise specified in this agreement;
- (e) use its best endeavours to:
 - (i) achieve the Objectives; and
 - (ii) meet the Milestones by the due dates;
- (f) apply all Project funds, including all monetary Contributions, solely for conducting the Project and in accordance with the Budget;
- (g) ensure that its Representatives and Key Personnel carry out its Responsibilities:
 - (i) at the Site;
 - (ii) with due professional care and skill; and
 - (iii) under the supervision of the Project Leader;
- (h) keep full and accurate records of:
 - (i) its compliance with its Responsibilities; and
 - (ii) work done and results achieved in regards to the Project;

- (i) supply the other party with information the other party reasonably requires so that it is not delayed in performing its obligations under this agreement; and
- (j) act in good faith towards the other party in conducting the Project.

3.3 Key Personnel

- (a) Each party will:
 - (i) use its best endeavours to ensure that the Project is carried out by its Key Personnel; and
 - (ii) ensure that its Key Personnel are competent and have the necessary skills to carry out the Project.
- (b) If any of a party's Key Personnel are not available to carry out the Project, that party may replace him/her with persons of substantially equivalent experience and expertise by giving prior written notice to the other party.

4. Project Leader

4.1 Appointment

- (a) The parties must:
 - (i) appoint, and maintain at all times during the Term, a Project Leader; and
 - (ii) ensure that the Project Leader:
 - (A) has read this agreement, including the Project Plan;
 - (B) is appropriately qualified to manage the Project; and
 - (C) is appropriately authorised (subject to any limitations made known to the parties by the date of their appointment) to make decisions in relation to the Project in accordance with clause 4.2.
- (b) The parties may replace the Project Leader with a person of substantially equivalent experience and expertise at any time during the Term.

4.2 Role of Project Leader

The parties agree that the Project Leader will have responsibility for and authority to:

- (a) oversee the conduct of the Project;
- (b) consider Research Reports;
- (c) discuss and recommend to the parties or the Project Committee, if applicable, any proposed variations to any aspect of the Project; and
- (d) manage the Project IP, including by:
 - (i) identifying Project IP when it is created; and
 - (ii) making recommendations to the parties or the Project Committee, if applicable, about Project IP that should be:
 - (A) retained as Confidential Information;
 - (B) protected by registration or any other means; or
 - (C) disclosed in any publication in accordance with clause 16.

5. Project Committee

5.1 Establishment

- (a) Unless Item 11 of Schedule 2 specifies otherwise, the parties will establish a Project Committee to:
 - (i) make decisions regarding the Project Leader on the parties' behalf in accordance with clause 4.1;

- (ii) administer this agreement; and
- (iii) oversee the Project.
- (b) Each party will bear its own costs of participating in the Project Committee.
- (c) All matters to be determined by the Project Committee will be decided unanimously.

5.2 Composition

- (a) The Project Committee will be comprised of an equal number of Representatives from each of the parties.
- (b) At the Commencement Date, the Project Committee will be comprised of the Representatives specified in Item 11 of Schedule 2.
- (c) The Project Committee is to be chaired by a Representative of the Department (**Chairperson**).
- (d) If a position listed in specified in Item 11 of Schedule 2 ceases to exist during the Term, a Representative of the party occupying a position which has some or all of the responsibility for the previous position will occupy the relevant position on the Project Committee.
- (e) The parties may alter the composition of the Project Committee or the identity of the Chairperson by agreement.

5.3 Meetings

- (a) The Project Committee will meet at the frequency specified in Item 11 of Schedule 2 unless otherwise agreed, with the meeting to be convened and chaired by the Chairperson. If the Chairperson cannot attend a meeting of the Project Committee, another member of the Project Committee nominated by the Department will act as Chairperson for that meeting. Meetings may be held using electronic and other means of communication.
- (b) The quorum for a meeting of the Project Committee is one member nominated by each party.
- (c) At each meeting the Project Committee will discuss:
 - (i) the status and progress of the Project;
 - (ii) each party's Contribution to the Project;
 - (iii) any recommendations made by the Project Leader; and
 - (iv) any other issues relevant to this agreement or the Project.
- (d) The parties agree to negotiate in good faith to resolve and agree upon a course of action on any issue that has been raised in the meeting.
- (e) If, as part of any agreement reached pursuant to clause 5.3(b), the parties agree to amend this agreement, the parties acknowledge that such amendment will have no effect unless and until this agreement is amended in accordance with clause 29.5.
- (f) If an issue cannot be resolved in accordance with this clause 5.3 at any time, 2 or more members of the Project Committee may notify the parties that they wish to refer the matter to resolution pursuant to clause 25.

6. Subcontracting

- (a) Neither party will subcontract the carrying out of the Project or any part of the Project without the prior approval in writing of the other party (which will not be unreasonably withheld).
- (b) If written consent is provided under clause 6(a), the party subcontracting the carrying out of all or part of the Project (**Subcontracting Party**) will:
 - (i) be responsible for the acts or omissions of any subcontractor as if they were the acts or omissions of the Subcontracting Party and the Subcontracting Party indemnifies the other party for any costs, claims, losses or expenses incurred by the other party due to the acts or omissions of the subcontractor;
 - (ii) ensure the terms and conditions of the subcontract, at a minimum, require that the subcontractor must comply with this agreement as if the subcontractor was the Subcontracting Party, including (but not limited to) clauses 9, 17 and 18; and

- (iii) ensure the subcontractor complies with the terms and conditions of the subcontract and clause 12.1(d).

7. Contributions and records

7.1 Obligation

An obligation of a party to provide a Contribution is subject to the party's reasonable satisfaction that:

- (a) all Milestones related to that payment have been achieved; and
- (b) the other party is not otherwise in breach of this agreement.

7.2 Monetary Contributions

- (a) Unless expressly provided otherwise in this agreement, neither party has any liability to:
 - (i) fund the Project;
 - (ii) pay or reimburse money to the other party; or
 - (iii) pay or reimburse the other party for any outstanding liability of the party in respect of any contract, commitment or expenditure of the other party in relation to carrying out the Project.
- (b) All monetary Contributions provided by a party under this agreement must be used for the sole purpose of carrying out the Project, in accordance with the Budget.
- (c) Where a party (**Payer**) pays monetary Contributions to the other party (**Payee**), the Payee will, whenever reasonably required by the Payer, promptly produce invoices, receipts or other evidence satisfactory to the Payer of the proper use and application of the monetary Contributions provided by the Payer in accordance with the Budget.
- (d) If part of any payment of monetary Contributions to a Payee remains uncommitted at the end of the Term, the amount of uncommitted monetary Contributions will become a debt due and payable to the Payer.

7.3 Non-monetary Contributions

- (a) Unless otherwise agreed in writing, non-monetary Contributions provided by a party remain the absolute property of that party, or where non-monetary Contributions have been provided by a third party, of the third party.
- (b) A party providing an item of equipment will be solely responsible for the purchase, installation, maintenance and insurance of such items.

7.4 Records of Contributions

Each party will keep and retain for 7 years after termination of this agreement, full and accurate accounting records of and all receipts for:

- (a) Contributions it has made;
- (b) Contributions received from another party; and
- (c) all money used or applied and outgoings and expenditure incurred, in carrying out the Project.

7.5 Records of Project results

Each party will keep full and accurate records of the efforts taken to comply with its Responsibilities, in sufficient detail and appropriate form to properly reflect all work done and results achieved in regards to the Project.

8. Reporting

8.1 Research Reports

At the times specified in Item 12 of Schedule 2, or if no times are specified, within 10 Business Days of the end of each quarter of a financial year during the Term, the Collaborator must provide the Department with a Research Report.

8.2 Content of Research Reports

Each Research Report must be in a form reasonably required by the Department and include:

- (a) in respect of each Reporting Period:
 - (i) the progress of and Responsibilities undertaken by the Collaborator in the performance of the Project;
 - (ii) the Contributions provided by the Collaborator;
 - (iii) details of Milestones met;
 - (iv) details of Milestones delayed in being met (including the reasons for the delay);
 - (v) any material technical developments in the Project;
 - (vi) any changes in the Key Personnel or Project Leader;
 - (vii) any Background IP of either party used in the Project; and
 - (viii) any Project IP or likely Project IP generated by either party; and
- (b) any recommendations of the Collaborator on the future conduct of the Project including:
 - (i) proposed variations to the Project Plan; and
 - (ii) applications for registration or protection of Project IP.

8.3 Final Report

Within 20 Business Days after the end of the Term or as otherwise specified in Item 12 of Schedule 2, each party must submit a final report to the other party specifying all of the information as required for the Research Reports (**Final Report**).

8.4 Cooperation

Each party must provide all information reasonably required by the other party to enable it to prepare the Research Reports and the Final Report required under this clause 8.

9. Access to the Project

- (a) Each party will ensure that the other party is allowed, during normal business hours, access to the Site and will provide all reasonable assistance to allow the other party's Representatives to:
 - (i) speak to the persons associated with the Project;
 - (ii) examine, copy and otherwise inspect any books of account or technical records relating to the Project;
 - (iii) inspect any non-monetary Contributions used in the carrying out of the Project; and
 - (iv) make any other inquiries of any person who may be associated with the generation and/or examination of Project IP.
- (b) Each party will comply and ensure that its Representatives comply with all reasonable rules, directions and procedures including those relating to security and to work health and safety in effect at the Site that each party is made aware of or ought reasonably to be aware of.

10. Audit

10.1 Audit

The Collaborator will, upon 5 days' notice or as otherwise agreed, permit and provide persons nominated by the Department (**Auditors**) supervised access to the Collaborator's premises, books, records, documents, computer systems, equipment and other property relevant to the performance of this agreement to verify compliance by the Collaborator with its obligations under this agreement and its likely capacity to continue to comply with its obligations in the future (**Audit**).

10.2 Security

In undertaking the Audit, the Department will ensure that the Auditors comply with reasonable security requirements of the Collaborator made known to the Department.

10.3 Cooperation

The Collaborator will do things reasonably necessary to facilitate a prompt and efficient Audit.

10.4 Copies of materials

The Auditors may make copies of books, records, documents and other materials they have access to as part of an Audit.

10.5 Costs of the Audit

The Department is responsible for costs incurred by it in relation to an Audit unless the Audit reveals material non-compliance of the Collaborator with its obligations under this agreement in which case the Collaborator is liable to the Department for the costs incurred by the Department in relation to the Audit.

10.6 Disclosure of Audit information

The Department may disclose the Audit findings and the Audit recommendations to a third party.

10.7 Audit recommendations

If requested by the Department, the Collaborator will implement Audit recommendations and comply with Audit findings to the extent necessary to ensure that the collaborator continues to perform its obligations in accordance with this agreement.

11. Background IP

11.1 Licence to Background IP

Subject to any existing licences or encumbrances disclosed by a party at the time of making its Background IP available, the parties grant to each other a non-exclusive, non-transferable, royalty free licence to use each other's Background IP:

- (a) during the Term, for the purpose of conducting the Project in accordance with this agreement; and
- (b) during and after the Term, to the extent that the Background IP is necessary to use the Project IP as licensed under this agreement.

11.2 Background IP warranties

Each party represents and warrants to the other party that:

- (a) to the best of its knowledge at the Commencement Date without conducting patent or other IP Rights application or registration searches, and except to the extent disclosed at Item 3 of Schedule 1, the Background IP may be used without restriction in the conduct of the Project; and
- (b) except with the prior written approval of the other party (not to be unreasonably withheld or delayed), it will not assign, encumber or otherwise deal with, dispose of or Commercialise its Background IP in a manner that would limit a party's ability to use that Background IP in accordance with this agreement.

11.3 Ownership of Background IP

This agreement does not affect ownership of Background IP.

11.4 Protection of Background IP

Each party agrees that:

- (a) it will take all reasonably necessary steps (at the cost of a licensor of the Background IP) and provide assistance as reasonably required by that licensor to protect the licensor's Background IP; and

- (b) it will give to the licensor of the Background IP prompt notice of any suspected or actual infringement of Background IP of which it becomes aware.

12. Project IP – General provisions

12.1 Ownership of Project IP

- (a) Each party will promptly notify the other party in writing of:
 - (i) any Project IP created; and
 - (ii) any improvements made to the Project IP,and in any event not less than 20 Business Days following its creation or improvement.
- (b) The ownership of Project IP (excluding copyright in any Thesis) is as set out in Item 4 of Schedule 1.
- (c) Where a Student generates Project IP, the Responsible Party must ensure that the Student assigns any and all Project IP (other than copyright in any Thesis) in accordance with clause 13 or clause 14, whichever is applicable.
- (d) If a party has engaged a subcontractor in accordance with clause 6, that party must ensure that the subcontractor:
 - (i) assigns any Project IP in accordance with clause 13 or clause 14, whichever is applicable; and
 - (ii) does all things reasonably necessary to ensure the Project IP or copyright in any Thesis vests in accordance with clauses 12.1(b) and 12.2, including the signing of any required documentation as requested by the owner of the Project IP under clause 12.1(b) or the Student under clause 12.2.
- (e) Each party at its own cost must do all things reasonably necessary to ensure IP Rights vest in accordance with clauses 12.1(b) and 12.2, including the signing of any required documentation as requested by the owner of the Project IP under clause 12.1(b) or the Student under clause 12.2.

12.2 Thesis copyright

Title and ownership of copyright in any Thesis vests upon its creation in the relevant Student.

12.3 Moral Rights Consent

Each party must obtain Moral Rights Consents from its Representatives with respect to any publication authored or co-authored by those persons, provided that with respect to any Thesis, the right of the Student to be attributed author or co-author is retained in favour of the Student.

12.4 Infringement

Each party will give the other prompt notice of any claim or allegation made against it that the exercise of any rights under this agreement constitutes an infringement of the rights of any third party.

13. One party owns Project IP

If Item 4 of Schedule 1 specifies that one party owns the Project IP, then this clause 13 applies, and clause 14 does not apply.

13.1 Ownership and rights

- (a) All rights, title and interests in the Project IP belong solely to the IP Owner. Project IP is immediately assigned to and vests in the IP Owner as those rights are created.
- (b) The IP Owner grants to the other party (**Other Party**) a fully paid up, world wide, royalty free, non-exclusive, non-assignable right to use, reproduce, adapt and improve the Project IP (including any Background IP incorporated into Project IP) during the Term, for the purposes of carrying out the Project.
- (c) If specified in Item 5 of Schedule 1, the IP Owner also grants to the Other Party the Additional Licence.

- (d) Improvements to the Project IP made by any party are owned by the IP Owner and the provisions of this clause 13 apply to such improvements.
- (e) The Other Party:
 - (i) hereby assigns its rights, title and interest in the Project IP as required to give effect to clauses 13.1(a) and 13.1(d);
 - (ii) acknowledges that all Project IP coming into existence in the future will vest in the IP Owner from the date of its creation and no additional documentation is necessary to complete the assignment made under this clause 13; and
 - (iii) acknowledges that Project IP is the Confidential Information of the IP Owner, and the Other Party will keep the Project IP confidential in accordance with clause 17.

13.2 Warranty

The Other Party warrants that:

- (a) it has the right to assign the Project IP in accordance with clause 13.1(e)(i) of this agreement; and
- (b) the assignment referred to in clause 13.1(e)(i) includes all of the Project IP created by its Representatives.

13.3 Project IP protection and Commercialisation

- (a) The IP Owner may, at its cost, apply for, maintain and prosecute protection for the Project IP (including the Background IP to the extent that it is incorporated in the Project IP) in its own name and in any manner it elects.
- (b) The Other Party must:
 - (i) assist the IP Owner to exercise its rights in clause 13.3(a) by providing all necessary information it has in its possession and execute all documents required by the IP Owner from time to time; and
 - (ii) give the IP Owner prompt notice of any suspected or actual infringement of the Project IP (including any Background IP incorporated into Project IP) of which it becomes aware.
- (c) Unless otherwise specified in the terms of the Additional Licence (if any), the IP Owner may Commercialise the Project IP (including any Background IP incorporated into Project IP) in any manner without the consent of the Other Party.
- (d) Net Commercialisation Proceeds received as a result of the Commercialisation of the Project IP by the IP Owner must be distributed between the parties in the same proportions as each party's Contribution.

14. Joint ownership of Project IP

If Item 4 of Schedule 1 specifies that the parties will jointly own the Project IP, then this clause 14 applies and clause 13 does not apply.

14.1 Ownership

- (a) The Project IP will be owned jointly by the Department and the Collaborator as tenants in common, in the proportions specified in Item 4 of Schedule 1.
- (b) Project IP is the Confidential Information of both parties, and each Party will keep the Project IP confidential in accordance with clause 17.
- (c) Any improvement to or development of any Project IP made by a party following termination of the Project will be the sole property of the party making the improvement or development and that party will be entitled to apply for, in its name and at its cost, a patent or any other IP Rights in respect thereof and such patent or right will be the sole property of that party.
- (d) If, during the term of the Project, any improvement is made which is or may be patentable or registrable in any country in the world, the parties will determine whether a joint application will be filed and the countries in which such patent or other registrable protection will be sought.

- (e) If the parties agree to make a joint application:
 - (i) the Department will be entitled to apply in the joint names of the parties;
 - (ii) the Department on behalf of itself and the Collaborator will have the full conduct of any such application;
 - (iii) the Collaborator will take all reasonable steps to assist the Department in any such application;
 - (iv) the Department will keep the Collaborator informed of the progress of any such application; and
 - (v) all filing, prosecution and maintenance fees in respect of any joint application will be borne and paid by the parties equally.
- (f) If after having received 30 days' notice in writing a party decides not to file an application jointly or if a party refuses or fails to pay its share of the costs and expenses for any joint application:
 - (i) that application will be filed in the name of and at the expense of the contributing party, to the exclusion of the other party;
 - (ii) the patent or other registered right granted as a result of that application and all profits arising from the exploitation of that patent or other registered right will be the property of the contributing party to the exclusion of the other party; and
 - (iii) the non-contributing party will assign all its rights, title and interest in such patent or other registered right to the contributing party.

14.2 Rights to Project IP

Each party grants the other party a worldwide and royalty-free licence to use the Project IP for the Term and for the purpose of the Project.

14.3 Warranty

Each party warrants that the Project IP does not and will not infringe the IP Rights of a third person.

14.4 Infringement

- (a) The Department will have the full conduct of the prosecution or defence of any proceedings in relation to the Project IP in which either or both the Department and the Collaborator are or may be parties (**Proceedings**).
- (b) The Department must keep the Collaborator informed of the conduct of the Proceedings.
- (c) The Collaborator authorises the Department to settle the Proceedings on behalf of the Collaborator and to bind the Collaborator to the terms of such settlement.
- (d) The costs of the Proceedings or any award given in relation to the Proceedings will be shared by the parties in accordance with the proportions specified in Item 4 of Schedule 1.
- (e) If the Department wishes at any stage to withdraw or abandon its prosecution or defence of the Proceedings, it will give to the Collaborator written notice of its intention to do so. If the Collaborator does not give the Department written notice within 30 days of its intention to adopt the prosecution or defence of the Proceedings, the Department may withdraw or abandon its prosecution or defence of the Proceedings.
- (f) If the Collaborator gives notice of its intention to adopt the prosecution or defence of the Proceedings, the Collaborator will have the full conduct the Proceedings, and all rights and obligations (including without limitation all costs, losses and liabilities) flowing from the Proceedings will be those of the Collaborator without prejudice to the rights and obligations of the Department which have accrued at the date of, and which survive, the Department's withdrawal or abandonment.

14.5 Commercialisation or licensing of Project IP

A party may only Commercialise Project IP or license Project IP to a third party with the prior written consent and on terms agreed by the other party. If the parties cannot agree on such terms, the parties will refer the matter to resolution pursuant to clause 25.

15. Students

15.1 Students may participate in Project

A Responsible Party may engage Students to participate in the conduct of the Project.

15.2 Student participation requirements

If a Responsible Party engages a Student to participate in the conduct of the Project, the Responsible Party will:

- (a) ensure the Student is properly supervised by appropriately qualified staff;
- (b) ensure the Student conducts the Project in accordance with this agreement;
- (c) not allow the Student to commence work on the Project until the Student has signed a deed:
 - (i) assigning to the IP Owner the IP Rights created by the Student pursuant to clause 12.1(c); and
 - (ii) pursuant to which the Student agrees to keep Confidential Information confidential in a manner consistent with clause 17; and
- (d) ensure that any examiner appointed to review the Student's Thesis has given a written confidentiality undertaking consistent with clause 17.

15.3 Satisfaction of research higher degree requirements

If this agreement is terminated prior to the Expiry Date and a Student is participating in the Project for the purposes of the Student's research higher degree, each party grants the Student a non-exclusive, non-transferable, royalty-free licence to use such of that party's Background IP as is necessary for the Student to complete the Student's Thesis for such research higher degree and assessment of same.

15.4 Student Thesis Publications

- (a) The Responsible Party will ensure that any Student adheres to the procedure set out in clause 16 with respect to any proposed publication of the Thesis and the Responsible Party must provide a copy of the Thesis to the Department in accordance with clause 16(b).
- (b) The parties must adhere to the procedure set out in clause 16 with respect to any proposed publication of the Thesis. If publication of the Thesis is required under the Responsible Party's postgraduate Thesis completion rules, the Department may require as a condition of any consent referred to in clause 16(c), that the Thesis is placed in a restricted and monitored access library controlled by the Responsible Party for a period of up to 18 months and for a further period of up to 18 months on written notice providing grounds justifying the extension.
- (c) Where a Student intends to submit any Thesis for assessment or examination:
 - (i) the Responsible Party must ensure the Student notifies the Department of the Student's intention to submit that Thesis for assessment or examination and provide a copy of the Thesis to the Department; and
 - (ii) within 30 days of receiving a copy of the Student's Thesis under clause 15.4(c)(i), the Department may notify the Student (either directly or by notice to the Responsible Party) that the Department requires:
 - (A) any assessor or examiner of the Responsible Party to provide confidentiality undertakings regarding information contained in the Thesis; and/or
 - (B) access to the Thesis to be restricted, including for the reasons specified in clause 16(a); and

- (iii) the Student must not submit the Thesis to the Responsible Party for assessment or examination until the Department's requirements (as notified under clause 15.4(c)(ii)) have been met.
- (d) The Student may submit the Thesis for assessment or examination where the Department has not notified the Student and/or the Responsible Party in accordance with clause 15.4(c)(ii).
- (e) The Responsible Party must ensure that the Student does not make any press or other announcements or releases relating to this agreement and the Project (including transactions the subject of this agreement) without the prior written consent of the Department.

16. Publications

- (a) A party will not without the other party's consent (such consent not to be unreasonably withheld where the purpose of the publication is for the purpose of undertaking the Project), make any publication where to do so may:
 - (i) prejudice any present or future registration, Commercialisation or value of any Background IP or Project IP;
 - (ii) result in a premature publication of a Thesis inconsistent with the Responsible Party's Thesis completion rules; or
 - (iii) otherwise breach Confidential Information obligations specified in clause 17.
- (b) The party intending to publish under clause 16(a) must, at least 30 days before the date of the proposed publication, provide to the other party a copy of the material intended to be published.
- (c) Within 14 days of a party's receipt of material under clause 16(b), that party must either:
 - (i) provide written consent to the other party's intended publication of any or all of the material; or
 - (ii) reasonably request that other party delay or amend the proposed publication for the reasons set out in clause 16(a).
- (d) If a party does not:
 - (i) provide written consent in accordance with clause 16(c)(i); or
 - (ii) request a delay or amendment in accordance with clause 16(c)(ii),
 that party is deemed to give consent to the other party to publish the material.
- (e) A party may require, as a condition of any consent referred to in clause 16(c), acknowledgment of the collaboration of the party including authorship, and the use of any Contributions provided or made available by the party for or in relation to the generation of the relevant material.

17. Confidentiality

17.1 Confidential Information

Subject to clause 17.2, a party must not:

- (a) disclose the other party's Confidential Information to a third party; or
- (b) use the other party's Confidential Information other than for the purposes of the Project.

