



**Queensland
Government**

Grant Agreement

Between **State of Queensland** acting through the **Department of Tourism, Innovation and Sport ABN 83 481 966 722**

 (**Department**)

insert name and ACN/ABN of Recipient

 (**Recipient**)

Background

- A. The Recipient wishes to carry out the Activity and has sought assistance from the Department.
- B. The Department has agreed to provide the Grant to the Recipient to carry out the Activity on the terms of this agreement.
- C. The parties wish to record the terms and conditions of their agreement in this agreement, which consists of this cover page, the signing page and all schedules and annexures.

Ref: 0001638

Schedule 1 – Agreement details

Item 1 Party details:

Department:

Party Name: State of Queensland acting through the Department of Tourism, Innovation and Sport

ABN: 83 481 966 722

Street Address: Level 3, 140 Creek Street, Brisbane

Contact Name: Mr Stephen Lamb

Contact Postal Address: PO Box 15168, City East, Brisbane, Queensland 4002

Contact Telephone: 07 3170 5865

Contact Email: ScienceFunding@dtis.qld.gov.au

Recipient:

Party Name: insert details

ABN/ACN: insert details

Street Address: insert details

Contact Name: insert details

Contact Postal Address: insert details

Contact Telephone: insert details

Contact Email: insert details

Item 2 Term: (clauses 22.1 and 25.1)

Commencement Date: The date this agreement is executed by the last party to do so OR insert date relevant to after approval date.

Expiry Date: 3 months after Activity End Date or provision of Final Report, whichever is the later.

Item 3 Activity: (clauses 1.1 and 25.1)

The Recipient must deliver [details of project description here]

Item 4 Activity period: (clauses 1.1 and 25.1)

Activity Commencement Date: Insert date OR Upon Commencement Date.

Activity End Date: Insert date – up to 36 months after commencement date.

Item 5 Milestones and Grant: (clauses 1.1 and 25.1)

	Milestone description	Completion date
1.	Execution of Agreement Provision of Valid Tax Invoice	Upon execution
2.	Provision of executed Collaborative Research Agreement(s) addressing IP allocation. Provision of Valid Tax Invoice	3 calendar months after the Commencement Date
3.	Completion of Project planned activities for Project Period 1 and 2 as specified in the Project Plan. Submission of Progress Report on Project Period 1 and 2 to the satisfaction of the Department. Financial acquittal statement Provision of Valid Tax Invoice	TBD with specified date or 13 calendar months after the Commencement Date
4.	Completion of Project planned activities for Project Period [INSERT] as specified in the Project Plan. Submission of Progress Report on Project Period [INSERT] to the satisfaction of the Department. Financial acquittal statement Provision of Valid Tax Invoice	TBD with specified date or 25 calendar months after the Commencement Date
5.	Completion of Project planned activities for Project Period [INSERT] as specified in the Project Plan. Submission of Progress Report on Project Period [INSERT] to the satisfaction of the Department Financial acquittal statement Provision of Valid Tax Invoice	TBD with specified date or 31 calendar months after the Commencement Date
6.	Completion of Project planned activities for Project Period [INSERT] as specified in the Project Plan. Submission of Final Report on Project Period [INSERT] and end of Project outcomes to the satisfaction of the Department Financial acquittal statement Provision of Valid Tax Invoice	TBD with specified date or 37 calendar months after the Commencement Date

Item 6 Recipient's and Partner's Contributions: (clauses 1.1 and 25.1)

Contributions (all figures GST exclusive)	Recipient	Partner 1	Partner 2	Partner 3	Partner 4	TOTAL
Year						
Year 1 Total						
Year 2 Total						
Year 3 Total						
PROJECT TOTAL						

Item 7 Standards: (clauses 1.1 and 25.1)

The Recipient must adhere to all relevant legislation, codes of practice and Australian Standards for the required Activity.

Item 8 Grant: (clause 2.1, 4.1)

Instalment description	Amount	Payment date
Agreement Execution	\$TBD (excluding GST)	Upon execution of agreement
Milestone 1 completion	\$TBD (excluding GST)	INSERT DATE or 3 months after project commencement
Milestone 2 completion	\$TBD (excluding GST)	INSERT DATE or 13 months after project commencement
Milestone 3 completion	\$ TBD (excluding GST)	INSERT DATE or 19 months after project commencement

Instalment description	Amount	Payment date
Milestone 4 completion	\$ TBD (excluding GST)	INSERT DATE or 25 months after project commencement
Milestone 5 completion	\$TBD (excluding GST)	INSERT DATE or 31 months after project commencement
Milestone 6 completion	\$ TBD (excluding GST)	INSERT DATE or 37 months after project commencement
TOTAL:	\$TBD (excluding GST)	

Item 9 Reports: (clauses 5 and 25.1)

Report	Report contents and form	Submission date
Progress reports	<p>A report in the format specified by the Department via its SmartyGrants system including any other information and material reasonably requested by the Department and notified to the