17.2 Exceptions

A party may disclose the other party's Confidential Information:

- (a) with the other party's prior written consent;
- (b) to a professional adviser, financial adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential;
- (c) to any of its Representatives who are bound to keep the information confidential and to whom it is necessary to disclose the information;
- (d) to comply with its obligations, or to exercise its rights, under this agreement;

- (e) to comply with the law, or a requirement of a regulatory body (including any relevant stock exchange);
- (f) to the extent necessary to enforce its rights or defend a claim or action under this agreement; and
- (g) where that party is the Department:
 - (i) to the responsible Minister administering the Department and their personal and departmental advisers;
 - (ii) in response to a request by the Parliament or a Committee of the Parliament of the State of Queensland; or
 - (iii) where disclosure is required to be made in accordance with established governmental policies, procedures or for public accountability purposes.

17.3 Limiting disclosure

Before the Collaborator or any of its Representatives discloses any Confidential Information under clauses 17.2(e) or 17.2(f) that contains the Department's Background IP, or, if the Department is the IP Owner, any Project IP:

- (a) the Collaborator must notify the Department as soon as reasonably practicable after it becomes aware that disclosure is required;
- (b) unless immediate disclosure is required, the Collaborator must give the Department a reasonable opportunity to comment on the requirement for, and the proposed form of, the disclosure; and
- (c) the Collaborator must take all steps reasonably required by the Department to prevent or restrict the disclosure of the relevant Confidential Information.

17.4 Breach of confidentiality

- (a) If a party becomes aware of a suspected or actual breach of this clause 17 the party will immediately notify the other party and take reasonable steps required to prevent or stop the suspected or actual breach.
- (b) The parties acknowledge and accept that damages will be an inadequate remedy for a breach of this clause 17.

17.5 Return of Confidential Information

Subject to a Recipient needing to retain Confidential Information to properly exercise its rights to the Background IP and Project IP granted pursuant to this agreement, the Recipient will return or destroy (at the Discloser's discretion) material containing Confidential Information when it is no longer required by the Recipient, or otherwise when directed by the Discloser.

18. Privacy and Personal Information

- (a) This clause 18 applies where this agreement amounts to a service arrangement under the *Information Privacy Act 2009* (Qld).
- (b) For the purpose of this clause 18, **Personal Information** has the meaning given in the *Information Privacy Act 2009* (Qld).
- (c) If the Collaborator collects or has access to Personal Information in performing this agreement, the Collaborator must:
 - (i) comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under this agreement, as if the Collaborator was the Department;
 - (ii) ensure that the Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
 - (iii) not use Personal Information other than for the purposes of performing this agreement, unless required or authorised by law;

- (iv) not disclose Personal Information without the consent of the Department, unless required or authorised by law;
 - (v) not transfer Personal Information outside of Australia without the consent of the Department;
 - (vi) ensure that access to Personal Information is restricted to those of the Collaborator's employees and officers who require access in order to perform their duties under this agreement;
 - (vii) ensure that the Collaborator's officers and employees do not access, use or disclose Personal Information other than in the performance of their duties under this agreement;
 - (viii) ensure that the Collaborator's agents and subcontractors who have access to Personal Information comply with obligations the same as those imposed on the Collaborator under this clause 18;
 - (ix) fully co-operate with the Department to enable the Department to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
 - (x) comply with such other privacy and security measures as the Department reasonably advises the Collaborator in writing from time to time.
- (d) The Collaborator must immediately notify the Department on becoming aware of any breach of clause 18(c).
 - (e) On request by the Department, the Collaborator must obtain from its Representatives engaged for the purposes of this agreement, an executed deed of privacy in a form acceptable to the Department.

19. Insurance

- (a) The Collaborator must effect and maintain the types of insurance in the amounts and for the duration specified in Item 7 of Schedule 1 with an insurer and on terms approved by the Department (such approval not to be unreasonably withheld).
- (b) Upon reasonable request, the Collaborator must provide the Department with evidence in a form acceptable to the Department of the terms and currency of the insurance required under clause 19(a), including copies of insurance policies and any endorsements or amendment to such policies.

20. Warranty

Each party warrants and represents that to the best of its knowledge and belief at the Commencement Date, it has the power, authority and ability, and has obtained all necessary consents to enter into this agreement and perform its obligations under this agreement.

21. Conflict of interest

- (a) Each party warrants that, to the best of its knowledge, it does not, and is not likely to have any conflict of interest in the performance of this agreement. If a conflict or risk of conflict of interest arises, the party in conflict will immediately give notice of the conflict of interest, or the risk of it, to the other party.
- (b) If a party is given notice of a conflict of interest pursuant to clause 21(a), that party may proceed in accordance with clause 27 to terminate this agreement.

22. Indemnity

22.1 Parties to indemnify

- (a) Each party (**Indemnifying Party**) indemnifies the other party and its Representatives (**Indemnified**) against all liability, loss, costs and expenses (including legal fees, costs and disbursements on a solicitor and own client basis) arising from or incurred in connection with:

- (i) personal injury (including sickness and death) or property damage or loss in connection with the performance (or attempted or purported performance or non-performance) of this agreement or a breach of this agreement by the Indemnifying Party; or
 - (ii) any infringement or alleged infringement of any IP Rights or Moral Rights of any person, which infringement or alleged infringement occurred by reason of the use of the Indemnifying Party's Background IP or the Indemnifying Party's contribution to the Project IP in accordance with this agreement.
- (b) The Indemnifying Party's liability to indemnify the Indemnified under clause 22.1(a) will be reduced proportionally to the extent that any unlawful or negligent act or omission or breach of this agreement by the Indemnified contributed to the loss or damage.
 - (c) The indemnity granted in clause 22.1(a) is in addition to and not exclusive of any other remedies that may be available at law.

22.2 No expense required

It is not necessary for a party to incur expense or to make a payment before enforcing a right of indemnity conferred by this agreement.

23. Liability

23.1 Limitation of liability

Except in relation to liability:

- (a) for personal injury (including sickness and death) or property damage or loss;
- (b) for a breach of clause 7;
- (c) for a breach of clauses 12, 13 or 14;
- (d) for a breach of clause 17; or
- (e) arising under clause 22,

each party's liability (whether in contract, tort, statute or otherwise) to the other party for all claims is limited in aggregate to the greater of the amount equivalent to the amount the party:

- (f) is required to maintain insurance for in respect of that liability pursuant to clause 19; or
- (g) is actually insured for in respect of that liability.

23.2 No liability for indirect loss

Except in relation to a breach of clauses 7, 12, 13, 14 or 17 of this agreement, neither party will in any circumstances (including for negligence) be liable to the other for any loss of revenue, loss of profit, loss of anticipated savings or business, loss of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of data or goodwill, loss of reputation, or any indirect loss, whether arising in contract, tort (including negligence) or otherwise, in connection with this agreement.

24. GST

- (a) Words defined in the GST Law have the same meaning in this clause 24.
- (b) If a party is required under this agreement to reimburse or pay to another party an amount calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or an entity on whose behalf the party is acting) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (c) If GST is payable by an entity (**Supplier**) in relation to any supply that it makes under or in connection with this agreement, the parties agree that:
 - (i) any consideration (including the value of any non-monetary consideration) provided for that supply under or in connection with this agreement other than under this clause 24 (**Agreed Amount**) is exclusive of GST;

- (ii) an additional amount will be payable by the party providing consideration for that supply (**Receiver**) equal to the amount of GST payable by the Supplier on that supply;
 - (iii) the additional amount is payable at the same time as any part of the Agreed Amount is to be first provided for that supply and the Supplier will provide a tax invoice to the Receiver in respect of that supply, no later than that time; and
 - (iv) to the extent, if any, that any consideration (or part thereof) is specified in this agreement to be inclusive of GST, that consideration (or the relevant part) will be excluded from the Agreed Amount for the purposes of calculating the additional amount under clause 24(c)(i).
- (d) If the Receiver is not registered for GST and does not have an Australian Business Number, the Receiver must complete the Australian Taxation Office's Statement by a Supplier if it is eligible to do so, and return the completed and signed statement (satisfactory to the Australian Taxation Office) to the Department on or before the Commencement Date.
 - (e) If the Statement by a Supplier required in clause 24(d) is not received by the Department or the Collaborator is not eligible to complete the Statement by a Supplier and an Australian Business Number is not provided on any Tax Invoice, the Collaborator acknowledges and accepts that the Department may be required to withhold 46.5% of the payment to the Collaborator for submission to the Australian Taxation Office on behalf of the Collaborator.

25. Dispute resolution

25.1 Dispute resolution process

- (a) Subject to clause 25.3, the parties will adhere to the following procedure in relation to disputes arising from this agreement, prior to the commencement of litigation or other external dispute resolution procedure.
- (b) The Contact for a party may notify the other, in writing of the occurrence of a dispute (**Dispute Notice**) and the Contacts will try to resolve the dispute through negotiation.
- (c) If the Contacts are unable to resolve the dispute within 15 Business Days from the receipt of the Dispute Notice, the dispute is to be referred to:
 - (i) for the Collaborator, the person holding the position of Chief Executive Officer (or equivalent); and
 - (ii) for the Department, the Deputy Director General or the Director General of the Department,
 for resolution.
- (d) If the dispute is not resolved within 15 Business Days after its referral to the representatives of each of the parties listed in clause 25.1(c), either party may refer the dispute to a mediator agreed by the parties with costs to be shared equally between the parties.
- (e) If the parties cannot agree upon a mediator, either party may request the President of the Queensland Law Society to nominate a mediator.

25.2 Continuity during dispute

Notwithstanding the existence of a dispute, each party will continue to perform its obligations under this agreement.

25.3 Urgent interlocutory relief

Nothing in this clause 25 prevents either party from commencing court proceedings relating to any dispute arising from this agreement at any time where that party seeks urgent interlocutory relief.

26. Performance of failed obligations

26.1 Department may perform obligations

If the Collaborator fails to perform an obligation under this agreement and such failure is not remedied within 14 days of the Department notifying the Collaborator of the failure:

- (a) the Collaborator authorises the Department or its nominee to act on the Collaborator's behalf in performing the Collaborator's obligations; and
- (b) the Department or its nominee may (but is not obliged to) perform the obligation.

26.2 Collaborator responsible for costs

Where the Department or its nominee performs an obligation of the Collaborator under clause 26.1, the costs of that performance are to be taken as a debt due and payable to the Department.

26.3 Collaborator responsible for obligation

The Collaborator is not relieved from its failure to meet an obligation by the Department or its nominee performing that obligation in accordance with clause 26.1.

27. Term and Termination

27.1 Term

This agreement will remain in force for the Term.

27.2 Termination for convenience

- (a) The Department may, at any time, by reasonable written notice, terminate this agreement for convenience, including for a Machinery of Government Change.
- (b) If this agreement is terminated by the Department under this clause 27.2, the Collaborator will be entitled to the reasonable costs (if any) that have been or will be incurred by the Collaborator as a direct result of the termination of the agreement and which the Collaborator cannot recoup or avoid and which would not have been incurred if the agreement had continued until the expiry of the Term.
- (c) For the avoidance of doubt, clause 23.2 applies in relation to termination of this agreement under clause 27.2.

27.3 Termination for breach

Either party may terminate this agreement by written notice with immediate effect if the other party:

- (a) breaches a term of this agreement which is not capable of being remedied; or
- (b) breaches a term of this agreement which is capable of being remedied and fails to remedy that breach within 30 days after receiving notice requiring it to do so.

27.4 Effect of termination

If this agreement is terminated in accordance with clauses 27.2 or 27.3:

- (a) each party must immediately cease all activities under the Project;
- (b) each party must take all available steps to minimise any loss resulting from termination and to protect the party's Background IP and the Project IP;
- (c) the parties cease to be liable to pay or provide any further Contributions; and
- (d) each party agrees (other than where to do so would give rise to a void or voidable transaction) to:
 - (i) promptly repay to the other party any part of the monetary Contributions paid to the party and not then used or applied for a purpose permitted under this agreement or appropriated for expenditure already incurred and permitted under this agreement; and
 - (ii) promptly return or deliver up to the other party, or as the other party directs, all non-monetary Contributions and documents relating to the Background IP provided by the other party.

27.5 Pre-existing rights and survival

- (a) Termination in accordance with this clause 27 is without prejudice to any rights of either party under this agreement existing at the date of termination.

- (b) Clauses 7.4, 8, 11, 12, 13 (if applicable), 14 (if applicable), 15, 16, 17, 19, 20, 21, 22, 23, this clause 27.5 and clause 29 survive expiry or termination of this agreement for any reason.

28. Notices

Each communication (including each notice, consent, approval, request and demand) in connection with this agreement to be given by either party to the other:

- (a) must be in writing;
- (b) must be signed by the party making it (or by a person duly authorised by that party);
- (c) must be addressed in accordance with Item 1 of Schedule 1 (or as otherwise notified from time to time);
- (d) must be delivered by hand or posted by pre-paid post to the address, or sent by facsimile transmission to the number, of the addressee, in accordance with clause 28(c); and
- (e) is taken to have been received by the addressee:
 - (i) where sent by pre-paid post – on the fifth day after the date of posting;
 - (ii) where sent by facsimile transmission – at the time in the place to which it is sent equivalent to the time recorded on the transmitting machine from which it was sent; and
 - (iii) where hand delivered – on delivery,

but if the communication is taken to have been received on a day that is not a Business Day or later than 5.00 pm on a Business Day, the communication is taken to have been received at 9.00 am on the next Business Day.

29. General

29.1 Entire agreement

To the extent permitted by law, in relation to its subject matter, this agreement:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

29.2 No relationship

Nothing in this agreement will be taken as giving rise to any employment, agency, partnership, or joint venture relationship between the parties.

29.3 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this agreement except for representations or inducements expressly set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this agreement.
- (c) Each party acknowledges and confirms that no representations have been made by one party to the other party that the Project will result in the delivery of a particular outcome.

29.4 Assignment

A party must not assign, novate or subcontract the whole or any part of this agreement without the prior written consent of the other party.

29.5 Amendments

This agreement may only be varied by a document signed by or on behalf of each party.

29.6 Further acts and documents

Each party must promptly do all acts and deliver all documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this agreement.

29.7 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement.
- (b) A waiver or consent given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or any other term of this agreement.

29.8 Severance

If at any time a provision of this agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this agreement; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this agreement.

29.9 Counterparts

This agreement may be signed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

29.10 Expenses

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

29.11 Consents

A consent required under this agreement from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this agreement expressly provides otherwise.

29.12 Continuing obligation

Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement.

29.13 Governing law

This agreement is governed by and will be construed according to the law applying in Queensland.

29.14 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 29.14(a).

30. Definitions and interpretation

30.1 Definitions

In this agreement:

Additional Licence means the licence specified in Item 5 of Schedule 1.

Background IP means IP Rights which are made available by a party for the purpose of carrying out this agreement and that are:

- (a) in existence at the Commencement Date, including the IP Rights in the material set out in Item 3 of Schedule 1; or
- (b) brought into existence after the Commencement Date other than as a result of the performance of the Project.

Budget means the budget specified in Item 7 of Schedule 2.

Business Day means a day that is not a Saturday, Sunday or a public holiday in Brisbane.

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

Commercialise means:

- (a) in relation to a product, to use, make, manufacture, have made or manufactured, sell, advertise, promote, distribute, hire or otherwise dispose of the product, or to keep it for the purpose of doing any of those things;
- (b) in relation to material of a plant variety, to produce or reproduce, condition for propagation, offer for sale, sell, import, export, or to stock for the purpose of doing any of those things;
- (c) in relation to a method or process, to use the method or process or do any act referred to above in respect of a product resulting from such use; and
- (d) to license any third party to do any or all of the acts referred to in paragraphs (a), (b) or (c).

Commercialisation Costs means costs reasonably incurred by a party with respect to the Commercialisation of Project IP and includes patent, trade mark, design, due diligence and legal costs and any other IP Rights application and registration costs.

Commercialisation Proceeds means all royalties, licence fees, and other direct monetary payments received by a party from the Commercialisation of Project IP.

Confidential Information means information, trade secrets and knowledge of or disclosed by a party (the **Discloser**) to another party (the **Recipient**) that:

- (a) is by its nature confidential;
- (b) is designated or marked by the Discloser as confidential including any information specified in Item 6 of Schedule 1; or
- (c) the Recipient knows or ought to know is confidential,

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this agreement or any other confidentiality obligation; or
- (e) is independently developed by a party while having no knowledge or access to the other party's Confidential Information.

Contact means the contact person for each party specified in Item 1 of Schedule 1 or another person as appointed from time to time and notified to the other party.

Contribution means the monetary contributions and non-monetary in-kind contributions to be made by each party including any and all funding, cash, assets, items, goods, services, and personnel specified in Item 5 of Schedule 2.

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

GST means a goods and services tax or any similar tax, levy or impost imposed by the Commonwealth of Australia.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property or **IP Rights** means all intellectual property rights, whether created before or after the Commencement Date, including:

- (a) plant breeder's rights, patents, copyright, rights in circuit layouts, trade marks and registered designs;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) that may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.

IP Owner means the single party (if any) specified in Item 4 of Schedule 1.

Key Personnel means the Representatives of the parties specified in Item 9 of Schedule 2.

Machinery of Government Change means a change to the title, structure, functions or operations of the Department or a part of the Department (including corporatisation) as a result of an order made under the *Constitution of Queensland 2001* (Qld) or other Queensland legislation.

Milestones means those milestones specified in Item 6 of Schedule 2.

Moral Rights means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined by and granted under the *Copyright Act 1968* (Cth) and any similar rights existing under foreign laws.

Moral Rights Consent means a written consent to any act or omission by or on behalf of the licensee of that Project IP in relation to the Project IP (or the Background IP incorporated in the Project IP) which would otherwise constitute an infringement of that person's Moral Rights.

Net Commercialisation Proceeds means Commercialisation Proceeds received by a party with respect to Project IP less Commercialisation Costs.

Non-Commercial Use means any use of the Project IP by a party that does not constitute Commercialisation of the Project IP.

Objectives means the objectives of the Project as specified in Item 2 of Schedule 2.

Project means the project specified in Item 1 of Schedule 2.

Project Committee means the project committee established by the parties (if any) in accordance with clause 5.

Project IP means any IP Rights created, resulting from or arising in the course of, and as a direct result of carrying out the Project, pursuant to this agreement.

Project Leader means a Representative nominated by a party to act as the project leader for the Project as specified in Item 10 of Schedule 2, or as replaced under clause 4.1(b).

Project Plan means the plan specified in Schedule 2.

Reporting Period means the period specified in Item 12 of Schedule 2 or if not specified each quarter of a financial year during the Term.

Representative means an employee, agent, officer, director, contractor, subcontractor or other authorised representative of a party, and in the case of a Responsible Party, its Students.

Research Report means a report containing the information specified in clause 8.2 and as specified in Item 12 of Schedule 2.

Responsible Party means a party in its capacity as a tertiary institution or university that has a Student involved in the Project.

Responsibilities means for each party the tasks or activities specified as that party's responsibilities in Item 4 of Schedule 2.

Site means the place or places at which the Project is to be conducted as specified in Item 8 of Schedule 2.

Special Conditions means any special conditions specified in Item 8 of Schedule 1.

Student means a student of a Responsible Party enrolled to undertake postgraduate research studies whose Thesis, or a part of it, relates to the Project.

Term means the period commencing on the Commencement Date and ending on the Expiry Date, unless this agreement is terminated earlier in accordance with clause 27.

Thesis means the postgraduate research paper, dissertation and/or thesis written by a Student in satisfaction of the Student's research higher degree.

30.2 Interpretation

In this agreement:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) if more than one person is identified as the Collaborator, that expression refers to them, and the obligations of the Collaborator under this agreement bind them, jointly and severally;
 - (c) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (where incorporated), a partnership and a trust;
 - (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
 - (e) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
 - (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (h) a reference to a party, clause, schedule, attachment or annexure is a reference to a party, clause, schedule, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, attachments and annexures to it;
 - (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (j) **includes** in any form is not a word of limitation;
 - (k) a reference to **\$** or **dollar** is to Australian currency; and
 - (l) no rule of construction will apply to a provision of this agreement to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it.



Collaborative Agreement

Signed as an agreement

Signed for and on behalf of the **State of Queensland**
acting through the **Department of National Parks,**
Sport and Racing ABN 11 322 391 452 by

_____, a
person duly authorised to act in that behalf in the
presence of:

Signature of Witness

Name of Witness in full

Signature

Position

Date: _____

Option 1: if the Collaborator is an individual **Delete if inapplicable OR**

Signed by the Collaborator

Signature of Witness

Name of Witness in full

Signature

Date: _____

Option 2: if the Collaborator is a company **Delete if inapplicable OR**

Executed by the Collaborator in accordance with
section 127 of the *Corporations Act 2001* (Cth)

Signature of Director/sole Director

Name of Director/sole Director in full

Date: _____

Signature of Director/Secretary

Name of Director/Secretary in full

Date: _____

Option 3: if the Collaborator is another entity **Delete if inapplicable**

Signed for and on behalf of **the Collaborator** by

_____, a
person duly authorised to act in that behalf in the

Signature

presence of:

Position

Date: _____

Signature of Witness

Name of Witness in full

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RTI Act 2009

Instalment	Department payment	Department payment date (subject to receipt of a valid tax invoice from the Collaborator)	Collaborator payment	Collaborator payment date
1	\$1,000,000	Upon signing of this agreement by the parties	\$1,000,000	30 June 2018
2	\$1,000,000	31 July 2018	\$1,000,000	30 June 2019
3	\$1,000,000	31 July 2019	\$1,000,000	30 June 2020
Subtotal	\$3,000,000		\$3,000,000	

Published on DES Disclosure Log
RTI Act 2009

From: Theresa Fyffe [tfyffe@barrierreef.org]
Sent: Monday, 20 November 2017 11:33 AM
To: HAMMILL Ben
CC: Kerri Ryan; Accounts; Petra Lundgren; KENYON Kirstin
Subject: collaboration agreement
Attachments: draft-GBRF-collaborative-agreement tf edits.docx; table of GBRF contract edits.docx; GBRF and QG match budget.docx

Follow Up Flag: Follow up
Flag Status: Completed

Hi Ben,

Please find attached the draft collaboration agreement with GBRF edits, a table which details the edits made and the budget tables – project budget and funding instalment table. And now we wait....

Thanks
Theresa

Theresa Fyffe
Director Projects & Partnerships | Great Barrier Reef Foundation

d + 61 7 3064 0872 | m S.78B(2) | e tfyffe@barrierreef.org | barrierreef.org
Level 13, 300 Ann Street, Brisbane QLD 4000 | PO Box 2725, Fortitude Valley BC, QLD 4006

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Collaborative Agreement

made at Brisbane on the day of 2017

Between State of Queensland acting through the Department of Environment and Heritage
Protection ABN 46 640 294 485

(Department)

Great Barrier Reef Foundation ABN 82 090 616 443

(Collaborator)

Background

- A. The parties intend collaborating together on the Project.
- B. The Department has agreed to match the payments raised by the Collaborator to the amount of up to \$1 million each year for three years, resulting in a combined total of up to \$6 million. Both parties have agreed to direct this funding towards the Reef Islands project.
- C. The parties have agreed to conduct the Project in accordance with the terms and conditions of this agreement, which consists of:
 - (a) this cover page and the signing page;
 - (b) Schedule 1 – Agreement details;
 - (c) Schedule 2 – Project Plan; [and]
 - (d) Schedule 3 – Terms and conditions[.]; and]
- D. Capitalised words and phrases have the meanings specified in clause 30.

Ref: [insert Department reference number, if any]



Collaborative Agreement

Schedule 1 – Agreement details

Item 1 Party details

Department:

Party Name: State of Queensland acting through the Department of Environment and Heritage Protection

ABN: 46 640 294 485

Street Address: Level 10, 400 George Street, BRISBANE QLD 4000

Contact Name: Ben Hammill

Contact Postal Address: GPO Box 2454 BRISBANE QLD 4001

Contact Telephone: 07 3330 5760

Contact Facsimile: N/A

Contact Email (notices cannot be given by email): ben.hammill@ehp.qld.gov.au

Collaborator:

Party Name: Great Barrier Reef Foundation

ABN/ACN: 090 616 443

Street Address: Level 13, 300 Ann Street, BRISBANE 4000

Contact Name: Theresa Fyffe

Contact Postal Address: PO Box 2725, Fortitude Valley BC, QLD, 4006

Contact Telephone: 07 3252 7555

Contact Facsimile: N/A

Contact Email (notices cannot be given by email): tfyffe@barrierreef.org

Item 2 Term: (clauses 27.1 and 30.1)

Commencement Date: The date the last party to sign this agreement does so.

Expiry Date: 30 November 2020

Item 3 Background IP: (clause 11)

Background IP of the Department: Not applicable

Background IP of the Collaborator: Not applicable

Item 4 Ownership of Project IP: (clauses 12, 13 and 14)

The parties jointly own the Project IP in the following proportions:

Department – 50%

Collaborator – 50%

Item 5 Additional Licence: (clauses 13.1(c) and 30.1)

Will the IP Owner grant an Additional Licence? No

Item 6 Confidential Information: (clauses 17 and 30.1)

Confidential Information of Not applicable
the Department:

Confidential Information of Not applicable
the Collaborator:

Item 7 Insurance: (clause 19)

Public Liability covering legal liability to third parties for bodily injury or property damage:	[\$10,000,000.00]	During the Term
Workers' Compensation:	As required by law	During the Term
Professional indemnity appropriate and relevant to the conduct of the Project:	[\$1,000,000.00]	7 years after the Expiry Date

Item 8 Special Conditions: (clauses 2 and 30.1)

Nil

IMPORTANT: Special Conditions take precedence over the terms of this agreement. Legal advice should be sought on any Special Conditions that are inconsistent with the terms of the agreement or which are significant (e.g. involve intellectual property, warranties, indemnities or liability). If no Special Conditions insert "NIL".



Collaborative Agreement

Schedule 2 – Project Plan

Item 1 Project: (clauses 3 and 30.1)

The Project is the Reef Islands Project. The project will focus on protecting the Reef's most precious land- and sea-scapes - with a focus on islands and their adjacent waters. Five island groups have been prioritised based on an assessment of the Great Barrier Reef islands undertaken by Queensland Parks and Wildlife and the Great Barrier Reef Marine Park Authority. This assessment considered both the biodiversity and conservation value of each island and the threat level to these values due to global and local stressors. The project is a collaboration between the Queensland Government and the Collaborator to achieve the objectives.

Item 2 Objectives: (clauses 3 and 30.1)

- Maximise ecosystem resilience to climate change and other stressors
- Enhance natural vegetation communities
- Minimise impacts of introduced flora and fauna
- Maximise breeding opportunities for important coastal birds and marine turtle species while having regard to existing footprint and uses
- Enhance the resilience of adjoining coral reefs.

Item 3 Methodology: (clause 3)

- Develop a detailed resilience map for each island area and its adjoining coral reefs, including local scale hydrodynamics and ocean chemistry.
- Model predicted impacts of climate change on island geomorphology and ecosystems, including potential range expansions of critical species
- Strengthen island condition and trend monitoring and reporting to support a complete adaptive management approach for islands and deliver more resilient island ecosystems.
- Pilot novel, cost-efficient monitoring platforms and methods such as acoustic monitoring of birds' nests to record hatchling success, under and above water automated vehicles, drones, thermal-imaging, automated image analyses via machine learning etc.
- Develop detailed vegetation and geomorphological maps including sand budgets
- Implement on ground and in water restoration and assisted recovery activities
- Strengthen stewardship activities with communities and reef businesses
- Increase indigenous engagement and indigenous management opportunities
- Develop carbon budgets for each island and explore ways to decrease carbon footprints - e.g. carbon neutral GBR islands.

Item 4 Responsibilities: (clauses 3 and 30.1)

Responsibilities of the Department:

The Department will provide:

- funding to the Collaborator to undertake the Project and monitoring the Project to ensure it meets specified milestones;
- the Project plan template and will provide support in co-designing the Project, including technical advice as required; and
- relevant participation in the Project Committee.

Responsibilities of the Collaborator:

The Collaborator will:

- manage the Project, including Project design, delivery, monitoring, evaluation and communications;
- design the Project in collaboration with the Department and other stakeholders;



Collaborative Agreement

- be responsible for fundraising to match the monetary Contribution of the Department (\$3 million); and
- Lead and convene the Project Committee

Item 5 Contributions: (clauses 3, 7 and 30.1)

Contributions of the Department: Monetary Contribution of \$3,000,000 (excl. GST) as set out below

Contributions of the Collaborator: Monetary Contribution of \$3,000,000 (excl. GST) as set out below
In- kind Contribution necessary to deliver the Project

*Insert funding break down table here!!!

Item 6 Milestones: (clauses 3 and 30.1)

No.	Milestone	Milestone Date
1	Hold forum to explore management and remediation options	28 February 2018
2	Produce a work program for the Project	15 April 2018
3	Produce a communication and engagement strategy	15 April 2018
4	Agreed monitoring and evaluation plan in place	30 May 2018
5	Agree on delivery arrangements, including options for traditional owner engagement	30 June 2018
6	Commence on ground management and remediation activities on Lady Elliot Island as informed by Milestone 1, Milestone 2 and Milestone 5	31 July 2018
7	Ongoing communication of outcomes from the Project, including visualisations, videos etc.	September and March each year of the project commencing in September 2018
8	Synthesise initial outcomes of the project	30 March 2019
9	Agree on whether to expand the scope beyond Lady Elliot Island	30 May 2019
10	Synthesise final outcomes of the project	30 May 2020

Item 7 Budget: (clauses 3 and 30.1)

* GBRF to insert budget break down. EHP to provide an example

Item 8 Site: (clauses 3 and 30.1)

The project will initially focus on Lady Elliot Island, with scope to expand to the Whitsunday Islands National Park, Hinchinbrook Island National Park and the Michaelmas and Upolu Cays National Park. A decision will be made by the Project Committee on whether to expand the scope beyond Lady Elliot Island no later than 30 May 2019, following the initial implementation phase.

Item 9 Key Personnel: (clauses 3.3 and 30.1)

Key Person 1: Kirstin Kenyon, Director from the Department
Key Person 2: Rachel D'Arcy, Manager from the Department
Key Person 3: Ben Hammill, Principal Project Officer from the Department
Key Person 4: Jodie Mehrtens, Senior Scientific Officer from the Department
Key Person 5: Theresa Fyffe, Director from the Collaborator
Key Person 6: Petra Lundgren, Science Program Manager from the Collaborator

Item 10 Project Leader: (clauses 4 and 30.1)

Theresa Fyffe, Director of Projects and Partnerships from the Collaborator

Item 11 Project Committee: (clauses 5 and 30.1)

Will the parties establish a Project Committee? Yes

If yes, the Project Committee will be comprised of: The Key Personnel set out in Item 9 above.

Frequency of Project Committee meetings: Quarterly

Item 12 Reporting: (clauses 8 and 30.1)

Report Description	Reporting Period	Report requirements	Due date
6 monthly Progress Reports	Initially from the Commencement Date to 31 March 2018 and then every 6 months during the Term	Assessment of progress toward the Milestone and financial performance	30 March and 31 September of each year during the Term
Annual Audit Report	Annually during the Term	Financial audit report for the period from the Commencement Date to 30 June 2018 and then for each subsequent financial year ending 30 June during the Term	31 October each year during the Term
Final Report	The Term	Final assessment against all Milestone and financial	30 May 2020

		performance	
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RTI Act 2009

Collaborative Agreement

Schedule 3 – Terms and conditions

1. Precedence

Where any inconsistency exists between:

- (a) the Special Conditions;
- (b) this Schedule 3;
- (c) Schedule 1 (except the Special Conditions);
- (d) Schedule 2; or
- (e) any other schedules or annexures of this agreement,

the provisions will take precedence in that order to the extent necessary to resolve the inconsistency.

2. Special Conditions

The parties agree to be bound by any Special Conditions.

3. Project

3.1 Nature of the Project

Each party acknowledges that the Project involves the conduct of genuine research and that the outcomes of the Project are not yet known.

3.2 Conduct of the Project

Each party must:

- (a) conduct the Project and meet its Responsibilities in accordance with Schedule 2;
- (b) conduct the Project in accordance with generally accepted professional, scientific and ethical principles and standards;
- (c) obtain and/or comply with any statutory ethical clearances required for the conduct of the Project including any required animal ethics clearances;
- (d) make its Contributions on the terms and at the times set out Item 5 of Schedule 2 or as otherwise specified in this agreement;
- (e) use its best endeavours to:
 - (i) achieve the Objectives; and
 - (ii) meet the Milestones by the due dates;
- (f) apply all Project funds, including all monetary Contributions, solely for conducting the Project and in accordance with the Budget;
- (g) ensure that its Representatives and Key Personnel carry out its Responsibilities:
 - (i) at the Site;
 - (ii) with due professional care and skill; and
 - (iii) under the supervision of the Project Leader;
- (h) keep full and accurate records of:
 - (i) its compliance with its Responsibilities; and
 - (ii) work done and results achieved in regards to the Project;

- (i) supply the other party with information the other party reasonably requires so that it is not delayed in performing its obligations under this agreement; and
- (j) act in good faith towards the other party in conducting the Project.

3.3 Key Personnel

- (a) Each party will:
 - (i) use its best endeavours to ensure that the Project is carried out by its Key Personnel; and
 - (ii) ensure that its Key Personnel are competent and have the necessary skills to carry out the Project.
- (b) If any of a party's Key Personnel are not available to carry out the Project, that party may replace him/her with persons of substantially equivalent experience and expertise by giving prior written notice to the other party.

4. Project Leader

4.1 Appointment

- (a) The parties must:
 - (i) appoint, and maintain at all times during the Term, a Project Leader; and
 - (ii) ensure that the Project Leader:
 - (A) has read this agreement, including the Project Plan;
 - (B) is appropriately qualified to manage the Project; and
 - (C) is appropriately authorised (subject to any limitations made known to the parties by the date of their appointment) to make decisions in relation to the Project in accordance with clause 4.2.
- (b) The parties may replace the Project Leader with a person of substantially equivalent experience and expertise at any time during the Term.

4.2 Role of Project Leader

The parties agree that the Project Leader will have responsibility for and authority to:

- (a) oversee the conduct of the Project;
- (b) consider Research Reports;
- (c) discuss and recommend to the parties or the Project Committee, if applicable, any proposed variations to any aspect of the Project; and
- (d) manage the Project IP, including by:
 - (i) identifying Project IP when it is created; and
 - (ii) making recommendations to the parties or the Project Committee, if applicable, about Project IP that should be:
 - (A) retained as Confidential Information;
 - (B) protected by registration or any other means; or
 - (C) disclosed in any publication in accordance with clause 16.

5. Project Committee

5.1 Establishment

- (a) Unless Item 11 of Schedule 2 specifies otherwise, the parties will establish a Project Committee to:
 - (i) make decisions regarding the Project Leader on the parties' behalf in accordance with clause 4.1;

- (ii) administer this agreement; and
- (iii) oversee the Project.
- (b) Each party will bear its own costs of participating in the Project Committee.
- (c) All matters to be determined by the Project Committee will be decided unanimously.

5.2 Composition

- (a) The Project Committee will be comprised of an equal number of Representatives from each of the parties.
- (b) At the Commencement Date, the Project Committee will be comprised of the Representatives specified in Item 11 of Schedule 2.
- (c) The Project Committee is to be chaired by a Representative of the Department (**Chairperson**).
- (d) If a position listed in specified in Item 11 of Schedule 2 ceases to exist during the Term, a Representative of the party occupying a position which has some or all of the responsibility for the previous position will occupy the relevant position on the Project Committee.
- (e) The parties may alter the composition of the Project Committee or the identity of the Chairperson by agreement.

5.3 Meetings

- (a) The Project Committee will meet at the frequency specified in Item 11 of Schedule 2 unless otherwise agreed, with the meeting to be convened and chaired by the Chairperson. If the Chairperson cannot attend a meeting of the Project Committee, another member of the Project Committee nominated by the Department will act as Chairperson for that meeting. Meetings may be held using electronic and other means of communication.
- (b) The quorum for a meeting of the Project Committee is one member nominated by each party.
- (c) At each meeting the Project Committee will discuss:
 - (i) the status and progress of the Project;
 - (ii) each party's Contribution to the Project;
 - (iii) any recommendations made by the Project Leader; and
 - (iv) any other issues relevant to this agreement or the Project.
- (d) The parties agree to negotiate in good faith to resolve and agree upon a course of action on any issue that has been raised in the meeting.
- (e) If, as part of any agreement reached pursuant to clause 5.3(b), the parties agree to amend this agreement, the parties acknowledge that such amendment will have no effect unless and until this agreement is amended in accordance with clause 29.5.
- (f) If an issue cannot be resolved in accordance with this clause 5.3 at any time, 2 or more members of the Project Committee may notify the parties that they wish to refer the matter to resolution pursuant to clause 25.

6. Subcontracting

- (a) Neither party will subcontract the carrying out of the Project or any part of the Project without the prior approval in writing of the other party (which will not be unreasonably withheld).
- (b) If written consent is provided under clause 6(a), the party subcontracting the carrying out of all or part of the Project (**Subcontracting Party**) will:
 - (i) be responsible for the acts or omissions of any subcontractor as if they were the acts or omissions of the Subcontracting Party and the Subcontracting Party indemnifies the other party for any costs, claims, losses or expenses incurred by the other party due to the acts or omissions of the subcontractor;
 - (ii) ensure the terms and conditions of the subcontract, at a minimum, require that the subcontractor must comply with this agreement as if the subcontractor was the Subcontracting Party, including (but not limited to) clauses 9, 17 and 18; and

- (iii) ensure the subcontractor complies with the terms and conditions of the subcontract and clause 12.1(d).

7. Contributions and records

7.1 Obligation

An obligation of a party to provide a Contribution is subject to the party's reasonable satisfaction that:

- (a) all Milestones related to that payment have been achieved; and
- (b) the other party is not otherwise in breach of this agreement.

7.2 Monetary Contributions

- (a) Unless expressly provided otherwise in this agreement, neither party has any liability to:
 - (i) fund the Project;
 - (ii) pay or reimburse money to the other party; or
 - (iii) pay or reimburse the other party for any outstanding liability of the party in respect of any contract, commitment or expenditure of the other party in relation to carrying out the Project.
- (b) All monetary Contributions provided by a party under this agreement must be used for the sole purpose of carrying out the Project, in accordance with the Budget.
- (c) Where a party (**Payer**) pays monetary Contributions to the other party (**Payee**), the Payee will, whenever reasonably required by the Payer, promptly produce invoices, receipts or other evidence satisfactory to the Payer of the proper use and application of the monetary Contributions provided by the Payer in accordance with the Budget.
- (d) If part of any payment of monetary Contributions to a Payee remains uncommitted at the end of the Term, the amount of uncommitted monetary Contributions will become a debt due and payable to the Payer.

7.3 Non-monetary Contributions

- (a) Unless otherwise agreed in writing, non-monetary Contributions provided by a party remain the absolute property of that party, or where non-monetary Contributions have been provided by a third party, of the third party.
- (b) A party providing an item of equipment will be solely responsible for the purchase, installation, maintenance and insurance of such items.

7.4 Records of Contributions

Each party will keep and retain for 7 years after termination of this agreement, full and accurate accounting records of and all receipts for:

- (a) Contributions it has made;
- (b) Contributions received from another party; and
- (c) all money used or applied and outgoings and expenditure incurred, in carrying out the Project.

7.5 Records of Project results

Each party will keep full and accurate records of the efforts taken to comply with its Responsibilities, in sufficient detail and appropriate form to properly reflect all work done and results achieved in regards to the Project.

8. Reporting

8.1 Research Reports

At the times specified in Item 12 of Schedule 2, or if no times are specified, within 10 Business Days of the end of each quarter of a financial year during the Term, the Collaborator must provide the Department with a Research Report.

8.2 Content of Research Reports

Each Research Report must be in a form reasonably required by the Department and include:

- (a) in respect of each Reporting Period:
 - (i) the progress of and Responsibilities undertaken by the Collaborator in the performance of the Project;
 - (ii) the Contributions provided by the Collaborator;
 - (iii) details of Milestones met;
 - (iv) details of Milestones delayed in being met (including the reasons for the delay);
 - (v) any material technical developments in the Project;
 - (vi) any changes in the Key Personnel or Project Leader;
 - (vii) any Background IP of either party used in the Project; and
 - (viii) any Project IP or likely Project IP generated by either party; and
- (b) any recommendations of the Collaborator on the future conduct of the Project including:
 - (i) proposed variations to the Project Plan; and
 - (ii) applications for registration or protection of Project IP.

8.3 Final Report

Within 20 Business Days after the end of the Term or as otherwise specified in Item 12 of Schedule 2, each party must submit a final report to the other party specifying all of the information as required for the Research Reports (**Final Report**).

8.4 Cooperation

Each party must provide all information reasonably required by the other party to enable it to prepare the Research Reports and the Final Report required under this clause 8.

9. Access to the Project

- (a) Each party will ensure that the other party is allowed, during normal business hours, access to the Site and will provide all reasonable assistance to allow the other party's Representatives to:
 - (i) speak to the persons associated with the Project;
 - (ii) examine, copy and otherwise inspect any books of account or technical records relating to the Project;
 - (iii) inspect any non-monetary Contributions used in the carrying out of the Project; and
 - (iv) make any other inquiries of any person who may be associated with the generation and/or examination of Project IP.
- (b) Each party will comply and ensure that its Representatives comply with all reasonable rules, directions and procedures including those relating to security and to work health and safety in effect at the Site that each party is made aware of or ought reasonably to be aware of.

10. Audit

10.1 Audit

The Collaborator will, upon 5 days' notice or as otherwise agreed, permit and provide persons nominated by the Department (**Auditors**) supervised access to the Collaborator's premises, books, records, documents, computer systems, equipment and other property relevant to the performance of this agreement to verify compliance by the Collaborator with its obligations under this agreement and its likely capacity to continue to comply with its obligations in the future (**Audit**).

10.2 Security

In undertaking the Audit, the Department will ensure that the Auditors comply with reasonable security requirements of the Collaborator made known to the Department.

10.3 Cooperation

The Collaborator will do things reasonably necessary to facilitate a prompt and efficient Audit.

10.4 Copies of materials

The Auditors may make copies of books, records, documents and other materials they have access to as part of an Audit.

10.5 Costs of the Audit

The Department is responsible for costs incurred by it in relation to an Audit unless the Audit reveals material non-compliance of the Collaborator with its obligations under this agreement in which case the Collaborator is liable to the Department for the costs incurred by the Department in relation to the Audit.

10.6 Disclosure of Audit information

The Department may disclose the Audit findings and the Audit recommendations to a third party.

10.7 Audit recommendations

If requested by the Department, the Collaborator will implement Audit recommendations and comply with Audit findings to the extent necessary to ensure that the collaborator continues to perform its obligations in accordance with this agreement.

11. Background IP

11.1 Licence to Background IP

Subject to any existing licences or encumbrances disclosed by a party at the time of making its Background IP available, the parties grant to each other a non-exclusive, non-transferable, royalty free licence to use each other's Background IP:

- (a) during the Term, for the purpose of conducting the Project in accordance with this agreement; and
- (b) during and after the Term, to the extent that the Background IP is necessary to use the Project IP as licensed under this agreement.

11.2 Background IP warranties

Each party represents and warrants to the other party that:

- (a) to the best of its knowledge at the Commencement Date without conducting patent or other IP Rights application or registration searches, and except to the extent disclosed at Item 3 of Schedule 1, the Background IP may be used without restriction in the conduct of the Project; and
- (b) except with the prior written approval of the other party (not to be unreasonably withheld or delayed), it will not assign, encumber or otherwise deal with, dispose of or Commercialise its Background IP in a manner that would limit a party's ability to use that Background IP in accordance with this agreement.

11.3 Ownership of Background IP

This agreement does not affect ownership of Background IP.

11.4 Protection of Background IP

Each party agrees that:

- (a) it will take all reasonably necessary steps (at the cost of a licensor of the Background IP) and provide assistance as reasonably required by that licensor to protect the licensor's Background IP; and

- (b) it will give to the licensor of the Background IP prompt notice of any suspected or actual infringement of Background IP of which it becomes aware.

12. Project IP – General provisions

12.1 Ownership of Project IP

- (a) Each party will promptly notify the other party in writing of:
 - (i) any Project IP created; and
 - (ii) any improvements made to the Project IP,and in any event not less than 20 Business Days following its creation or improvement.
- (b) The ownership of Project IP (excluding copyright in any Thesis) is as set out in Item 4 of Schedule 1.
- (c) Where a Student generates Project IP, the Responsible Party must ensure that the Student assigns any and all Project IP (other than copyright in any Thesis) in accordance with clause 13 or clause 14, whichever is applicable.
- (d) If a party has engaged a subcontractor in accordance with clause 6, that party must ensure that the subcontractor:
 - (i) assigns any Project IP in accordance with clause 13 or clause 14, whichever is applicable; and
 - (ii) does all things reasonably necessary to ensure the Project IP or copyright in any Thesis vests in accordance with clauses 12.1(b) and 12.2, including the signing of any required documentation as requested by the owner of the Project IP under clause 12.1(b) or the Student under clause 12.2.
- (e) Each party at its own cost must do all things reasonably necessary to ensure IP Rights vest in accordance with clauses 12.1(b) and 12.2, including the signing of any required documentation as requested by the owner of the Project IP under clause 12.1(b) or the Student under clause 12.2.

12.2 Thesis copyright

Title and ownership of copyright in any Thesis vests upon its creation in the relevant Student.

12.3 Moral Rights Consent

Each party must obtain Moral Rights Consents from its Representatives with respect to any publication authored or co-authored by those persons, provided that with respect to any Thesis, the right of the Student to be attributed author or co-author is retained in favour of the Student.

12.4 Infringement

Each party will give the other prompt notice of any claim or allegation made against it that the exercise of any rights under this agreement constitutes an infringement of the rights of any third party.

13. One party owns Project IP

If Item 4 of Schedule 1 specifies that one party owns the Project IP, then this clause 13 applies, and clause 14 does not apply.

13.1 Ownership and rights

- (a) All rights, title and interests in the Project IP belong solely to the IP Owner. Project IP is immediately assigned to and vests in the IP Owner as those rights are created.
- (b) The IP Owner grants to the other party (**Other Party**) a fully paid up, world wide, royalty free, non-exclusive, non-assignable right to use, reproduce, adapt and improve the Project IP (including any Background IP incorporated into Project IP) during the Term, for the purposes of carrying out the Project.
- (c) If specified in Item 5 of Schedule 1, the IP Owner also grants to the Other Party the Additional Licence.

- (d) Improvements to the Project IP made by any party are owned by the IP Owner and the provisions of this clause 13 apply to such improvements.
- (e) The Other Party:
 - (i) hereby assigns its rights, title and interest in the Project IP as required to give effect to clauses 13.1(a) and 13.1(d);
 - (ii) acknowledges that all Project IP coming into existence in the future will vest in the IP Owner from the date of its creation and no additional documentation is necessary to complete the assignment made under this clause 13; and
 - (iii) acknowledges that Project IP is the Confidential Information of the IP Owner, and the Other Party will keep the Project IP confidential in accordance with clause 17.

13.2 Warranty

The Other Party warrants that:

- (a) it has the right to assign the Project IP in accordance with clause 13.1(e)(i) of this agreement; and
- (b) the assignment referred to in clause 13.1(e)(i) includes all of the Project IP created by its Representatives.

13.3 Project IP protection and Commercialisation

- (a) The IP Owner may, at its cost, apply for, maintain and prosecute protection for the Project IP (including the Background IP to the extent that it is incorporated in the Project IP) in its own name and in any manner it elects.
- (b) The Other Party must:
 - (i) assist the IP Owner to exercise its rights in clause 13.3(a) by providing all necessary information it has in its possession and execute all documents required by the IP Owner from time to time; and
 - (ii) give the IP Owner prompt notice of any suspected or actual infringement of the Project IP (including any Background IP incorporated into Project IP) of which it becomes aware.
- (c) Unless otherwise specified in the terms of the Additional Licence (if any), the IP Owner may Commercialise the Project IP (including any Background IP incorporated into Project IP) in any manner without the consent of the Other Party.
- (d) Net Commercialisation Proceeds received as a result of the Commercialisation of the Project IP by the IP Owner must be distributed between the parties in the same proportions as each party's Contribution.

14. Joint ownership of Project IP

If Item 4 of Schedule 1 specifies that the parties will jointly own the Project IP, then this clause 14 applies and clause 13 does not apply.

14.1 Ownership

- (a) The Project IP will be owned jointly by the Department and the Collaborator as tenants in common, in the proportions specified in Item 4 of Schedule 1.
- (b) Project IP is the Confidential Information of both parties, and each Party will keep the Project IP confidential in accordance with clause 17.
- (c) Any improvement to or development of any Project IP made by a party following termination of the Project will be the sole property of the party making the improvement or development and that party will be entitled to apply for, in its name and at its cost, a patent or any other IP Rights in respect thereof and such patent or right will be the sole property of that party.
- (d) If, during the term of the Project, any improvement is made which is or may be patentable or registrable in any country in the world, the parties will determine whether a joint application will be filed and the countries in which such patent or other registrable protection will be sought.

- (e) If the parties agree to make a joint application:
 - (i) the Department will be entitled to apply in the joint names of the parties;
 - (ii) the Department on behalf of itself and the Collaborator will have the full conduct of any such application;
 - (iii) the Collaborator will take all reasonable steps to assist the Department in any such application;
 - (iv) the Department will keep the Collaborator informed of the progress of any such application; and
 - (v) all filing, prosecution and maintenance fees in respect of any joint application will be borne and paid by the parties equally.
- (f) If after having received 30 days' notice in writing a party decides not to file an application jointly or if a party refuses or fails to pay its share of the costs and expenses for any joint application:
 - (i) that application will be filed in the name of and at the expense of the contributing party, to the exclusion of the other party;
 - (ii) the patent or other registered right granted as a result of that application and all profits arising from the exploitation of that patent or other registered right will be the property of the contributing party to the exclusion of the other party; and
 - (iii) the non-contributing party will assign all its rights, title and interest in such patent or other registered right to the contributing party.

14.2 Rights to Project IP

Each party grants the other party a worldwide and royalty-free licence to use the Project IP for the Term and for the purpose of the Project.

14.3 Warranty

Each party warrants that the Project IP does not and will not infringe the IP Rights of a third person.

14.4 Infringement

- (a) The Department will have the full conduct of the prosecution or defence of any proceedings in relation to the Project IP in which either or both the Department and the Collaborator are or may be parties (**Proceedings**).
- (b) The Department must keep the Collaborator informed of the conduct of the Proceedings.
- (c) The Collaborator authorises the Department to settle the Proceedings on behalf of the Collaborator and to bind the Collaborator to the terms of such settlement.
- (d) The costs of the Proceedings or any award given in relation to the Proceedings will be shared by the parties in accordance with the proportions specified in Item 4 of Schedule 1.
- (e) If the Department wishes at any stage to withdraw or abandon its prosecution or defence of the Proceedings, it will give to the Collaborator written notice of its intention to do so. If the Collaborator does not give the Department written notice within 30 days of its intention to adopt the prosecution or defence of the Proceedings, the Department may withdraw or abandon its prosecution or defence of the Proceedings.
- (f) If the Collaborator gives notice of its intention to adopt the prosecution or defence of the Proceedings, the Collaborator will have the full conduct the Proceedings, and all rights and obligations (including without limitation all costs, losses and liabilities) flowing from the Proceedings will be those of the Collaborator without prejudice to the rights and obligations of the Department which have accrued at the date of, and which survive, the Department's withdrawal or abandonment.

14.5 Commercialisation or licensing of Project IP

A party may only Commercialise Project IP or license Project IP to a third party with the prior written consent and on terms agreed by the other party. If the parties cannot agree on such terms, the parties will refer the matter to resolution pursuant to clause 25.

15. Students

15.1 Students may participate in Project

A Responsible Party may engage Students to participate in the conduct of the Project.

15.2 Student participation requirements

If a Responsible Party engages a Student to participate in the conduct of the Project, the Responsible Party will:

- (a) ensure the Student is properly supervised by appropriately qualified staff;
- (b) ensure the Student conducts the Project in accordance with this agreement;
- (c) not allow the Student to commence work on the Project until the Student has signed a deed:
 - (i) assigning to the IP Owner the IP Rights created by the Student pursuant to clause 12.1(c); and
 - (ii) pursuant to which the Student agrees to keep Confidential Information confidential in a manner consistent with clause 17; and
- (d) ensure that any examiner appointed to review the Student's Thesis has given a written confidentiality undertaking consistent with clause 17.

15.3 Satisfaction of research higher degree requirements

If this agreement is terminated prior to the Expiry Date and a Student is participating in the Project for the purposes of the Student's research higher degree, each party grants the Student a non-exclusive, non-transferable, royalty-free licence to use such of that party's Background IP as is necessary for the Student to complete the Student's Thesis for such research higher degree and assessment of same.

15.4 Student Thesis Publications

- (a) The Responsible Party will ensure that any Student adheres to the procedure set out in clause 16 with respect to any proposed publication of the Thesis and the Responsible Party must provide a copy of the Thesis to the Department in accordance with clause 16(b).
- (b) The parties must adhere to the procedure set out in clause 16 with respect to any proposed publication of the Thesis. If publication of the Thesis is required under the Responsible Party's postgraduate Thesis completion rules, the Department may require as a condition of any consent referred to in clause 16(c), that the Thesis is placed in a restricted and monitored access library controlled by the Responsible Party for a period of up to 18 months and for a further period of up to 18 months on written notice providing grounds justifying the extension.
- (c) Where a Student intends to submit any Thesis for assessment or examination:
 - (i) the Responsible Party must ensure the Student notifies the Department of the Student's intention to submit that Thesis for assessment or examination and provide a copy of the Thesis to the Department; and
 - (ii) within 30 days of receiving a copy of the Student's Thesis under clause 15.4(c)(i), the Department may notify the Student (either directly or by notice to the Responsible Party) that the Department requires:
 - (A) any assessor or examiner of the Responsible Party to provide confidentiality undertakings regarding information contained in the Thesis; and/or
 - (B) access to the Thesis to be restricted, including for the reasons specified in clause 16(a); and

- (iii) the Student must not submit the Thesis to the Responsible Party for assessment or examination until the Department's requirements (as notified under clause 15.4(c)(ii)) have been met.
- (d) The Student may submit the Thesis for assessment or examination where the Department has not notified the Student and/or the Responsible Party in accordance with clause 15.4(c)(ii).
- (e) The Responsible Party must ensure that the Student does not make any press or other announcements or releases relating to this agreement and the Project (including transactions the subject of this agreement) without the prior written consent of the Department.

16. Publications

- (a) A party will not without the other party's consent (such consent not to be unreasonably withheld where the purpose of the publication is for the purpose of undertaking the Project), make any publication where to do so may:
 - (i) prejudice any present or future registration, Commercialisation or value of any Background IP or Project IP;
 - (ii) result in a premature publication of a Thesis inconsistent with the Responsible Party's Thesis completion rules; or
 - (iii) otherwise breach Confidential Information obligations specified in clause 17.
- (b) The party intending to publish under clause 16(a) must, at least 30 days before the date of the proposed publication, provide to the other party a copy of the material intended to be published.
- (c) Within 14 days of a party's receipt of material under clause 16(b), that party must either:
 - (i) provide written consent to the other party's intended publication of any or all of the material; or
 - (ii) reasonably request that other party delay or amend the proposed publication for the reasons set out in clause 16(a).
- (d) If a party does not:
 - (i) provide written consent in accordance with clause 16(c)(i); or
 - (ii) request a delay or amendment in accordance with clause 16(c)(ii),
 that party is deemed to give consent to the other party to publish the material.
- (e) A party may require, as a condition of any consent referred to in clause 16(c), acknowledgment of the collaboration of the party including authorship, and the use of any Contributions provided or made available by the party for or in relation to the generation of the relevant material.

17. Confidentiality

17.1 Confidential Information

Subject to clause 17.2, a party must not:

- (a) disclose the other party's Confidential Information to a third party; or
- (b) use the other party's Confidential Information other than for the purposes of the Project.

17.2 Exceptions

A party may disclose the other party's Confidential Information:

- (a) with the other party's prior written consent;
- (b) to a professional adviser, financial adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential;
- (c) to any of its Representatives who are bound to keep the information confidential and to whom it is necessary to disclose the information;
- (d) to comply with its obligations, or to exercise its rights, under this agreement;

- (e) to comply with the law, or a requirement of a regulatory body (including any relevant stock exchange);
- (f) to the extent necessary to enforce its rights or defend a claim or action under this agreement; and
- (g) where that party is the Department:
 - (i) to the responsible Minister administering the Department and their personal and departmental advisers;
 - (ii) in response to a request by the Parliament or a Committee of the Parliament of the State of Queensland; or
 - (iii) where disclosure is required to be made in accordance with established governmental policies, procedures or for public accountability purposes.

17.3 Limiting disclosure

Before the Collaborator or any of its Representatives discloses any Confidential Information under clauses 17.2(e) or 17.2(f) that contains the Department's Background IP, or, if the Department is the IP Owner, any Project IP:

- (a) the Collaborator must notify the Department as soon as reasonably practicable after it becomes aware that disclosure is required;
- (b) unless immediate disclosure is required, the Collaborator must give the Department a reasonable opportunity to comment on the requirement for, and the proposed form of, the disclosure; and
- (c) the Collaborator must take all steps reasonably required by the Department to prevent or restrict the disclosure of the relevant Confidential Information.

17.4 Breach of confidentiality

- (a) If a party becomes aware of a suspected or actual breach of this clause 17 the party will immediately notify the other party and take reasonable steps required to prevent or stop the suspected or actual breach.
- (b) The parties acknowledge and accept that damages will be an inadequate remedy for a breach of this clause 17.

17.5 Return of Confidential Information

Subject to a Recipient needing to retain Confidential Information to properly exercise its rights to the Background IP and Project IP granted pursuant to this agreement, the Recipient will return or destroy (at the Discloser's discretion) material containing Confidential Information when it is no longer required by the Recipient, or otherwise when directed by the Discloser.

18. Privacy and Personal Information

- (a) This clause 18 applies where this agreement amounts to a service arrangement under the *Information Privacy Act 2009* (Qld).
- (b) For the purpose of this clause 18, **Personal Information** has the meaning given in the *Information Privacy Act 2009* (Qld).
- (c) If the Collaborator collects or has access to Personal Information in performing this agreement, the Collaborator must:
 - (i) comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under this agreement, as if the Collaborator was the Department;
 - (ii) ensure that the Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
 - (iii) not use Personal Information other than for the purposes of performing this agreement, unless required or authorised by law;

- (iv) not disclose Personal Information without the consent of the Department, unless required or authorised by law;
 - (v) not transfer Personal Information outside of Australia without the consent of the Department;
 - (vi) ensure that access to Personal Information is restricted to those of the Collaborator's employees and officers who require access in order to perform their duties under this agreement;
 - (vii) ensure that the Collaborator's officers and employees do not access, use or disclose Personal Information other than in the performance of their duties under this agreement;
 - (viii) ensure that the Collaborator's agents and subcontractors who have access to Personal Information comply with obligations the same as those imposed on the Collaborator under this clause 18;
 - (ix) fully co-operate with the Department to enable the Department to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
 - (x) comply with such other privacy and security measures as the Department reasonably advises the Collaborator in writing from time to time.
- (d) The Collaborator must immediately notify the Department on becoming aware of any breach of clause 18(c).
- (e) On request by the Department, the Collaborator must obtain from its Representatives engaged for the purposes of this agreement, an executed deed of privacy in a form acceptable to the Department.
-

19. Insurance

- (a) The Collaborator must effect and maintain the types of insurance in the amounts and for the duration specified in Item 7 of Schedule 1 with an insurer and on terms approved by the Department (such approval not to be unreasonably withheld).
- (b) Upon reasonable request, the Collaborator must provide the Department with evidence in a form acceptable to the Department of the terms and currency of the insurance required under clause 19(a), including copies of insurance policies and any endorsements or amendment to such policies.
-

20. Warranty

Each party warrants and represents that to the best of its knowledge and belief at the Commencement Date, it has the power, authority and ability, and has obtained all necessary consents to enter into this agreement and perform its obligations under this agreement.

21. Conflict of interest

- (a) Each party warrants that, to the best of its knowledge, it does not, and is not likely to have any conflict of interest in the performance of this agreement. If a conflict or risk of conflict of interest arises, the party in conflict will immediately give notice of the conflict of interest, or the risk of it, to the other party.
- (b) If a party is given notice of a conflict of interest pursuant to clause 21(a), that party may proceed in accordance with clause 27 to terminate this agreement.
-

22. Indemnity

22.1 Parties to indemnify

- (a) Each party (**Indemnifying Party**) indemnifies the other party and its Representatives (**Indemnified**) against all liability, loss, costs and expenses (including legal fees, costs and disbursements on a solicitor and own client basis) arising from or incurred in connection with:

- (i) personal injury (including sickness and death) or property damage or loss in connection with the performance (or attempted or purported performance or non-performance) of this agreement or a breach of this agreement by the Indemnifying Party; or
 - (ii) any infringement or alleged infringement of any IP Rights or Moral Rights of any person, which infringement or alleged infringement occurred by reason of the use of the Indemnifying Party's Background IP or the Indemnifying Party's contribution to the Project IP in accordance with this agreement.
- (b) The Indemnifying Party's liability to indemnify the Indemnified under clause 22.1(a) will be reduced proportionally to the extent that any unlawful or negligent act or omission or breach of this agreement by the Indemnified contributed to the loss or damage.
 - (c) The indemnity granted in clause 22.1(a) is in addition to and not exclusive of any other remedies that may be available at law.

22.2 No expense required

It is not necessary for a party to incur expense or to make a payment before enforcing a right of indemnity conferred by this agreement.

23. Liability

23.1 Limitation of liability

Except in relation to liability:

- (a) for personal injury (including sickness and death) or property damage or loss;
- (b) for a breach of clause 7;
- (c) for a breach of clauses 12, 13 or 14;
- (d) for a breach of clause 17; or
- (e) arising under clause 22,

each party's liability (whether in contract, tort, statute or otherwise) to the other party for all claims is limited in aggregate to the greater of the amount equivalent to the amount the party:

- (f) is required to maintain insurance for in respect of that liability pursuant to clause 19; or
- (g) is actually insured for in respect of that liability.

23.2 No liability for indirect loss

Except in relation to a breach of clauses 7, 12, 13, 14 or 17 of this agreement, neither party will in any circumstances (including for negligence) be liable to the other for any loss of revenue, loss of profit, loss of anticipated savings or business, loss of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of data or goodwill, loss of reputation, or any indirect loss, whether arising in contract, tort (including negligence) or otherwise, in connection with this agreement.

24. GST

- (a) Words defined in the GST Law have the same meaning in this clause 24.
- (b) If a party is required under this agreement to reimburse or pay to another party an amount calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or an entity on whose behalf the party is acting) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (c) If GST is payable by an entity (**Supplier**) in relation to any supply that it makes under or in connection with this agreement, the parties agree that:
 - (i) any consideration (including the value of any non-monetary consideration) provided for that supply under or in connection with this agreement other than under this clause 24 (**Agreed Amount**) is exclusive of GST;

- (ii) an additional amount will be payable by the party providing consideration for that supply (**Receiver**) equal to the amount of GST payable by the Supplier on that supply;
 - (iii) the additional amount is payable at the same time as any part of the Agreed Amount is to be first provided for that supply and the Supplier will provide a tax invoice to the Receiver in respect of that supply, no later than that time; and
 - (iv) to the extent, if any, that any consideration (or part thereof) is specified in this agreement to be inclusive of GST, that consideration (or the relevant part) will be excluded from the Agreed Amount for the purposes of calculating the additional amount under clause 24(c)(i).
- (d) If the Receiver is not registered for GST and does not have an Australian Business Number, the Receiver must complete the Australian Taxation Office's Statement by a Supplier if it is eligible to do so, and return the completed and signed statement (satisfactory to the Australian Taxation Office) to the Department on or before the Commencement Date.
 - (e) If the Statement by a Supplier required in clause 24(d) is not received by the Department or the Collaborator is not eligible to complete the Statement by a Supplier and an Australian Business Number is not provided on any Tax Invoice, the Collaborator acknowledges and accepts that the Department may be required to withhold 46.5% of the payment to the Collaborator for submission to the Australian Taxation Office on behalf of the Collaborator.

25. Dispute resolution

25.1 Dispute resolution process

- (a) Subject to clause 25.3, the parties will adhere to the following procedure in relation to disputes arising from this agreement, prior to the commencement of litigation or other external dispute resolution procedure.
- (b) The Contact for a party may notify the other, in writing of the occurrence of a dispute (**Dispute Notice**) and the Contacts will try to resolve the dispute through negotiation.
- (c) If the Contacts are unable to resolve the dispute within 15 Business Days from the receipt of the Dispute Notice, the dispute is to be referred to:
 - (i) for the Collaborator, the person holding the position of Chief Executive Officer (or equivalent); and
 - (ii) for the Department, the Deputy Director General or the Director General of the Department,
 for resolution.
- (d) If the dispute is not resolved within 15 Business Days after its referral to the representatives of each of the parties listed in clause 25.1(c), either party may refer the dispute to a mediator agreed by the parties with costs to be shared equally between the parties.
- (e) If the parties cannot agree upon a mediator, either party may request the President of the Queensland Law Society to nominate a mediator.

25.2 Continuity during dispute

Notwithstanding the existence of a dispute, each party will continue to perform its obligations under this agreement.

25.3 Urgent interlocutory relief

Nothing in this clause 25 prevents either party from commencing court proceedings relating to any dispute arising from this agreement at any time where that party seeks urgent interlocutory relief.

26. Performance of failed obligations

26.1 Department may perform obligations

If the Collaborator fails to perform an obligation under this agreement and such failure is not remedied within 14 days of the Department notifying the Collaborator of the failure:

- (a) the Collaborator authorises the Department or its nominee to act on the Collaborator's behalf in performing the Collaborator's obligations; and
- (b) the Department or its nominee may (but is not obliged to) perform the obligation.

26.2 Collaborator responsible for costs

Where the Department or its nominee performs an obligation of the Collaborator under clause 26.1, the costs of that performance are to be taken as a debt due and payable to the Department.

26.3 Collaborator responsible for obligation

The Collaborator is not relieved from its failure to meet an obligation by the Department or its nominee performing that obligation in accordance with clause 26.1.

27. Term and Termination

27.1 Term

This agreement will remain in force for the Term.

27.2 Termination for convenience

- (a) The Department may, at any time, by reasonable written notice, terminate this agreement for convenience, including for a Machinery of Government Change.
- (b) If this agreement is terminated by the Department under this clause 27.2, the Collaborator will be entitled to the reasonable costs (if any) that have been or will be incurred by the Collaborator as a direct result of the termination of the agreement and which the Collaborator cannot recoup or avoid and which would not have been incurred if the agreement had continued until the expiry of the Term.
- (c) For the avoidance of doubt, clause 23.2 applies in relation to termination of this agreement under clause 27.2.

27.3 Termination for breach

Either party may terminate this agreement by written notice with immediate effect if the other party:

- (a) breaches a term of this agreement which is not capable of being remedied; or
- (b) breaches a term of this agreement which is capable of being remedied and fails to remedy that breach within 30 days after receiving notice requiring it to do so.

27.4 Effect of termination

If this agreement is terminated in accordance with clauses 27.2 or 27.3:

- (a) each party must immediately cease all activities under the Project;
- (b) each party must take all available steps to minimise any loss resulting from termination and to protect the party's Background IP and the Project IP;
- (c) the parties cease to be liable to pay or provide any further Contributions; and
- (d) each party agrees (other than where to do so would give rise to a void or voidable transaction) to:
 - (i) promptly repay to the other party any part of the monetary Contributions paid to the party and not then used or applied for a purpose permitted under this agreement or appropriated for expenditure already incurred and permitted under this agreement; and
 - (ii) promptly return or deliver up to the other party, or as the other party directs, all non-monetary Contributions and documents relating to the Background IP provided by the other party.

27.5 Pre-existing rights and survival

- (a) Termination in accordance with this clause 27 is without prejudice to any rights of either party under this agreement existing at the date of termination.

- (b) Clauses 7.4, 8, 11, 12, 13 (if applicable), 14 (if applicable), 15, 16, 17, 19, 20, 21, 22, 23, this clause 27.5 and clause 29 survive expiry or termination of this agreement for any reason.

28. Notices

Each communication (including each notice, consent, approval, request and demand) in connection with this agreement to be given by either party to the other:

- (a) must be in writing;
- (b) must be signed by the party making it (or by a person duly authorised by that party);
- (c) must be addressed in accordance with Item 1 of Schedule 1 (or as otherwise notified from time to time);
- (d) must be delivered by hand or posted by pre-paid post to the address, or sent by facsimile transmission to the number, of the addressee, in accordance with clause 28(c); and
- (e) is taken to have been received by the addressee:
 - (i) where sent by pre-paid post – on the fifth day after the date of posting;
 - (ii) where sent by facsimile transmission – at the time in the place to which it is sent equivalent to the time recorded on the transmitting machine from which it was sent; and
 - (iii) where hand delivered – on delivery,

but if the communication is taken to have been received on a day that is not a Business Day or later than 5.00 pm on a Business Day, the communication is taken to have been received at 9.00 am on the next Business Day.

29. General

29.1 Entire agreement

To the extent permitted by law, in relation to its subject matter, this agreement:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

29.2 No relationship

Nothing in this agreement will be taken as giving rise to any employment, agency, partnership, or joint venture relationship between the parties.

29.3 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this agreement except for representations or inducements expressly set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this agreement.
- (c) Each party acknowledges and confirms that no representations have been made by one party to the other party that the Project will result in the delivery of a particular outcome.

29.4 Assignment

A party must not assign, novate or subcontract the whole or any part of this agreement without the prior written consent of the other party.

29.5 Amendments

This agreement may only be varied by a document signed by or on behalf of each party.

29.6 Further acts and documents

Each party must promptly do all acts and deliver all documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this agreement.

29.7 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement.
- (b) A waiver or consent given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or any other term of this agreement.

29.8 Severance

If at any time a provision of this agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this agreement; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this agreement.

29.9 Counterparts

This agreement may be signed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

29.10 Expenses

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

29.11 Consents

A consent required under this agreement from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this agreement expressly provides otherwise.

29.12 Continuing obligation

Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement.

29.13 Governing law

This agreement is governed by and will be construed according to the law applying in Queensland.

29.14 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 29.14(a).

30. Definitions and interpretation

30.1 Definitions

In this agreement:

Additional Licence means the licence specified in Item 5 of Schedule 1.

Background IP means IP Rights which are made available by a party for the purpose of carrying out this agreement and that are:

- (a) in existence at the Commencement Date, including the IP Rights in the material set out in Item 3 of Schedule 1; or
- (b) brought into existence after the Commencement Date other than as a result of the performance of the Project.

Budget means the budget specified in Item 7 of Schedule 2.

Business Day means a day that is not a Saturday, Sunday or a public holiday in Brisbane.

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

Commercialise means:

- (a) in relation to a product, to use, make, manufacture, have made or manufactured, sell, advertise, promote, distribute, hire or otherwise dispose of the product, or to keep it for the purpose of doing any of those things;
- (b) in relation to material of a plant variety, to produce or reproduce, condition for propagation, offer for sale, sell, import, export, or to stock for the purpose of doing any of those things;
- (c) in relation to a method or process, to use the method or process or do any act referred to above in respect of a product resulting from such use; and
- (d) to license any third party to do any or all of the acts referred to in paragraphs (a), (b) or (c).

Commercialisation Costs means costs reasonably incurred by a party with respect to the Commercialisation of Project IP and includes patent, trade mark, design, due diligence and legal costs and any other IP Rights application and registration costs.

Commercialisation Proceeds means all royalties, licence fees, and other direct monetary payments received by a party from the Commercialisation of Project IP.

Confidential Information means information, trade secrets and knowledge of or disclosed by a party (the **Discloser**) to another party (the **Recipient**) that:

- (a) is by its nature confidential;
- (b) is designated or marked by the Discloser as confidential including any information specified in Item 6 of Schedule 1; or
- (c) the Recipient knows or ought to know is confidential,

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this agreement or any other confidentiality obligation; or
- (e) is independently developed by a party while having no knowledge or access to the other party's Confidential Information.

Contact means the contact person for each party specified in Item 1 of Schedule 1 or another person as appointed from time to time and notified to the other party.

Contribution means the monetary contributions and non-monetary in-kind contributions to be made by each party including any and all funding, cash, assets, items, goods, services, and personnel specified in Item 5 of Schedule 2.

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

GST means a goods and services tax or any similar tax, levy or impost imposed by the Commonwealth of Australia.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property or **IP Rights** means all intellectual property rights, whether created before or after the Commencement Date, including:

- (a) plant breeder's rights, patents, copyright, rights in circuit layouts, trade marks and registered designs;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) that may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.

IP Owner means the single party (if any) specified in Item 4 of Schedule 1.

Key Personnel means the Representatives of the parties specified in Item 9 of Schedule 2.

Machinery of Government Change means a change to the title, structure, functions or operations of the Department or a part of the Department (including corporatisation) as a result of an order made under the *Constitution of Queensland 2001* (Qld) or other Queensland legislation.

Milestones means those milestones specified in Item 6 of Schedule 2.

Moral Rights means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined by and granted under the *Copyright Act 1968* (Cth) and any similar rights existing under foreign laws.

Moral Rights Consent means a written consent to any act or omission by or on behalf of the licensee of that Project IP in relation to the Project IP (or the Background IP incorporated in the Project IP) which would otherwise constitute an infringement of that person's Moral Rights.

Net Commercialisation Proceeds means Commercialisation Proceeds received by a party with respect to Project IP less Commercialisation Costs.

Non-Commercial Use means any use of the Project IP by a party that does not constitute Commercialisation of the Project IP.

Objectives means the objectives of the Project as specified in Item 2 of Schedule 2.

Project means the project specified in Item 1 of Schedule 2.

Project Committee means the project committee established by the parties (if any) in accordance with clause 5.

Project IP means any IP Rights created, resulting from or arising in the course of, and as a direct result of carrying out the Project, pursuant to this agreement.

Project Leader means a Representative nominated by a party to act as the project leader for the Project as specified in Item 10 of Schedule 2, or as replaced under clause 4.1(b).

Project Plan means the plan specified in Schedule 2.

Reporting Period means the period specified in Item 12 of Schedule 2 or if not specified each quarter of a financial year during the Term.

Representative means an employee, agent, officer, director, contractor, subcontractor or other authorised representative of a party, and in the case of a Responsible Party, its Students.

Research Report means a report containing the information specified in clause 8.2 and as specified in Item 12 of Schedule 2.

Responsible Party means a party in its capacity as a tertiary institution or university that has a Student involved in the Project.

Responsibilities means for each party the tasks or activities specified as that party's responsibilities in Item 4 of Schedule 2.

Site means the place or places at which the Project is to be conducted as specified in Item 8 of Schedule 2.

Special Conditions means any special conditions specified in Item 8 of Schedule 1.

Student means a student of a Responsible Party enrolled to undertake postgraduate research studies whose Thesis, or a part of it, relates to the Project.

Term means the period commencing on the Commencement Date and ending on the Expiry Date, unless this agreement is terminated earlier in accordance with clause 27.

Thesis means the postgraduate research paper, dissertation and/or thesis written by a Student in satisfaction of the Student's research higher degree.

30.2 Interpretation

In this agreement:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) if more than one person is identified as the Collaborator, that expression refers to them, and the obligations of the Collaborator under this agreement bind them, jointly and severally;
 - (c) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (where incorporated), a partnership and a trust;
 - (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
 - (e) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
 - (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (h) a reference to a party, clause, schedule, attachment or annexure is a reference to a party, clause, schedule, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, attachments and annexures to it;
 - (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (j) **includes** in any form is not a word of limitation;
 - (k) a reference to **\$** or **dollar** is to Australian currency; and
 - (l) no rule of construction will apply to a provision of this agreement to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it.



Collaborative Agreement

Signed as an agreement

Signed for and on behalf of the **State of Queensland**
acting through the **Department of National Parks,**
Sport and Racing ABN 11 322 391 452 by

_____, a
person duly authorised to act in that behalf in the
presence of:

Signature of Witness

Name of Witness in full

Signature

Position

Date: _____

Option 2: if the Collaborator is a company **Delete if inapplicable OR**

Executed by the **Collaborator** in accordance with
section 127 of the *Corporations Act 2001* (Cth)

Signature of Director/sole Director

Name of Director/sole Director in full

Date: _____

Signature of Director/Secretary

Name of Director/Secretary in full

Date: _____

Signature of Witness

Name of Witness in full

Budget item	Total	Collaborator	Department
Reef Islands planning and design	\$50,000	\$25,000	\$25,000
On-ground activities including habitat restoration and reef and island resilience-building activities	\$3,100,000	\$1,550,000	\$1,550,000
Science program including modelling, mapping and monitoring	\$1,500,000	\$750,000	\$750,000
Capacity Building and knowledge sharing	\$150,000	\$75,000	\$75,000
Monitoring and Evaluation	\$300,000	\$150,000	\$150,000
Communication, engagement	\$300,000	\$150,000	\$150,000
Project management, administration and reporting	\$600,000	\$300,000	\$300,000
TOTAL (GST excl)	\$6,000,000	\$3,000,000	\$3,000,000

Instalment	Department payment	Department payment date (subject to receipt of a valid tax invoice from the Collaborator)	Collaborator match	Collaborator match date
1	\$1,000,000	Upon signing of this agreement by the parties	\$1,000,000	30 June 2018
2	\$1,000,000	31 July 2018	\$1,000,000	30 June 2019
3	\$1,000,000	31 July 2019	\$1,000,000	30 June 2020
Subtotal	\$3,000,000		\$3,000,000	

Clause	Changes/Comments
Parties at beginning of document	Changed GBRF ACN to ABN
Item 4	<p>Preference is for one owner – GBRF as the collaborator. This is simply because any IP generated in the project is actually going to be owned by those we subcontract to do the work – eg QPWS, JCU, CSIRO etc – so we won't have the legal right to share this with the State. Our standard approach is that IP vests with the organisation that created it, but that a license is granted to GBRF (and in this case QG and other project partners) for the purpose of implementing the project. We could extend this to granting QG a license to all project IP for any non-commercial purpose if that works better.</p> <p>This one party ownership of IP is then relevant to clause 13 of schedule 3, rather than clause 14.</p>
Item 5	Given the Item 4 then this becomes YES rather than NO as the IP vests in the
Item 12	Change Annual Audit Report to Annual Financial Report
Item 12	6 monthly progress report due dates – change 30 March to 31 March and 31 September to 30 September
Schedule 2 Item 1	Minor edits made to text
Schedule 2 Item 2	Corrected type in last dotpoint
Schedule 2 Item 3	Minor edits
Schedule 2 Item 6	<p>Happy with this schedule but just like to highlight that there is a possibility that GBRF may have funds raised for other islands earlier than the milestone decision point 9, dated 30 May 2019. For example, GBRF applied for \$500k last week from the NAB Foundation to commence activities in the Whitsundays. If successful GBRF would request that \$500k of the QG match be used to kickstart this work – which can run as a standalone component of work in the absence of other funds for the Whitsunday Islands National Park. Just want to make sure that we have the flexibility to have these discussions throughout the term and QG is comfortable with making the relevant contract amendments as required.</p>
Schedule 2 Item 8	Added the words – no later than 30 May 2019 to reflect the comments mentioned under Item 6 above. It may be advantageous to both parties to commence work on other islands earlier than June 2019.
Schedule 2 Item 9	Added GBRF key personnel

Signature Page	Deleted options 1 and 3 as GBRF is a company
Payment Instalment Table	Change Collaborator Payment to Collaborator match

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From: KENYON Kirstin [Kirstin.Kenyon@des.qld.gov.au]
Sent: Wednesday, 22 November 2017 10:09 AM
To: NICHOLS Elisa; HAMMILL Ben
Subject: FW: MEDIA RELEASE: Climate change arks for the Great Barrier Reef

From: Louise Sturgess [mailto:lsturgess@barrierreef.org]
Sent: Wednesday, 22 November 2017 10:00 AM
To: Louise Sturgess
Subject: MEDIA RELEASE: Climate change arks for the Great Barrier Reef

We are super excited to announce this new project for the Great Barrier Reef today. Please feel free to share the news through your networks.
Cheers
Louise

Reef island rescue plan to shore up climate change refuges

A network of climate change refuges will be established on five Great Barrier Reef islands with the launch of the first phase of a \$AUD 14 million, 10-year program today by the Great Barrier Reef Foundation on Lady Elliot Island.

Lady Elliot Island on the southern Great Barrier Reef will be the first new climate change 'ark' included in the Reef Island Refuge Initiative in 2018. A tailored on-ground action program will be developed to expand and accelerate the existing, award-winning environmental work already underway to further boost and accelerate the island's resilience to climate change and other stresses.

Selected for its outstanding nature conservation values, Lady Elliot Island is one of the most important sites in the Great Barrier Reef World Heritage Area for seabird nesting and an important habitat for marine turtles, manta rays, dolphins, sharks and coral reefs.

UK-based Australian philanthropist Stephen Fitzgerald donated \$AUD 1 million to establish the Reef Island Refuge Initiative, a partnership that brings together the Great Barrier Reef Foundation, Great Barrier Reef Marine Park Authority (GBRMPA), Queensland Government and the Queensland Parks and Wildlife Service, island-based businesses and communities, and research and science agencies.

Environment Minister Steven Miles announced \$3 million in matched funding for the Reef Island Refuge Initiative from the Queensland Government.

Great Barrier Reef Foundation Managing Director Anna Marsden said protecting and restoring the Great Barrier Reef's most precious land and sea scapes in the face of climate change is a priority in light of the current pressures facing the Reef.

"Islands are a critical part of the whole Great Barrier Reef ecosystem and play a key role in the life cycle of so many species of fauna and flora," Ms Marsden said.

"Both global climate change and local threats are impacting Great Barrier Reef islands and these impacts are only projected to increase into the future, which is why we have to act now to ensure the most critical climate refuges are maintained," she said.

'Arks' for the Reef

"By working to restore and protect these island refuges, we're essentially creating a series of 'arks' to help our precious Reef wildlife and plants to survive in an increasingly challenging environment.

"Lady Elliot Island is one of five Great Barrier Reef islands/island groups we've prioritised for urgent action based on an assessment of biodiversity, conservation value, and threat level to these values carried out by Queensland Parks and Wildlife and the Great Barrier Reef Marine Park Authority.

"With the first stage of funding secured for the program, we will be bringing together an expert project team to work with Lady Elliot Island Eco Resort Managing Director Peter Gash and his team to develop a tailored program to boost the island's resilience and provide a

sustainable habitat for its amazing seabirds, turtles, manta rays, dolphins, sharks and coral reefs.

“We have to acknowledge the outstanding results already achieved by the current and previous custodians of Lady Elliot Island who have worked incredibly hard to restore it from its historical use as a guano mine site and to create an environmentally sustainable, award-winning ecotourism experience. The Foundation is thrilled to have the opportunity to take this great program to the next level with all of our partners.

“The project will be tailor made to meet the unique needs of the island. It will include elements such as developing detailed resilience and habitat maps for the island and its adjoining coral reefs, climate change impact modelling, piloting novel monitoring technologies such as acoustics, drones, under and above water automated vehicles, thermal imaging, machine learning and more. On ground adaptation and restoration activities and carbon mitigation will also form part of the overall program.”

Lady Elliot Island Eco Resort Managing Director Peter Gash said the project will build on and accelerate the award-winning work already underway to improve the island’s sustainability and contribute to a healthy Great Barrier Reef.

“Preserving the natural environment of the Great Barrier Reef is something that I am extremely passionate about,” Mr Gash said.

“Lady Elliot Island is a remarkable place that hosts some of the most extraordinary marine and terrestrial life and we need to do our best to look after them. It has the second highest diversity of breeding seabirds of any island on the Great Barrier Reef and is one of only two places on the Reef where endangered red-tailed tropic birds breed. Endangered loggerhead and green turtles also nest here and it’s renowned as a haven for giant manta rays and many other marine creatures.

“The island is also a recovering mine site which was intensively mined for guano in the late 1800s and stripped of all its vegetation and top soil. We’ve made great progress in working to revegetate it by planting over 4000 native trees but there is still more work to be done.

“Over 90% of the resort’s energy comes from our solar power plant and we’re aiming to achieve 100% sustainability by 2020.

“Working with the Great Barrier Reef Foundation, Queensland Government, Great Barrier Reef Marine Park Authority and other partners, this restoration project will be underpinned by strong science. We’re excited to be able to take the initiatives that we and the island’s previous custodians started to the next level and introduce new ones to ensure that Lady Elliot Island remains a biodiversity bright spot for the Reef into the future.”

The Reef Island Refuge Initiative was made possible through an establishing investment from the former chairman of Goldman Sachs, Australia and New Zealand, Stephen Fitzgerald, who is now based in the UK.

“I’ve followed and supported the Great Barrier Reef Foundation’s work for many years and, while there are already significant initiatives underway to protect the Reef, it’s clear that the Reef needs more help to give it the best chance of a bright future,” Mr Fitzgerald said.

“Climate change is the number one threat facing the Great Barrier Reef today and the Reef Island Refuge Initiative will improve the ability of some of the most important places on the Reef to withstand and survive our changing climate.

“Importantly, the program aligns with the goals of the Reef 2050 Plan and will help protect the outstanding values of our World Heritage site which has been valued at \$56 billion by the recent Deloitte Access Economics report commissioned by the Great Barrier Reef Foundation.

“It’s a privilege to be part of this project with the Great Barrier Reef Foundation and its partners, and I hope that others will also support this quest to protect the world’s largest reef for generations to come,” he said.

Speaking from the Island, Minister for the Great Barrier Reef Steven Miles said the Government would contribute \$3 million to the program to protect the Reef’s most precious land and sea scapes from climate change.

“Tackling climate change is vital for protecting our iconic places, including the Great Barrier Reef,” Mr Miles said.

“But global climate change and mass coral bleaching are impacting the islands.

“The advice of scientific experts is clear: action needs to be taken urgently to address climate change, and we need to accelerate our efforts to reduce other pressures.”

Great Barrier Reef Marine Park Authority Dr Russell Reichelt welcomed the work at Lady Elliot Island.

“We’re delighted to see a continuing focus on building resilience in the Great Barrier Reef, including islands,” Dr Reichelt said.

“Like all coral reefs around the world, the Great Barrier Reef is under pressure – climate change impacts on coral reefs are predicted to worsen and critically affect the survival of coral reefs globally without the strongest possible climate mitigation,” he said.

Ms Marsden said the new initiative builds on the momentum and success of another Reef island project supported by the Foundation.

“The Raine Island Recovery Project is working to restore the world’s largest green turtle nesting site with a coordinated program of science, intervention, innovation and on ground conservation,” Ms Marsden said.

“A key part of the Raine Island Recovery Project’s success has been achieved by working with local communities, businesses, traditional owners, scientists and government agencies to facilitate resilience-building to improve the outlook for the Great Barrier Reef.

“We’ll be applying this proven approach to the Lady Elliot Island project and to each of the island projects within this new Reef Island Refuge Initiative as they’re added.”

The Great Barrier Reef Foundation is working to confirm additional funding partners for the Reef Island Refuge Initiative. These will be announced once specific funding commitments are agreed. The other priority Great Barrier Reef islands that will form part of this initiative will be announced when further project funding is secured.

ENDS

Media contacts: Louise Sturgess, Great Barrier Reef Foundation | S.78B(2) | lsturgess@barrierreef.org
Amy Gash, Lady Elliot Island Eco Resort | S.78B(2) | amy@ladyelliott.com.au
Great Barrier Reef Marine Park Authority 07 4750 0846 | media@gbmmpa.gov.au

Vision and images: Available via [dropbox](#)

Note: Due to limited mobile phone reception on Lady Elliot Island, contact may only be available via Reception from 9.30am-2.45pm on 22 November
07 4156 4444

ABOUT

Great Barrier Reef Foundation – the lead charity dedicated exclusively to protecting the Great Barrier Reef through funding projects grounded in science, technology engineering and on-ground action to ensure its long-term conservation. The Foundation is uniquely positioned to lead the collaboration of business, science, government and philanthropy to deliver projects that fill gaps and accelerate the results needed to make a positive impact for the Great Barrier Reef and reefs globally.

Lady Elliot Island – Lady Elliot Island first appeared above sea level roughly 3,500 years ago. Seabirds landed on the bare coral cay bringing with them the vital guano and seeds necessary to establish vegetation on the island. Guano miners first appeared on Lady Elliot Island in 1863 and remained on the island for a decade. The destructive practice of extracting the guano from the soil resulted in the removal of all the vegetation present except for the eight *Pisonia* trees which remain today. Roughly one metre of surface soil was removed from Lady Elliot during this period. In an attempt to help stranded sailors, the Queensland Government placed goats on each of the islands on the Great Barrier Reef. Unfortunately, this prevented any new growth to properly establish resulting in a barren island until the late 1960s.

Both the previous and current custodians of the island have worked incredibly hard to work towards restoring the island to its previous natural condition and deliver an award-winning ecotourism experience for visitors. Peter Gash, the Managing Director and current leaseholder, took over the guardianship of Lady Elliot Island Resort in 2005 and has made significant changes to make the Resort carbon neutral. A revegetation program and removal of weed and pest species, waste management, water desalination and treatment, and solar power generation are key elements of the island’s commitment to a sustainable ecotourism operation.

Lady Elliot Island Eco Resort has been awarded Advanced Eco Certification by Ecotourism Australia. The Resort has been recognised as one of the leading ecologically sustainable tourism operators on the Great Barrier Reef, providing guests with an opportunity to experience and learn about the Island’s unique ecosystem with minimal impact. Only a limited number of guests are allowed on the Island at any one time and all activities are conducted in accordance with best practice and minimal impact guidelines to ensure no damage occurs to the island or reef.

In November, Lady Elliot Island Eco Resort won the Steve Irwin Award for Ecotourism at the 2017 Queensland Tourism Awards.

Stephen Fitzgerald – the former chairman of Goldman Sachs, Australia and New Zealand, now based in the UK. A long-standing supporter of reef research, through his private family foundation Stephen has also contributed to other Great Barrier Reef Foundation projects including the five-year Sea-quence project, the world’s largest coral genomics sequencing project that created a world first in genetically sequencing a whole coral organism and which has just released the genetic codes for nine Great Barrier Reef coral species.

Raine Island Recovery Project – a five year, \$7.95 million partnership between BHP, the Queensland Government, the Great Barrier Reef Marine Park Authority, Wuthathi Nation and Kemer Meriam Nation (Ugar, Mer, Erub) Traditional Owners and the Great Barrier Reef Foundation that aims to protect and restore the island’s critical habitat to ensure the future of key marine species, including green turtles and seabirds.

Louise Sturgess
Communications Manager | Great Barrier Reef Foundation
Work days: Monday – Thursday

d + 61 7 3064 0880 | m S.78B(2) | e lsturgess@barrierreef.org | barrierreef.org
Level 13, 300 Ann Street, Brisbane QLD 4000 | PO Box 2725, Fortitude Valley BC, QLD 4006



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Collaborative Agreement

made at Brisbane on the 3 day of APRIL 2018

Between State of Queensland acting through the Department of Environment and Science
ABN 46 640 294 485

(Department)

Great Barrier Reef Foundation ABN 82 090 616 443

(Collaborator)

Background

- A. The Department and the Collaborator entered into a written agreement dated 22 December 2016 (**Matched Funds Agreement**) for the purpose of raising funds for a water quality project in a reef catchment that is agreed by the parties.
- B. Under the Matched Funds Agreement, the parties agreed to contribute \$3 million each for the purpose of raising funds for a water quality project in a reef catchment, to be agreed by the parties. The total amount of funds for the Project is \$6 million (ex GST).
- C. The parties have agreed on the Project and the Contributions that will be made by each party, and intend to collaborate together on the Project.
- D. The parties intend to terminate the Matched Funds Agreement and to conduct the Project in accordance with the terms and conditions of this agreement, which consists of:
 - (a) this cover page and the signing page;
 - (b) Schedule 1 – Agreement details;
 - (c) Schedule 2 – Project Plan;
 - (d) Schedule 3 – Terms and conditions; and
 - (e) Annexure 1 – Reef Islands Project Proposal.
- E. Capitalised words and phrases have the meanings specified in clause 31.



Collaborative Agreement

Schedule 1 – Agreement details

Item 1 Party details

Department:

Party Name: State of Queensland acting through the Department of Environment and Science

ABN: 46 640 294 485

Street Address: Level 10, 400 George Street, BRISBANE QLD 4000

Contact Name: Ben Hammill

Contact Postal Address: GPO Box 2454 BRISBANE QLD 4001

Contact Telephone: 07 3330 5760

Contact Facsimile: N/A

Contact Email (notices cannot be given by email): ben.hammill@des.qld.gov.au

Collaborator:

Party Name: Great Barrier Reef Foundation

ABN/ACN: ABN 82 090 616 443

Street Address: Level 13, 300 Ann Street, BRISBANE 4000

Contact Name: Theresa Fyffe

Contact Postal Address: PO Box 2725, Fortitude Valley BC, QLD, 4006

Contact Telephone: 07 3252 7555

Contact Facsimile: N/A

Contact Email (notices cannot be given by email): tfyffe@barrierreef.org

Item 2 Term: (clauses 28.1 and 31.1)

Commencement Date: 1 February 2018

Expiry Date: 30 September 2021

Item 3 Background IP: (clause 12)

Background IP of the Department: Nil

Background IP of the Collaborator: Nil

Item 4 Ownership of Project IP: (clauses 13, 14 and 15)

The Collaborator owns the Project IP, subject to clause 13.1(e)(i)

Department –Additional Licence: (clauses 14.1(c) and 31.1)

Will the IP Owner grant an Additional Licence? Yes

Item 5 Confidential Information: (clauses 18 and 31.1)

Confidential Information of Nil
the Department:

Confidential Information of Nil
the Collaborator:

Item 6 Insurance: (clause 20)

Public Liability covering legal liability to third parties for bodily injury or property damage:	\$10,000,000.00	During the Term
Workers' Compensation:	As required by law	During the Term
Professional indemnity appropriate and relevant to the conduct of the Project:	\$1,000,000.00	7 years after the Expiry Date

Item 7 Special Conditions: (clauses 2 and 31.1)

Special Condition 1:

The parties agree that the following documents will form part of this agreement, once they are finalised in accordance with the relevant Milestone:

- (a) Work Program (Milestone 2);
- (b) Communication and engagement strategy (Milestone 3); and
- (c) Monitoring and evaluation plan (Milestone 4).

Special Condition 2:

The Department may at any time, upon reasonable written request, require an audited financial statement for a financial year, including a statement by the auditor that the audited financial statement is true and correct and whether in his/her opinion there are any receipts, outgoings and expenditures received or incurred by the Collaborator that were not received or incurred in carrying out the Project. This is in addition to any Audit that the Department may carry out in accordance with clause 10.

IMPORTANT: Special Conditions take precedence over the terms of this agreement. Legal advice should be sought on any Special Conditions that are inconsistent with the terms of the agreement or which are significant (e.g. involve intellectual property, warranties, indemnities or liability). If no Special Conditions insert "NIL".



Collaborative Agreement

Schedule 2 – Project Plan

Item 1 Project: (clauses 3 and 31.1)

The Project is the Reef Islands Project as outlined in Annexure 1. The Project will focus on protecting the Reef's most precious land- and sea-scapes - with a focus on islands and their adjacent waters. Five island groups have been prioritised based on an assessment of the Great Barrier Reef islands undertaken by Queensland Parks and Wildlife and the Great Barrier Reef Marine Park Authority. This assessment considered both the biodiversity and conservation value of each island and the threat level to these values due to global and local stressors. As a result of that assessment, Lady Elliot Island has been selected as the first priority project to be undertaken under the Reef Islands Project. The project is a collaboration between the Queensland Government and the Collaborator to achieve the objectives.

Item 2 Objectives: (clauses 3 and 31.1)

To achieve the following outcomes in relation to the Lady Elliot Island priority project:

- Maximise ecosystem resilience to climate change and other stressors
- Enhance natural vegetation communities
- Minimise impacts of introduced flora and fauna
- Maximise breeding opportunities for important coastal birds and marine turtle species while having regard to existing footprint and uses
- Enhance the resilience of adjoining coral reefs.

Item 3 Methodology: (clause 3)

- Develop a detailed resilience map for Lady Elliot Island and its adjoining coral reefs, including local scale hydrodynamics and ocean chemistry.
- Model predicted impacts of climate change on island geomorphology and ecosystems, including potential range expansions of critical species
- Strengthen island condition and trend monitoring and reporting to support a complete adaptive management approach for islands and deliver more resilient island ecosystems.
- Pilot novel, cost-efficient monitoring platforms and methods such as acoustic monitoring of birds' nests to record hatchling success, under and above water automated vehicles, drones, thermal-imaging, automated image analyses via machine learning etc.
- Develop detailed vegetation and geomorphological maps including sand budgets
- Implement on ground and in water restoration and assisted recovery activities
- Strengthen stewardship activities with communities and reef businesses
- Increase indigenous engagement and indigenous management opportunities
- Develop carbon budgets for each island and explore ways to decrease carbon footprints - e.g. carbon neutral GBR islands.

Item 4 Responsibilities: (clauses 3 and 31.1)

Responsibilities of the Department:

The Department will provide:

- funding to the Collaborator to undertake the Project and monitoring the Project to ensure it meets specified milestones;
- the Project plan template and will provide support in co-designing the Project, including technical advice as required; and
- relevant participation in the Project Committee.

Responsibilities of the Collaborator:

The Collaborator will:

- manage the Project, including Project design, delivery, monitoring, evaluation and communications;



Collaborative Agreement

- design the Project in collaboration with the Department and other stakeholders;
- be responsible for fundraising to match the monetary Contribution of the Department (\$3 million); and
- Lead and convene the Project Committee

Item 5 Contributions: (clauses 3, 8 and 31.1)

Contributions of the Department:	Monetary Contribution of \$3,000,000 (excl. GST) as set out below in Item 5A
Contributions of the Collaborator:	Monetary Contribution of \$3,000,000 (excl. GST) as set out below in Item 5B

Item 5A Department Monetary Contribution

Instalment	Department Contribution	Department Cash Contribution Payment Date
1	\$3,000,000	Payment will be made within 21 days of: (a) provision of a valid tax invoice to the Department; and (b) signing of this agreement by both parties.

Item 5B Collaborator Contribution

Instalment	Collaborator Contribution	Collaborator Cash Contribution Payment Date
1	\$1,000,000	30 June 2019
2	\$1,000,000	30 June 2020
3	\$1,000,000	30 June 2021

Item 6 Milestones: (clauses 3 and 31.1)

No.	Milestone	Milestone Date
1	Hold forum to explore management and remediation options	28 February 2018
2	Produce a work program for the Project	15 April 2018
3	Produce a communication and engagement strategy	15 April 2018
4	Agreed monitoring and evaluation plan in place	30 May 2018

5	Agree on delivery arrangements, including options for traditional owner engagement	30 June 2018
6	Commence on ground management and remediation activities on Lady Elliot Island as informed by Milestone 1, Milestone 2 and Milestone 5	31 August 2018
7	Subject to final scope and budget for Lady Elliot Island commence selection and scoping of next priority island.	30 September 2018
8	Ongoing communication of outcomes from the Project, including visualisations, videos etc.	September and March each year of the Project commencing in September 2018
9	Produce a Mid-term Report synthesising the initial outcomes of the Project	30 March 2020
10	Agree on whether to expand the scope beyond Lady Elliot Island	30 May 2019
11	Produce a Final Report synthesising the final outcomes of the Project	30 May 2020

Item 7 Budget: (clauses 3 and 31.1)

Budget item	Total	Collaborator	Department
Reef Islands planning and design	\$50,000	\$25,000	\$25,000
On-ground activities including habitat restoration and reef and island resilience-building activities	\$3,100,000	\$1,550,000	\$1,550,000
Science program including modelling, mapping and monitoring	\$1,500,000	\$750,000	\$750,000
Capacity Building and knowledge sharing	\$150,000	\$75,000	\$75,000
Monitoring and Evaluation	\$300,000	\$150,000	\$150,000
Communication, engagement	\$300,000	\$150,000	\$150,000
Project management, administration and reporting	\$600,000	\$300,000	\$300,000
TOTAL (GST excl)	\$6,000,000	\$3,000,000	\$3,000,000

Item 8 Site: (clauses 3 and 31.1)

The project will initially focus on Lady Elliot Island, with scope to expand to the Whitsunday Islands National Park, Hinchinbrook Island National Park and the Michaelmas and Upolu Cays National Park. A decision will be made by the Project Committee on whether to expand the scope beyond Lady Elliot Island no later than 30 May 2019, following the initial implementation phase.

Item 9 Key Personnel: (clauses 4.3 and 31.1)

Key Person 1: Kirstin Kenyon, Director from the Department

Key Person 2: Rachel D'Arcy, Manager from the Department

Key Person 3: Ben Hammill, Principal Project Officer from the Department
 Key Person 4: Jodie Mehrstens, Senior Scientific Officer from the Department
 Key Person 5: Theresa Fyffe, Director from the Collaborator
 Key Person 6: Petra Lundgren, Science Program Manager from the Collaborator

Item 10 Project Leader: (clauses 5 and 31.1)

Theresa Fyffe, Director of Projects and Partnerships from the Collaborator

Item 11 Project Committee: (clauses 6 and 31.1)

Will the parties establish a Project Committee? Yes

If yes, the Project Committee will be comprised of: The Key Personnel set out in Item 9 above.

Frequency of Project Committee meetings: Quarterly, with the first meeting to be held in February 2018

Item 12 Reporting: (clauses 9 and 31.1)

Report Description	Reporting Period	Report requirements	Due date
6 monthly Research Reports	Every 6 months during the Term for the following periods: <ul style="list-style-type: none"> • 1/4/2018 – 30/9/2018 • 1/10/2018 – 31/3/2019 • 1/10/2019 – 30/9/2019 • 1/10/2019 – 31/3/2020 • 1/4/2020 – 30/9/2020 • 1/10/2020 – 31/3/2021 	Assessment of progress toward the Milestone and financial performance, to contain at a minimum: <ul style="list-style-type: none"> (a) progress on the Milestones to date; (b) expected outcomes of future Milestones; (c) Update on expenditure of all Contributions to date; and (d) risks/issues and remedial actions 	Within 30 days of the end of each of Reporting Period: <ul style="list-style-type: none"> • 31/10/2018 • 30/4/2019 • 31/10/2019 • 31/10/2020 • 30/4/2021 (except for 30 April 2020, where the Collaborator will provide a Mid-Term Report)
Mid-Term Report	From the Commencement Date to 31 March 2020	Mid-term report containing at a minimum: <ul style="list-style-type: none"> (a) progress on the Milestones to date; (b) expected outcomes of future Milestones; (c) Update on expenditure of all Contributions to date; and (d) risks/issues and remedial actions 	30 April 2020
Financial Report	Annually during the Term	Financial report for the period from the Commencement Date to 30 June 2018 and then for each	31 October each year during the Term

		subsequent financial year ending 30 June during the Term	
Final Report	The Term	<p>Final assessment against all Milestones and financial performance to contain at a minimum:</p> <ul style="list-style-type: none"> (a) progress on the Milestones to date; (b) expected outcomes of future Milestones; (c) Update on expenditure of all Contributions to date, summary of project purpose; and (d) risks/issues and remedial actions 	30 August 2021



Collaborative Agreement

Schedule 3 – Terms and conditions

1. Precedence

Where any inconsistency exists between:

- (a) the Special Conditions;
- (b) this Schedule 3;
- (c) Schedule 1 (except the Special Conditions);
- (d) Schedule 2; or
- (e) any other schedules or annexures of this agreement,

the provisions will take precedence in that order to the extent necessary to resolve the inconsistency.

2. Special Conditions

The parties agree to be bound by any Special Conditions.

3. Termination of the Matched Funds Agreement

- (a) The Department and the Collaborator agree, subject to the terms and conditions of this agreement, to terminate the Matched Funds Agreement on and from the Commencement Date of this agreement.
- (b) The parties acknowledge and agree that on termination of the Matched Funds Agreement under clause 3(a), none of the parties will have any rights nor obligations under the Matched Funds Agreement except as expressly provided in this agreement.

4. Project

4.1 Nature of the Project

Each party acknowledges that the Project involves the conduct of genuine research and that the outcomes of the Project are not yet known.

4.2 Conduct of the Project

Each party must:

- (a) conduct the Project and meet its Responsibilities in accordance with Schedule 2;
- (b) conduct the Project in accordance with generally accepted professional, scientific and ethical principles and standards;
- (c) obtain and/or comply with any statutory ethical clearances required for the conduct of the Project including any required animal ethics clearances;
- (d) make its Contributions on the terms and at the times set out Item 5 of Schedule 2 or as otherwise specified in this agreement;
- (e) use its best endeavours to:
 - (i) achieve the Objectives; and
 - (ii) meet the Milestones by the due dates;
- (f) apply all Project funds, including all monetary Contributions, solely for conducting the Project and in accordance with the Budget;
- (g) ensure that its Representatives and Key Personnel carry out its Responsibilities:
 - (i) at the Site;

- (ii) with due professional care and skill; and
 - (iii) under the supervision of the Project Leader;
- (h) keep full and accurate records of:
 - (i) its compliance with its Responsibilities; and
 - (ii) work done and results achieved in regards to the Project;
- (i) supply the other party with information the other party reasonably requires so that it is not delayed in performing its obligations under this agreement; and
- (j) act in good faith towards the other party in conducting the Project.

4.3 Key Personnel

- (a) Each party will:
 - (i) use its best endeavours to ensure that the Project is carried out by its Key Personnel; and
 - (ii) ensure that its Key Personnel are competent and have the necessary skills to carry out the Project.
- (b) If any of a party's Key Personnel are not available to carry out the Project, that party may replace him/her with persons of substantially equivalent experience and expertise by giving prior written notice to the other party.

5. Project Leader

5.1 Appointment

- (a) The parties must:
 - (i) appoint, and maintain at all times during the Term, a Project Leader; and
 - (ii) ensure that the Project Leader:
 - (A) has read this agreement, including the Project Plan;
 - (B) is appropriately qualified to manage the Project; and
 - (C) is appropriately authorised (subject to any limitations made known to the parties by the date of their appointment) to make decisions in relation to the Project in accordance with clause 5.2.
- (b) The parties may replace the Project Leader with a person of substantially equivalent experience and expertise at any time during the Term.

5.2 Role of Project Leader

The parties agree that the Project Leader will have responsibility for and authority to:

- (a) oversee the conduct of the Project;
- (b) consider Research Reports;
- (c) discuss and recommend to the parties or the Project Committee, if applicable, any proposed variations to any aspect of the Project; and
- (d) manage the Project IP, including by:
 - (i) identifying Project IP when it is created; and
 - (ii) making recommendations to the parties or the Project Committee, if applicable, about Project IP that should be:
 - (A) retained as Confidential Information;
 - (B) protected by registration or any other means; or
 - (C) disclosed in any publication in accordance with clause 17.

6. Project Committee

6.1 Establishment

- (a) Unless Item 11 of Schedule 2 specifies otherwise, the parties will establish a Project Committee to:
 - (i) make decisions regarding the Project Leader on the parties' behalf in accordance with clause 5.1;
 - (ii) administer this agreement; and
 - (iii) oversee the Project.
- (b) Each party will bear its own costs of participating in the Project Committee.
- (c) All matters to be determined by the Project Committee will be decided unanimously.

6.2 Composition

- (a) The Project Committee will be comprised of an equal number of Representatives from each of the parties.
- (b) At the Commencement Date, the Project Committee will be comprised of the Representatives specified in Item 11 of Schedule 2.
- (c) The Project Committee is to be chaired by a Representative of the Department (**Chairperson**).
- (d) If a position listed in specified in Item 11 of Schedule 2 ceases to exist during the Term, a Representative of the party occupying a position which has some or all of the responsibility for the previous position will occupy the relevant position on the Project Committee.
- (e) The parties may alter the composition of the Project Committee or the identity of the Chairperson by agreement.

6.3 Meetings

- (a) The Project Committee will meet at the frequency specified in Item 11 of Schedule 2 unless otherwise agreed, with the meeting to be convened and chaired by the Chairperson. If the Chairperson cannot attend a meeting of the Project Committee, another member of the Project Committee nominated by the Department will act as Chairperson for that meeting. Meetings may be held using electronic and other means of communication.
- (b) The quorum for a meeting of the Project Committee is one member nominated by each party.
- (c) At each meeting the Project Committee will discuss:
 - (i) the status and progress of the Project;
 - (ii) each party's Contribution to the Project;
 - (iii) any recommendations made by the Project Leader; and
 - (iv) any other issues relevant to this agreement or the Project.
- (d) The parties agree to negotiate in good faith to resolve and agree upon a course of action on any issue that has been raised in the meeting.
- (e) If, as part of any agreement reached pursuant to clause 6.3(b), the parties agree to amend this agreement, the parties acknowledge that such amendment will have no effect unless and until this agreement is amended in accordance with clause 30.5.
- (f) If an issue cannot be resolved in accordance with this clause 6.3 at any time, 2 or more members of the Project Committee may notify the parties that they wish to refer the matter to resolution pursuant to clause 26.

7. Subcontracting

- (a) Neither party will subcontract the carrying out of the Project or any part of the Project without the prior approval in writing of the other party (which will not be unreasonably withheld).
- (b) If written consent is provided under clause 7(a), the party subcontracting the carrying out of all or part of the Project (**Subcontracting Party**) will:

- (i) be responsible for the acts or omissions of any subcontractor as if they were the acts or omissions of the Subcontracting Party and the Subcontracting Party indemnifies the other party for any costs, claims, losses or expenses incurred by the other party due to the acts or omissions of the subcontractor;
- (ii) ensure the terms and conditions of the subcontract, at a minimum, require that the subcontractor must comply with this agreement as if the subcontractor was the Subcontracting Party, including (but not limited to) clauses 10, 18 and 19; and
- (iii) ensure the subcontractor complies with the terms and conditions of the subcontract and clause 13.1(d).

8. Contributions and records

8.1 Obligation

An obligation of a party to provide a Contribution is subject to the party's reasonable satisfaction that:

- (a) all Milestones related to that payment have been achieved; and
- (b) the other party is not otherwise in breach of this agreement.

8.2 Monetary Contributions

- (a) Unless expressly provided otherwise in this agreement, neither party has any liability to:
 - (i) fund the Project;
 - (ii) pay or reimburse money to the other party; or
 - (iii) pay or reimburse the other party for any outstanding liability of the party in respect of any contract, commitment or expenditure of the other party in relation to carrying out the Project.
- (b) All monetary Contributions provided by a party under this agreement must be used for the sole purpose of carrying out the Project, in accordance with the Budget.
- (c) Where a party (**Payer**) pays monetary Contributions to the other party (**Payee**), the Payee will, whenever reasonably required by the Payer, promptly produce invoices, receipts or other evidence satisfactory to the Payer of the proper use and application of the monetary Contributions provided by the Payer in accordance with the Budget.
- (d) If part of any payment of monetary Contributions to a Payee remains uncommitted at the end of the Term, the amount of uncommitted monetary Contributions will become a debt due and payable to the Payer.

8.3 Repayment of Department Contribution

- (a) The Collaborator agrees that the Department is making one upfront monetary Contribution subject to the Collaborator making three Part Contributions in accordance with Item 5B of Schedule 2.
- (b) If the Collaborator is unable to fulfil a Part Contribution in accordance with Item 5B of Schedule 2, the Collaborator must notify the Department immediately in writing and the Department may:
 - (i) require the Collaborator to raise, for the next financial year, the Part Contribution owing for that financial year plus the difference for the Part Contribution not raised for the previous financial year; or
 - (ii) require the Collaborator to re-pay part of the Department's monetary Contribution which equals that amount of the Part Contribution not matched by the Collaborator; or
 - (iii) terminate this agreement in accordance with clause 28.3.

8.4 Non-monetary Contributions

- (a) Unless otherwise agreed in writing, non-monetary Contributions provided by a party remain the absolute property of that party, or where non-monetary Contributions have been provided by a third party, of the third party.

- (b) A party providing an item of equipment will be solely responsible for the purchase, installation, maintenance and insurance of such items.

8.5 Records of Contributions

Each party will keep and retain for 7 years after termination of this agreement, full and accurate accounting records of and all receipts for:

- (a) Contributions it has made;
- (b) Contributions received from another party; and
- (c) all money used or applied and outgoings and expenditure incurred, in carrying out the Project.

8.6 Records of Project results

Each party will keep full and accurate records of the efforts taken to comply with its Responsibilities, in sufficient detail and appropriate form to properly reflect all work done and results achieved in regards to the Project.

9. Reporting

9.1 Research Reports

At the times specified in Item 12 of Schedule 2, or if no times are specified, within 10 Business Days of the end of each quarter of a financial year during the Term, the Collaborator must provide the Department with a Research Report.

9.2 Content of Research Reports

Each Research Report must be in a form reasonably required by the Department and include:

- (a) in respect of each Reporting Period:
 - (i) the progress of and Responsibilities undertaken by the Collaborator in the performance of the Project;
 - (ii) the Contributions provided by the Collaborator;
 - (iii) details of Milestones met;
 - (iv) details of Milestones delayed in being met (including the reasons for the delay);
 - (v) any material technical developments in the Project;
 - (vi) any changes in the Key Personnel or Project Leader;
 - (vii) any Background IP of either party used in the Project; and
 - (viii) any Project IP or likely Project IP generated by either party; and
- (b) any recommendations of the Collaborator on the future conduct of the Project including:
 - (i) proposed variations to the Project Plan; and
 - (ii) applications for registration or protection of Project IP.

9.3 Final Report

Within 20 Business Days after the end of the Term or as otherwise specified in Item 12 of Schedule 2, each party must submit a final report to the other party specifying all of the information as required for the Research Reports (**Final Report**).

9.4 Cooperation

Each party must provide all information reasonably required by the other party to enable it to prepare the Research Reports and the Final Report required under this clause 9.

10. Access to the Project

- (a) Each party will ensure that the other party is allowed, during normal business hours, access to the Site and will provide all reasonable assistance to allow the other party's Representatives to:
 - (i) speak to the persons associated with the Project;
 - (ii) examine, copy and otherwise inspect any books of account or technical records relating to the Project;
 - (iii) inspect any non-monetary Contributions used in the carrying out of the Project; and
 - (iv) make any other inquiries of any person who may be associated with the generation and/or examination of Project IP.
 - (b) Each party will comply and ensure that its Representatives comply with all reasonable rules, directions and procedures including those relating to security and to work health and safety in effect at the Site that each party is made aware of or ought reasonably to be aware of.
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11. Audit

11.1 Audit

The Collaborator will, upon 5 days' notice or as otherwise agreed, permit and provide persons nominated by the Department (**Auditors**) supervised access to the Collaborator's premises, books, records, documents, computer systems, equipment and other property relevant to the performance of this agreement to verify compliance by the Collaborator with its obligations under this agreement and its likely capacity to continue to comply with its obligations in the future (**Audit**).

11.2 Security

In undertaking the Audit, the Department will ensure that the Auditors comply with reasonable security requirements of the Collaborator made known to the Department.

11.3 Cooperation

The Collaborator will do things reasonably necessary to facilitate a prompt and efficient Audit.

11.4 Copies of materials

The Auditors may make copies of books, records, documents and other materials they have access to as part of an Audit.

11.5 Costs of the Audit

The Department is responsible for costs incurred by it in relation to an Audit unless the Audit reveals material non-compliance of the Collaborator with its obligations under this agreement in which case the Collaborator is liable to the Department for the costs incurred by the Department in relation to the Audit.

11.6 Disclosure of Audit information

The Department may disclose the Audit findings and the Audit recommendations to a third party.

11.7 Audit recommendations

If requested by the Department, the Collaborator will implement Audit recommendations and comply with Audit findings to the extent necessary to ensure that the collaborator continues to perform its obligations in accordance with this agreement.

12. Background IP

12.1 Licence to Background IP

Subject to any existing licences or encumbrances disclosed by a party at the time of making its Background IP available, the parties grant to each other a non-exclusive, non-transferable, royalty free licence to use each other's Background IP:

- (a) during the Term, for the purpose of conducting the Project in accordance with this agreement; and

- (b) during and after the Term, to the extent that the Background IP is necessary to use the Project IP as licensed under this agreement.

12.2 Background IP warranties

Each party represents and warrants to the other party that:

- (a) to the best of its knowledge at the Commencement Date without conducting patent or other IP Rights application or registration searches, and except to the extent disclosed at Item 3 of Schedule 1, the Background IP may be used without restriction in the conduct of the Project; and
- (b) except with the prior written approval of the other party (not to be unreasonably withheld or delayed), it will not assign, encumber or otherwise deal with, dispose of or Commercialise its Background IP in a manner that would limit a party's ability to use that Background IP in accordance with this agreement.

12.3 Ownership of Background IP

This agreement does not affect ownership of Background IP.

12.4 Protection of Background IP

Each party agrees that:

- (a) it will take all reasonably necessary steps (at the cost of a licensor of the Background IP) and provide assistance as reasonably required by that licensor to protect the licensor's Background IP; and
- (b) it will give to the licensor of the Background IP prompt notice of any suspected or actual infringement of Background IP of which it becomes aware.

13. Project IP – General provisions

13.1 Ownership of Project IP

- (a) Each party will promptly notify the other party in writing of:
 - (i) any Project IP created; and
 - (ii) any improvements made to the Project IP,and in any event not less than 20 Business Days following its creation or improvement.
- (b) The ownership of Project IP (excluding copyright in any Thesis) is as set out in Item 4 of Schedule 1.
- (c) Where a Student generates Project IP, the Responsible Party must ensure that the Student assigns any and all Project IP (other than copyright in any Thesis) in accordance with clause 14 or clause 15, whichever is applicable.
- (d) If the Department has engaged a subcontractor in accordance with clause 7, the Department will make reasonable endeavours to ensure that the subcontractor:
 - (i) assigns any Project IP in accordance with clause 14 or clause 15, whichever is applicable; and
 - (ii) does all things reasonably necessary to ensure the Project IP or copyright in any Thesis vests in accordance with clauses 13.1(b) and 13.2, including the signing of any required documentation as requested by the owner of the Project IP under clause 13.1(b) or the Student under clause 13.2.
- (e) If the Collaborator has engaged a subcontractor in accordance with clause 7, the Collaborator:
 - (i) may allow the subcontractor to own any Project IP the subcontractor creates (**Subcontractor IP**), provided that in relation to any such Subcontractor IP, the Collaborator procures from the subcontractor all rights necessary for the Collaborator to grant the Department the sub-licence in clause 14.1(b); and

- (ii) must ensure that the subcontractor does all things reasonably necessary to ensure that copyright in any Thesis vests in accordance with clause 13.2, including the signing of any required documentation as requested by the Student under clause 13.2.
- (f) Each party at its own cost must do all things reasonably necessary to ensure IP Rights vest in accordance with clauses 13.1(b) and 13.2, including the signing of any required documentation as requested by the owner of the Project IP under clause 13.1(b) or the Student under clause 13.2.

13.2 Thesis copyright

Title and ownership of copyright in any Thesis vests upon its creation in the relevant Student.

13.3 Moral Rights Consent

Each party must obtain Moral Rights Consents from its Representatives with respect to any publication authored or co-authored by those persons, provided that with respect to any Thesis, the right of the Student to be attributed author or co-author is retained in favour of the Student.

13.4 Infringement

Each party will give the other prompt notice of any claim or allegation made against it that the exercise of any rights under this agreement constitutes an infringement of the rights of any third party.

14. One party owns Project IP

If Item 4 of Schedule 1 specifies that one party owns the Project IP, then this clause 14 applies, and clause 15 does not apply.

14.1 Ownership and rights

- (a) All rights, title and interests in the Project IP belong solely to the IP Owner, except to the extent that clause 13.1(e) applies. Project IP is immediately assigned to and vests in the IP Owner as those rights are created.
- (b) The IP Owner grants to the other party (**Other Party**) a fully paid up, world wide, royalty free, non-exclusive, non-assignable right to use, reproduce, adapt and improve the Project IP (including any Background IP incorporated into Project IP) during the Term, for the purposes of carrying out the Project.
- (c) If specified in Item 4 of Schedule 1, the IP Owner also grants to the Other Party the Additional Licence.
- (d) Improvements to the Project IP made by any party are owned by the IP Owner and the provisions of this clause 14 apply to such improvements.
- (e) The Other Party:
 - (i) hereby assigns its rights, title and interest in the Project IP as required to give effect to clauses 14.1(a) and 14.1(d);
 - (ii) acknowledges that all Project IP coming into existence in the future will vest in the IP Owner from the date of its creation and no additional documentation is necessary to complete the assignment made under this clause 14; and
 - (iii) acknowledges that Project IP is the Confidential Information of the IP Owner, and the Other Party will keep the Project IP confidential in accordance with clause 18.

14.2 Warranty

The Other Party warrants that:

- (a) it has the right to assign the Project IP in accordance with clause 14.1(e)(i) of this agreement; and
- (b) the assignment referred to in clause 14.1(e)(i) includes all of the Project IP created by its Representatives.

14.3 Project IP protection and Commercialisation

- (a) The IP Owner may, at its cost, apply for, maintain and prosecute protection for the Project IP (excluding the Background IP, but including the Background IP to the extent that it is incorporated in the Project IP) in its own name and in any manner it elects.
- (b) The Other Party must:
 - (i) assist the IP Owner to exercise its rights in clause 14.3(a) by providing all necessary information it has in its possession and execute all documents required by the IP Owner from time to time; and
 - (ii) give the IP Owner prompt notice of any suspected or actual infringement of the Project IP (including any Background IP incorporated into Project IP) of which it becomes aware.
- (c) Unless otherwise specified in the terms of the Additional Licence (if any), the IP Owner may Commercialise the Project IP (including any Background IP incorporated into Project IP) in any manner without the consent of the Other Party.
- (d) Net Commercialisation Proceeds received as a result of the Commercialisation of the Project IP by the IP Owner must be distributed between the parties in the same proportions as each party's Contribution.

15. Joint ownership of Project IP

If Item 4 of Schedule 1 specifies that the parties will jointly own the Project IP, then this clause 15 applies and clause 14 does not apply.

15.1 Ownership

- (a) The Project IP will be owned jointly by the Department and the Collaborator as tenants in common, in the proportions specified in Item 4 of Schedule 1.
- (b) Project IP is the Confidential Information of both parties, and each Party will keep the Project IP confidential in accordance with clause 18.
- (c) Any improvement to or development of any Project IP made by a party following termination of the Project will be the sole property of the party making the improvement or development and that party will be entitled to apply for, in its name and at its cost, a patent or any other IP Rights in respect thereof and such patent or right will be the sole property of that party.
- (d) If, during the term of the Project, any improvement is made which is or may be patentable or registrable in any country in the world, the parties will determine whether a joint application will be filed and the countries in which such patent or other registrable protection will be sought.
- (e) If the parties agree to make a joint application:
 - (i) the Department will be entitled to apply in the joint names of the parties;
 - (ii) the Department on behalf of itself and the Collaborator will have the full conduct of any such application;
 - (iii) the Collaborator will take all reasonable steps to assist the Department in any such application;
 - (iv) the Department will keep the Collaborator informed of the progress of any such application; and
 - (v) all filing, prosecution and maintenance fees in respect of any joint application will be borne and paid by the parties equally.
- (f) If after having received 30 days' notice in writing a party decides not to file an application jointly or if a party refuses or fails to pay its share of the costs and expenses for any joint application:
 - (i) that application will be filed in the name of and at the expense of the contributing party, to the exclusion of the other party;
 - (ii) the patent or other registered right granted as a result of that application and all profits arising from the exploitation of that patent or other registered right will be the property of the contributing party to the exclusion of the other party; and

- (iii) the non-contributing party will assign all its rights, title and interest in such patent or other registered right to the contributing party.

15.2 Rights to Project IP

Each party grants the other party a worldwide and royalty-free licence to use the Project IP for the Term and for the purpose of the Project.

15.3 Warranty

Each party warrants that the Project IP does not and will not infringe the IP Rights of a third person.

15.4 Infringement

- (a) The Department will have the full conduct of the prosecution or defence of any proceedings in relation to the Project IP in which either or both the Department and the Collaborator are or may be parties (**Proceedings**).
- (b) The Department must keep the Collaborator informed of the conduct of the Proceedings.
- (c) The Collaborator authorises the Department to settle the Proceedings on behalf of the Collaborator and to bind the Collaborator to the terms of such settlement.
- (d) The costs of the Proceedings or any award given in relation to the Proceedings will be shared by the parties in accordance with the proportions specified in Item 4 of Schedule 1.
- (e) If the Department wishes at any stage to withdraw or abandon its prosecution or defence of the Proceedings, it will give to the Collaborator written notice of its intention to do so. If the Collaborator does not give the Department written notice within 30 days of its intention to adopt the prosecution or defence of the Proceedings, the Department may withdraw or abandon its prosecution or defence of the Proceedings.
- (f) If the Collaborator gives notice of its intention to adopt the prosecution or defence of the Proceedings, the Collaborator will have the full conduct of the Proceedings, and all rights and obligations (including without limitation all costs, losses and liabilities) flowing from the Proceedings will be those of the Collaborator without prejudice to the rights and obligations of the Department which have accrued at the date of, and which survive, the Department's withdrawal or abandonment.

15.5 Commercialisation or licensing of Project IP

A party may only Commercialise Project IP or license Project IP to a third party with the prior written consent and on terms agreed by the other party. If the parties cannot agree on such terms, the parties will refer the matter to resolution pursuant to clause 26.

16. Students

16.1 Students may participate in Project

A Responsible Party may engage Students to participate in the conduct of the Project.

16.2 Student participation requirements

If a Responsible Party engages a Student to participate in the conduct of the Project, the Responsible Party will:

- (a) ensure the Student is properly supervised by appropriately qualified staff;
- (b) ensure the Student conducts the Project in accordance with this agreement;
- (c) not allow the Student to commence work on the Project until the Student has signed a deed:
 - (i) assigning to the IP Owner the IP Rights created by the Student pursuant to clause 13.1(c) (or under 13.1(e) if applicable); and
 - (ii) pursuant to which the Student agrees to keep Confidential Information confidential in a manner consistent with clause 18; and
- (d) ensure that any examiner appointed to review the Student's Thesis has given a written confidentiality undertaking consistent with clause 18.

16.3 Satisfaction of research higher degree requirements

If this agreement is terminated prior to the Expiry Date and a Student is participating in the Project for the purposes of the Student's research higher degree, each party grants the Student a non-exclusive, non-transferable, royalty-free licence to use such of that party's Background IP as is necessary for the Student to complete the Student's Thesis for such research higher degree and assessment of same.

16.4 Student Thesis Publications

- (a) The Responsible Party will ensure that any Student adheres to the procedure set out in clause 17 with respect to any proposed publication of the Thesis and the Responsible Party must provide a copy of the Thesis to the Department in accordance with clause 17(b).
- (b) The parties must adhere to the procedure set out in clause 17 with respect to any proposed publication of the Thesis. If publication of the Thesis is required under the Responsible Party's postgraduate Thesis completion rules, the Department may require as a condition of any consent referred to in clause 17(c), that the Thesis is placed in a restricted and monitored access library controlled by the Responsible Party for a period of up to 18 months and for a further period of up to 18 months on written notice providing grounds justifying the extension.
- (c) Where a Student intends to submit any Thesis for assessment or examination:
 - (i) the Responsible Party must ensure the Student notifies the Department of the Student's intention to submit that Thesis for assessment or examination and provide a copy of the Thesis to the Department; and
 - (ii) within 30 days of receiving a copy of the Student's Thesis under clause 16.4(c)(i), the Department may notify the Student (either directly or by notice to the Responsible Party) that the Department requires:
 - (A) any assessor or examiner of the Responsible Party to provide confidentiality undertakings regarding information contained in the Thesis; and/or
 - (B) access to the Thesis to be restricted, including for the reasons specified in clause 17(a); and
 - (iii) the Student must not submit the Thesis to the Responsible Party for assessment or examination until the Department's requirements (as notified under clause 16.4(c)(ii)) have been met.
- (d) The Student may submit the Thesis for assessment or examination where the Department has not notified the Student and/or the Responsible Party in accordance with clause 16.4(c)(ii).
- (e) The Responsible Party must ensure that the Student does not make any press or other announcements or releases relating to this agreement and the Project (including transactions the subject of this agreement) without the prior written consent of the Department.

17. Publications

- (a) A party will not without the other party's consent (such consent not to be unreasonably withheld where the purpose of the publication is for the purpose of undertaking the Project), make any publication where to do so may:
 - (i) prejudice any present or future registration, Commercialisation or value of any Background IP or Project IP;
 - (ii) result in a premature publication of a Thesis inconsistent with the Responsible Party's Thesis completion rules; or
 - (iii) otherwise breach Confidential Information obligations specified in clause 18.
- (b) The party intending to publish under clause 17(a) must, at least 30 days before the date of the proposed publication, provide to the other party a copy of the material intended to be published.
- (c) Within 14 days of a party's receipt of material under clause 17(b), that party must either:

- (i) provide written consent to the other party's intended publication of any or all of the material; or
- (ii) reasonably request that other party delay or amend the proposed publication for the reasons set out in clause 17(a).
- (d) If a party does not:
 - (i) provide written consent in accordance with clause 17(c)(i); or
 - (ii) request a delay or amendment in accordance with clause 17(c)(ii),
 that party is deemed to give consent to the other party to publish the material.
- (e) A party may require, as a condition of any consent referred to in clause 17(c), acknowledgment of the collaboration of the party including authorship, and the use of any Contributions provided or made available by the party for or in relation to the generation of the relevant material.

18. Confidentiality

18.1 Confidential Information

Subject to clause 18.2, a party must not:

- (a) disclose the other party's Confidential Information to a third party; or
- (b) use the other party's Confidential Information other than for the purposes of the Project.

18.2 Exceptions

A party may disclose the other party's Confidential Information:

- (a) with the other party's prior written consent;
- (b) to a professional adviser, financial adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential;
- (c) to any of its Representatives who are bound to keep the information confidential and to whom it is necessary to disclose the information;
- (d) to comply with its obligations, or to exercise its rights, under this agreement;
- (e) to comply with the law, or a requirement of a regulatory body (including any relevant stock exchange);
- (f) to the extent necessary to enforce its rights or defend a claim or action under this agreement; and
- (g) where that party is the Department:
 - (i) to the responsible Minister administering the Department and their personal and departmental advisers;
 - (ii) in response to a request by the Parliament or a Committee of the Parliament of the State of Queensland; or
 - (iii) where disclosure is required to be made in accordance with established governmental policies, procedures or for public accountability purposes.

18.3 Limiting disclosure

Before the Collaborator or any of its Representatives discloses any Confidential Information under clauses 18.2(e) or 18.2(f) that contains the Department's Background IP, or, if the Department is the IP Owner, any Project IP:

- (a) the Collaborator must notify the Department as soon as reasonably practicable after it becomes aware that disclosure is required;
- (b) unless immediate disclosure is required, the Collaborator must give the Department a reasonable opportunity to comment on the requirement for, and the proposed form of, the disclosure; and

- (c) the Collaborator must take all steps reasonably required by the Department to prevent or restrict the disclosure of the relevant Confidential Information.

18.4 Breach of confidentiality

- (a) If a party becomes aware of a suspected or actual breach of this clause 18 the party will immediately notify the other party and take reasonable steps required to prevent or stop the suspected or actual breach.
- (b) The parties acknowledge and accept that damages will be an inadequate remedy for a breach of this clause 18.

18.5 Return of Confidential Information

Subject to a Recipient needing to retain Confidential Information to properly exercise its rights to the Background IP and Project IP granted pursuant to this agreement, the Recipient will return or destroy (at the Discloser's discretion) material containing Confidential Information when it is no longer required by the Recipient, or otherwise when directed by the Discloser.

19. Privacy and Personal Information

- (a) This clause 19 applies where this agreement amounts to a service arrangement under the *Information Privacy Act 2009* (Qld).
- (b) For the purpose of this clause 19, **Personal Information** has the meaning given in the *Information Privacy Act 2009* (Qld).
- (c) If the Collaborator collects or has access to Personal Information in performing this agreement, the Collaborator must:
 - (i) comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under this agreement, as if the Collaborator was the Department;
 - (ii) ensure that the Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
 - (iii) not use Personal Information other than for the purposes of performing this agreement, unless required or authorised by law;
 - (iv) not disclose Personal Information without the consent of the Department, unless required or authorised by law;
 - (v) not transfer Personal Information outside of Australia without the consent of the Department;
 - (vi) ensure that access to Personal Information is restricted to those of the Collaborator's employees and officers who require access in order to perform their duties under this agreement;
 - (vii) ensure that the Collaborator's officers and employees do not access, use or disclose Personal Information other than in the performance of their duties under this agreement;
 - (viii) ensure that the Collaborator's agents and subcontractors who have access to Personal Information comply with obligations the same as those imposed on the Collaborator under this clause 19;
 - (ix) fully co-operate with the Department to enable the Department to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
 - (x) comply with such other privacy and security measures as the Department reasonably advises the Collaborator in writing from time to time.
- (d) The Collaborator must immediately notify the Department on becoming aware of any breach of clause 19(c).
- (e) On request by the Department, the Collaborator must obtain from its Representatives engaged for the purposes of this agreement, an executed deed of privacy in a form acceptable to the Department.

20. Insurance

- (a) The Collaborator must effect and maintain the types of insurance in the amounts and for the duration specified in Item 6 of Schedule 1 with an insurer and on terms approved by the Department (such approval not to be unreasonably withheld).
- (b) Upon reasonable request, the Collaborator must provide the Department with evidence in a form acceptable to the Department of the terms and currency of the insurance required under clause 20(a), including copies of insurance policies and any endorsements or amendment to such policies.

21. Warranty

Each party warrants and represents that to the best of its knowledge and belief at the Commencement Date, it has the power, authority and ability, and has obtained all necessary consents to enter into this agreement and perform its obligations under this agreement.

22. Conflict of interest

- (a) Each party warrants that, to the best of its knowledge, it does not, and is not likely to have any conflict of interest in the performance of this agreement. If a conflict or risk of conflict of interest arises, the party in conflict will immediately give notice of the conflict of interest, or the risk of it, to the other party.
- (b) If a party is given notice of a conflict of interest pursuant to clause 22(a), that party may proceed in accordance with clause 28 to terminate this agreement.

23. Indemnity

23.1 Parties to indemnify

- (a) Each party (**Indemnifying Party**) indemnifies the other party and its Representatives (**Indemnified**) against all liability, loss, costs and expenses (including legal fees, costs and disbursements on a solicitor and own client basis) arising from or incurred in connection with:
 - (i) personal injury (including sickness and death) or property damage or loss in connection with the performance (or attempted or purported performance or non-performance) of this agreement or a breach of this agreement by the Indemnifying Party; or
 - (ii) any infringement or alleged infringement of any IP Rights or Moral Rights of any person, which infringement or alleged infringement occurred by reason of the use of the Indemnifying Party's Background IP or the Indemnifying Party's contribution to the Project IP in accordance with this agreement.
- (b) The Indemnifying Party's liability to indemnify the Indemnified under clause 23.1(a) will be reduced proportionally to the extent that any unlawful or negligent act or omission or breach of this agreement by the Indemnified contributed to the loss or damage.
- (c) The indemnity granted in clause 23.1(a) is in addition to and not exclusive of any other remedies that may be available at law.

23.2 No expense required

It is not necessary for a party to incur expense or to make a payment before enforcing a right of indemnity conferred by this agreement.

24. Liability

24.1 Limitation of liability

Except in relation to liability:

- (a) for personal injury (including sickness and death) or property damage or loss;
- (b) for a breach of clause 8;
- (c) for a breach of clauses 13, 14 or 15;
- (d) for a breach of clause 18; or

- (e) arising under clause 23,

each party's liability (whether in contract, tort, statute or otherwise) to the other party for all claims is limited in aggregate to the greater of the amount equivalent to the amount the party:

- (f) is required to maintain insurance for in respect of that liability pursuant to clause 20; or
(g) is actually insured for in respect of that liability.

24.2 No liability for indirect loss

Except in relation to a breach of clauses 8, 13, 14, 15 or 18 of this agreement, neither party will in any circumstances (including for negligence) be liable to the other for any loss of revenue, loss of profit, loss of anticipated savings or business, loss of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of data or goodwill, loss of reputation, or any indirect loss, whether arising in contract, tort (including negligence) or otherwise, in connection with this agreement.

25. GST

- (a) Words defined in the GST Law have the same meaning in this clause 25.
- (b) If a party is required under this agreement to reimburse or pay to another party an amount calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or an entity on whose behalf the party is acting) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (c) If GST is payable by an entity (**Supplier**) in relation to any supply that it makes under or in connection with this agreement, the parties agree that:
- (i) any consideration (including the value of any non-monetary consideration) provided for that supply under or in connection with this agreement other than under this clause 25 (**Agreed Amount**) is exclusive of GST;
 - (ii) an additional amount will be payable by the party providing consideration for that supply (**Receiver**) equal to the amount of GST payable by the Supplier on that supply;
 - (iii) the additional amount is payable at the same time as any part of the Agreed Amount is to be first provided for that supply and the Supplier will provide a tax invoice to the Receiver in respect of that supply, no later than that time; and
 - (iv) to the extent, if any, that any consideration (or part thereof) is specified in this agreement to be inclusive of GST, that consideration (or the relevant part) will be excluded from the Agreed Amount for the purposes of calculating the additional amount under clause 25(c)(i).
- (d) If the Receiver is not registered for GST and does not have an Australian Business Number, the Receiver must complete the Australian Taxation Office's Statement by a Supplier if it is eligible to do so, and return the completed and signed statement (satisfactory to the Australian Taxation Office) to the Department on or before the Commencement Date.
- (e) If the Statement by a Supplier required in clause 25(d) is not received by the Department or the Collaborator is not eligible to complete the Statement by a Supplier and an Australian Business Number is not provided on any Tax Invoice, the Collaborator acknowledges and accepts that the Department may be required to withhold 46.5% of the payment to the Collaborator for submission to the Australian Taxation Office on behalf of the Collaborator.

26. Dispute resolution

26.1 Dispute resolution process

- (a) Subject to clause 26.3, the parties will adhere to the following procedure in relation to disputes arising from this agreement, prior to the commencement of litigation or other external dispute resolution procedure.
- (b) The Contact for a party may notify the other, in writing of the occurrence of a dispute (**Dispute Notice**) and the Contacts will try to resolve the dispute through negotiation.

- (c) If the Contacts are unable to resolve the dispute within 15 Business Days from the receipt of the Dispute Notice, the dispute is to be referred to:
 - (i) for the Collaborator, the person holding the position of Chief Executive Officer (or equivalent); and
 - (ii) for the Department, the Deputy Director General or the Director General of the Department,for resolution.
- (d) If the dispute is not resolved within 15 Business Days after its referral to the representatives of each of the parties listed in clause 26.1(c), either party may refer the dispute to a mediator agreed by the parties with costs to be shared equally between the parties.
- (e) If the parties cannot agree upon a mediator, either party may request the President of the Queensland Law Society to nominate a mediator.

26.2 Continuity during dispute

Notwithstanding the existence of a dispute, each party will continue to perform its obligations under this agreement.

26.3 Urgent interlocutory relief

Nothing in this clause 26 prevents either party from commencing court proceedings relating to any dispute arising from this agreement at any time where that party seeks urgent interlocutory relief.

27. Performance of failed obligations

27.1 Department may perform obligations

If the Collaborator fails to perform an obligation under this agreement and such failure is not remedied within 14 days of the Department notifying the Collaborator of the failure:

- (a) the Collaborator authorises the Department or its nominee to act on the Collaborator's behalf in performing the Collaborator's obligations; and
- (b) the Department or its nominee may (but is not obliged to) perform the obligation.

27.2 Collaborator responsible for costs

Where the Department or its nominee performs an obligation of the Collaborator under clause 27.1, the costs of that performance are to be taken as a debt due and payable to the Department.

27.3 Collaborator responsible for obligation

The Collaborator is not relieved from its failure to meet an obligation by the Department or its nominee performing that obligation in accordance with clause 27.1.

28. Term and Termination

28.1 Term

This agreement will remain in force for the Term.

28.2 Termination for convenience

- (a) The Department may, at any time, by reasonable written notice, terminate this agreement for convenience, including for a Machinery of Government Change.
- (b) If this agreement is terminated by the Department under this clause 28.2, the Collaborator will be entitled to the reasonable costs (if any) that have been or will be incurred by the Collaborator as a direct result of the termination of the agreement and which the Collaborator cannot recoup or avoid and which would not have been incurred if the agreement had continued until the expiry of the Term.
- (c) For the avoidance of doubt, clause 24.2 applies in relation to termination of this agreement under clause 28.2.

28.3 Termination for breach

Either party may terminate this agreement by written notice with immediate effect if the other party:

- (a) breaches a term of this agreement which is not capable of being remedied; or
- (b) breaches a term of this agreement which is capable of being remedied and fails to remedy that breach within 30 days after receiving notice requiring it to do so.

28.4 Effect of termination

If this agreement is terminated in accordance with clauses 28.2 or 28.3:

- (a) each party must immediately cease all activities under the Project;
- (b) each party must take all available steps to minimise any loss resulting from termination and to protect the party's Background IP and the Project IP;
- (c) the parties cease to be liable to pay or provide any further Contributions; and
- (d) each party agrees (other than where to do so would give rise to a void or voidable transaction) to:
 - (i) promptly repay to the other party any part of the monetary Contributions paid to the party and not then used or applied for a purpose permitted under this agreement or appropriated for expenditure already incurred and permitted under this agreement; and
 - (ii) promptly return or deliver up to the other party, or as the other party directs, all non-monetary Contributions and documents relating to the Background IP provided by the other party.

28.5 Pre-existing rights and survival

- (a) Termination in accordance with this clause 28 is without prejudice to any rights of either party under this agreement existing at the date of termination.
- (b) Clauses 8.5, 9, 12, 13, 14 (if applicable), 15 (if applicable), 16, 17, 18, 20, 21, 22, 23, 24, this clause 28.5 and clause 30 survive expiry or termination of this agreement for any reason.

29. Notices

Each communication (including each notice, consent, approval, request and demand) in connection with this agreement to be given by either party to the other:

- (a) must be in writing;
- (b) must be signed by the party making it (or by a person duly authorised by that party);
- (c) must be addressed in accordance with Item 1 of Schedule 1 (or as otherwise notified from time to time);
- (d) must be delivered by hand or posted by pre-paid post to the address, or sent by facsimile transmission to the number, of the addressee, in accordance with clause 29(c); and
- (e) is taken to have been received by the addressee:
 - (i) where sent by pre-paid post – on the fifth day after the date of posting;
 - (ii) where sent by facsimile transmission – at the time in the place to which it is sent equivalent to the time recorded on the transmitting machine from which it was sent; and
 - (iii) where hand delivered – on delivery,

but if the communication is taken to have been received on a day that is not a Business Day or later than 5.00 pm on a Business Day, the communication is taken to have been received at 9.00 am on the next Business Day.

30. General

30.1 Entire agreement

To the extent permitted by law, in relation to its subject matter, this agreement:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and

- (b) supersedes any prior written or other agreement of the parties.

30.2 No relationship

Nothing in this agreement will be taken as giving rise to any employment, agency, partnership, or joint venture relationship between the parties.

30.3 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this agreement except for representations or inducements expressly set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this agreement.
- (c) Each party acknowledges and confirms that no representations have been made by one party to the other party that the Project will result in the delivery of a particular outcome.

30.4 Assignment

A party must not assign, novate or subcontract the whole or any part of this agreement without the prior written consent of the other party.

30.5 Amendments

This agreement may only be varied by a document signed by or on behalf of each party.

30.6 Further acts and documents

Each party must promptly do all acts and deliver all documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this agreement.

30.7 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement.
- (b) A waiver or consent given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or any other term of this agreement.

30.8 Severance

If at any time a provision of this agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this agreement; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this agreement.

30.9 Counterparts

This agreement may be signed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

30.10 Expenses

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

30.11 Consents

A consent required under this agreement from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this agreement expressly provides otherwise.

30.12 Continuing obligation

Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement.

30.13 Governing law

This agreement is governed by and will be construed according to the law applying in Queensland.

30.14 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 30.14(a).

31. Definitions and interpretation

31.1 Definitions

In this agreement:

Additional Licence means the licence specified in Item 4 of Schedule 1.

Background IP means IP Rights which are made available by a party for the purpose of carrying out this agreement and that are:

- (a) in existence at the Commencement Date, including the IP Rights in the material set out in Item 3 of Schedule 1; or
- (b) brought into existence after the Commencement Date other than as a result of the performance of the Project.

Budget means the budget specified in Item 7 of Schedule 2.

Business Day means a day that is not a Saturday, Sunday or a public holiday in Brisbane.

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

Commercialise means:

- (a) in relation to a product, to use, make, manufacture, have made or manufactured, sell, advertise, promote, distribute, hire or otherwise dispose of the product, or to keep it for the purpose of doing any of those things;
- (b) in relation to material of a plant variety, to produce or reproduce, condition for propagation, offer for sale, sell, import, export, or to stock for the purpose of doing any of those things;
- (c) in relation to a method or process, to use the method or process or do any act referred to above in respect of a product resulting from such use; and
- (d) to license any third party to do any or all of the acts referred to in paragraphs (a), (b) or (c).

Commercialisation Costs means costs reasonably incurred by a party with respect to the Commercialisation of Project IP and includes patent, trade mark, design, due diligence and legal costs and any other IP Rights application and registration costs.

Commercialisation Proceeds means all royalties, licence fees, and other direct monetary payments received by a party from the Commercialisation of Project IP.

Confidential Information means information, trade secrets and knowledge of or disclosed by a party (the **Discloser**) to another party (the **Recipient**) that:

- (a) is by its nature confidential;
- (b) is designated or marked by the Discloser as confidential including any information specified in Item 5 of Schedule 1; or
- (c) the Recipient knows or ought to know is confidential,

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this agreement or any other confidentiality obligation; or
- (e) is independently developed by a party while having no knowledge or access to the other party's Confidential Information.

Contact means the contact person for each party specified in Item 1 of Schedule 1 or another person as appointed from time to time and notified to the other party.

Contribution means the monetary contributions and non-monetary in-kind contributions to be made by each party including any and all funding, cash, assets, items, goods, services, and personnel specified in Item 5 of Schedule 2 and includes a Part Contribution.

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

GST means a goods and services tax or any similar tax, levy or impost imposed by the Commonwealth of Australia.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property or IP Rights means all intellectual property rights, whether created before or after the Commencement Date, including:

- (a) plant breeder's rights, patents, copyright, rights in circuit layouts, trade marks and registered designs;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) that may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.

IP Owner means the single party (if any) specified in Item 4 of Schedule 1.

Key Personnel means the Representatives of the parties specified in Item 9 of Schedule 2.

Machinery of Government Change means a change to the title, structure, functions or operations of the Department or a part of the Department (including corporatisation) as a result of an order made under the *Constitution of Queensland 2001* (Qld) or other Queensland legislation.

Milestones means those milestones specified in 0 of Schedule 2.

Moral Rights means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined by and granted under the *Copyright Act 1968* (Cth) and any similar rights existing under foreign laws.

Moral Rights Consent means a written consent to any act or omission by or on behalf of the licensee of that Project IP in relation to the Project IP (or the Background IP incorporated in the Project IP) which would otherwise constitute an infringement of that person's Moral Rights.

Net Commercialisation Proceeds means Commercialisation Proceeds received by a party with respect to Project IP less Commercialisation Costs.

Non-Commercial Use means any use of the Project IP by a party that does not constitute Commercialisation of the Project IP.

Objectives means the objectives of the Project as specified in Item 2 of Schedule 2.

Part Contribution means a monetary contribution made by the Collaborator for a financial year, in accordance with Item 5 of Schedule 2.

Project means the project specified in Item 1 of Schedule 2.

Project Committee means the project committee established by the parties (if any) in accordance with clause 6.

Project IP means any IP Rights created, resulting from or arising in the course of, and as a direct result of carrying out the Project, pursuant to this agreement.

Project Leader means a Representative nominated by a party to act as the project leader for the Project as specified in Item 10 of Schedule 2, or as replaced under clause 5.1(b).

Project Plan means the plan specified in Schedule 2, and contained in Annexure 1.

Reporting Period means the period specified in Item 12 of Schedule 2 or if not specified each quarter of a financial year during the Term.

Representative means an employee, agent, officer, director, contractor, subcontractor or other authorised representative of a party, and in the case of a Responsible Party, its Students.

Research Report means a report containing the information specified in clause 9.2 and as specified in Item 12 of Schedule 2.

Responsible Party means a party in its capacity as a tertiary institution or university that has a Student involved in the Project.

Responsibilities means for each party the tasks or activities specified as that party's responsibilities in Item 4 of Schedule 2.

Site means the place or places at which the Project is to be conducted as specified in Item 8 of Schedule 2.

Special Conditions means any special conditions specified in Item 7 of Schedule 1.

Student means a student of a Responsible Party enrolled to undertake postgraduate research studies whose Thesis, or a part of it, relates to the Project.

Term means the period commencing on the Commencement Date and ending on the Expiry Date, unless this agreement is terminated earlier in accordance with clause 28.

Thesis means the postgraduate research paper, dissertation and/or thesis written by a Student in satisfaction of the Student's research higher degree.

31.2 Interpretation

In this agreement:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) if more than one person is identified as the Collaborator, that expression refers to them, and the obligations of the Collaborator under this agreement bind them, jointly and severally;

(c) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (where incorporated), a partnership and a trust;

(d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

(e) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;

(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

(g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

- (h) a reference to a party, clause, schedule, attachment or annexure is a reference to a party, clause, schedule, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **includes** in any form is not a word of limitation;
- (k) a reference to \$ or dollar is to Australian currency; and
- (l) no rule of construction will apply to a provision of this agreement to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it.

Published on DES Disclosure Log
RTI Act 2009



Collaborative Agreement

Annexure 1 Reef Islands Project Proposal

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RTI Act 2009



Collaborative Agreement

Signed as an agreement

Signed for and on behalf of the **State of Queensland** acting through the **Department of Environment and Science ABN 46 640 294 485** by

JAMIE MERRICK, a
person duly authorised to act in that behalf in the
presence of:

S.78B(2)
Signature of Witness

ALENA TRACEY
Name of Witness in full

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

[Signature]
Signature
DIRECTOR GENERAL
Position
Date: 3/4/18

S.78B(2)

Signature of Director/sole Director

Aung Ma Saen
Name of Director/sole Director in full

Date: 3/4/18

S.78B(2)

Signature of Director/Secretary

KERRI RYAN
Name of Director/Secretary in full

Date: 3/4/18

Reef Islands

*Protecting and restoring the
Great Barrier Reef's most
precious land- and sea-scapes
in the face of climate change.*

Great Barrier
Reef Foundation

The challenge

Coral reefs are critically important, supporting 25% of all marine life on the planet and rivalling the Amazon Rainforest for biodiversity. The Great Barrier Reef is undoubtedly the greatest and largest coral reef, unequalled for its natural beauty and conservation values, it has the greatest diversity of marine life in the world.

This global treasure is under threat from the combination of local stresses and changing climatic conditions. Already we have witnessed two consecutive years of mass coral bleaching on the Great Barrier Reef and a series of catastrophic tropical cyclones, an unprecedented phenomenon, impacting both coral cover and island habitat along two thirds of the length reef.

It is clear that business-as-usual approaches for managing the Great Barrier Reef are no longer sufficient. Without a step change, we are on a trajectory that could see the world lose parts of this natural wonder, literally before our eyes.

Tackling the overarching threats of global climate change and regional-scale threats, such as poor water quality, is critical to the future of the Great Barrier Reef. These actions need to occur now, but for the most part will take decades to have effect.

There is an immediate and important need to maintain climate refuges throughout the Reef (in land and in water), essentially serving as arks that protect and preserve the Reef and its inhabitants while the impact of the mitigation and adaptation strategies is delivered.

While strategies are in place to protect coral cover in the vital source reefs, this project will focus on protecting the Reef's terrestrial refuges - namely its islands.

Islands are impacted by a combination of both global climate change – particularly more intense extreme weather events, sea level rise, ocean acidification and rising air and sea temperatures - and local threats – particularly the introduction of exotic species and disease, clearing or modifying island habitat, coastal development and altered hydrological flows, island developments and marine debris.

These impacts are all projected to increase into the future. Meaning future-facing interventions are required if we are to maintain the function of these most critical climate refuges.

Why islands

- The *Great Barrier Reef Climate Change Adaptation Strategy and Action Plan 2012 – 2017* lists the establishment and protection of climate refuges as an important component of maintaining a healthy Great Barrier Reef ecosystem.
- Islands contribute to all four of the natural criteria for which the World Heritage Area was listed in 1981: exceptional natural beauty, significant geomorphic features, significant ongoing ecological and biological processes, and significant natural habitats for the conservation of biological diversity.
- Interconnected reef and island ecosystems support some of the richest biodiversity on the planet.
- Islands are an important part of the Great Barrier Reef ecosystem and provide a range of ecosystem services. Playing important roles in the life cycle of many species of flora and fauna, islands provide shelter, living space, feeding and breeding grounds and nesting habitats for many marine and terrestrial species, including some of which are endemic and listed under Australian or Queensland government legislation as near threatened, vulnerable, or endangered.
- Islands often function as refugia for plants and animals, protecting these from prevalent and increasing impacts found on the mainland. Islands are also hotspots of evolution in the long-term, and in some cases have developed divergent or endemic species of flora and fauna.
- The islands of the Great Barrier Reef are global strongholds for seabirds, turtles and other wildlife as well as being important recreational areas and valuable ecotourism destinations.
- More than 25 per cent of the tropical seabirds of Australia nest on the islands of the Great Barrier Reef, made up of 24 different species and 1.7 million individuals. Many islands also provide important roosting and feeding habitat for migratory shorebird species that are of state, national and international significance.

The solution

Over the next five years, the Great Barrier Reef Foundation will deliver a \$14 million tailored program of on-ground climate adaptation and restoration actions across a network of islands that will boost the resilience and provide critical habitat for seabirds, turtles, corals and other marine species in the face of a changing climate.

This project is be a partnership between the Foundation, Great Barrier Reef Marine Park Authority (GBRMPA), Department of Parks and Wildlife, island based businesses and communities and relevant science agencies.

By piloting and scaling adaptation and restoration actions, including novel interventions, we hope to transform the way the Great Barrier Reef is managed.

This project builds on the momentum and success of the Raine Island Recovery Project where a coordinated program of science, intervention, innovation and on ground conservation is proving successful in restoring the world's largest green sea turtle hatchery.

Through the learnings from Raine Island we understand the impact a localised approach can have on the overall health of the Great Barrier Reef. A key part of this project will be to facilitate and coordinate resilience-building actions by local communities, businesses, traditional owners and government agencies, thus creating a platform for existing and new partners to work together to improve the outlook for the Great Barrier Reef.

In addition to boosting resilience of key islands, there is scope and flexibility in the life of this project to respond to unexpected challenges facing an ecosystem as a result of a major event such as extreme weather.

The islands

Five island groups have been prioritised based on an assessment of the Great Barrier Reef islands undertaken by Queensland Parks and Wildlife and GBRMPA. This assessment considered both the biodiversity and conservation value of each island and the threat level to these values due to global and local stressors. Furthermore, these islands are each core economic drivers for tourism for the Great Barrier Reef. Quite simply, these islands cannot and must not fail.

Key project activities

The project partners have compiled an indicative suite of activities that will be undertaken at each site. These will be tailored to meet the specific needs of each island in the context of future climate projections.

Monitoring and modelling to support resilience-based management

- Develop a detailed resilience map for each island area and its adjoining coral reefs, including local scale hydrodynamic and ocean chemistry.
- Model predicted impacts of climate change on island geomorphology and ecosystems, including potential range expansions of critical species
- Strengthen island condition and trend monitoring and reporting to support a complete adaptive management approach for islands and deliver more resilient island ecosystems.
- Pilot novel, cost-efficient monitoring platforms and methods such as acoustic monitoring of birds' nests to record hatchling success, under and above water automated vehicles, drones, thermal-imaging, automated image analyses via machine learning etc.

Habitat mapping

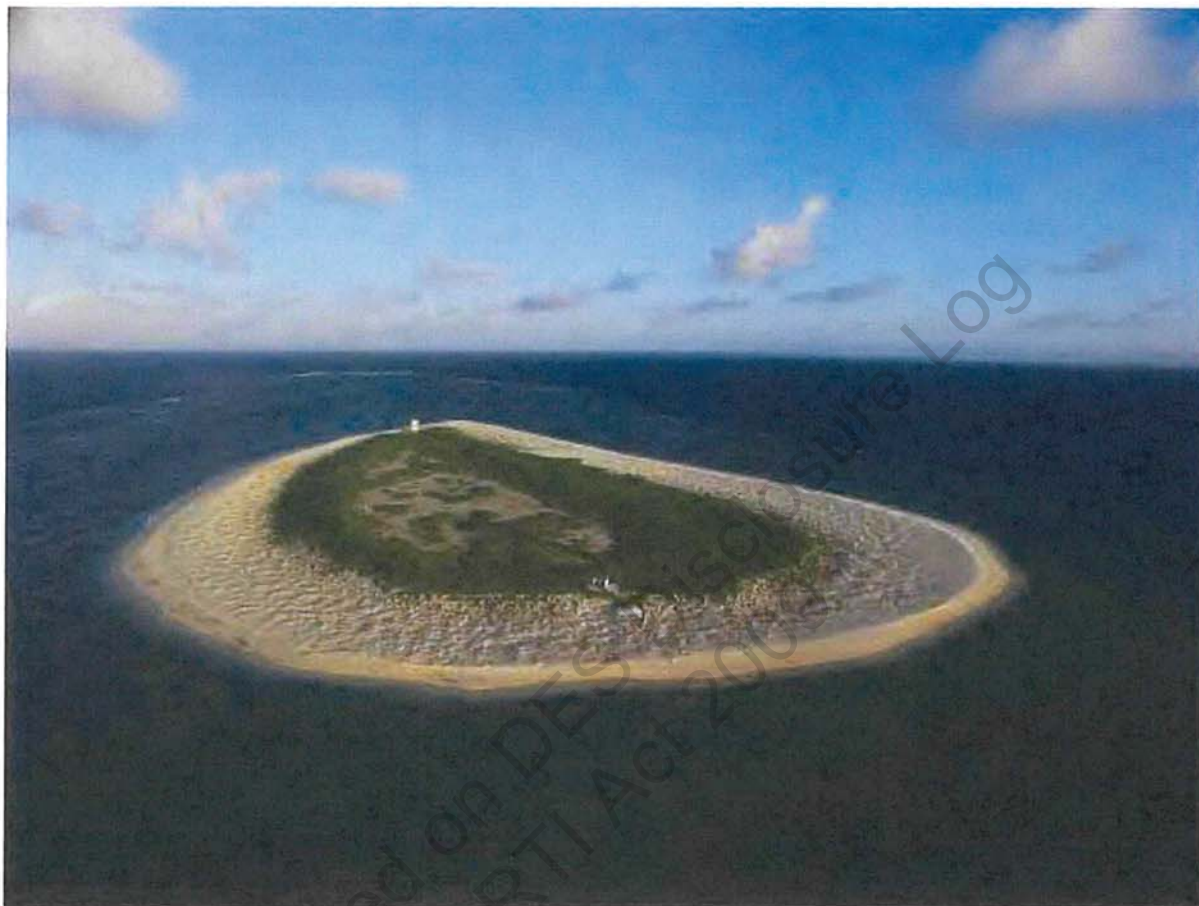
- Develop detailed vegetation and geomorphological maps including sand budgets

Implementing on-ground adaptation & restoration actions

- Restoration/accelerated recovery of key habitats both in water and on land including:
 - Re-profiling and re-vegetation of island areas
 - Restoration of mangroves, seagrasses and coral reefs
 - Improved protection measures for critical species for example: fencing to prevent turtle deaths; moorings to prevent anchor damage on coral reefs; pest management and eradication
- Strengthening stewardship activities with communities and reef businesses
- Increasing indigenous engagement and indigenous management opportunities

Carbon mitigation

- Develop carbon budgets for each island and explore ways to decrease carbon footprints – e.g. carbon neutral GBR islands.



Raine Island

Fully funded and in progress

Background: Raine Island is a critical Reef habitat supporting the largest remaining green turtle rookery in the world, and a major Coral Sea seabird nesting population. In terms of ecological importance, Raine Island is also the focal point for one of the greatest animal migrations occurring on Earth with up to 20,000 turtles nesting in a single night.

Research and monitoring over the last 30 years shows that the northern Great Barrier Reef (GBR) green turtle stock is in the early stage of decline, and that Raine Island has been failing as a turtle rookery since the late 1990s. It has been shown that turtles are typically unsuccessful in their attempts to nest on Raine Island due to shallow and dry sand, and there is low hatching success due to nest flooding, or unsuitable nesting substrate. This is resulting in an unsustainably low recruitment of hatchlings to a population that is already under pressure from threats elsewhere.

This is a 5 year, \$8M collaboration between BHP, the Queensland Government, the Great Barrier Reef Marine Park Authority, Traditional Owners and the Great Barrier Reef Foundation, that aims to restore and maintain the island as a viable island ecosystem which facilitates green turtle breeding, and seabird nesting and feeding, to support sustainable populations of those species and other dependent species.

Key project activities include:

- Restoring nesting habitat, including sand profiling and fencing
- Monitoring of key island species – including turtles, seabirds and other pelagic marine species such as tiger sharks
- Researching factors contributing to nesting success/failure and broader turtle connectivity (population model for Northern GBR turtle populations)
- 17-463 Engagement with Traditional Owners



Lady Elliot Island

Priority 1

Nature conservation values rating: Outstanding

Background: Lady Elliot Island is the southern-most of all the GBR islands. It was intensively mined for guano in the late 1800's stripping the island of all vegetation and removing more than 1m of topsoil. The island is home to a small Eco resort which is almost totally run on renewable energy.

Lady Elliot Island is one of the most important sites in the Great Barrier Reef World Heritage Area for seabird nesting. The diversity of seabirds breeding is the second highest of any island on the Great Barrier Reef. The island is home to a number of threatened bird species; it is one of only two breeding sites on the Great Barrier Reef for the red tailed tropicbird (listed as 'vulnerable' wildlife under the Nature Conservation Act), and an important site for nesting roseate terns. It is a roosting site for the lesser and greater frigate bird and brown booby. It is also a site for migratory birds covered under international migratory bird treaties such as Pacific golden plover, bar-tailed godwit, and grey-tailed tattler. Lady Elliot Island is an indicator species site and a key breeding site under the Coastal Bird Monitoring and Information Strategy (Department of National Parks, Recreation, Sport and Racing).

Pisonia grandis grew naturally on the island prior to the mining activities. pisonia forest is important as breeding habitat for black noddies and wedge-tailed shearwaters. In the Capricornia Cays, pisonia supports 75% of all nesting seabirds in the Great Barrier Reef World Heritage Area. Pisonia grandis low closed forest is restricted to a few scattered sand cays and is defined as 'of concern' under the Vegetation Management Act 1999 (3.2.29).

The island is also a nesting site for vulnerable green turtles (Chelonia mydas) and endangered loggerhead turtles (Caretta caretta). The turtles that use Lady Elliot Island are an important component of the turtle populations of the southern Great Barrier Reef.

Focus of works: GBRMPA has a draft Lady Elliot Island Resilience plan with a vision to maximise resilience to climate change and other stresses by enhancing natural vegetation communities, minimising impacts of introduced flora and fauna, and maximising breeding opportunities for important coastal birds and marine turtle species while having regard to existing footprint and uses. This project will extend the current resilience plan and include in water activities such as monitoring marine megafauna (e.g. manta rays, dolphins and sharks) and enhancing the resilience of adjoining coral reefs.

Alignment to Reef 2050 Priorities

Ecosystem Health

EHA2: Incorporate and prioritise Traditional Owners' planning into existing and future ecosystem and policy and projects.

EHA3: Support Traditional Owner stewardship activities that contribute to Reef health and resilience.

EHA7: Prioritise functional ecosystems critical to Reef health in each region for their protection, restoration and management

EHA10: Improve connectivity and resilience through protection, restoration and management of reef priority coastal ecosystems, including islands, through innovative and cost-effective measures

EHA13: Identify and prioritize key sites of high ecological value and implement recovery programs (Reef Recovery Plans)

EHA14: Implement ecosystem health initiatives through the Reef Trust investment strategy

EHA15: Improve mapping, modelling and monitoring of ecosystems important for the protection of the reef to inform planning, assessment and decision-making.

Biodiversity

BA2: Work with Traditional Owner groups to identify biocultural resources within their sea country and develop plans of management for conservation and use of those resources.

BA3: Improve Traditional Owner engagement to strengthen participation in decision making at all levels relating to the conservation and cultural use of biodiversity.

BA10: Identify, protect and manage key marine turtle nesting areas

BA11: Identify, protect and manage key seabird nesting islands, and key habitats that support foreshore and pelagic foraging.

BA16: Implement conservation plans for priority species of conservation concern

BA19 Monitor and report on key seabird populations to establish trends.

BA20 Monitor and report on turtle breeding and/or nesting success of green, loggerhead, flatback and hawksbill turtles at key locations.

BA24 Ensure that through the Field Management Program resources are available for island habitat restoration species (due to range shifts and loss of habitat elsewhere).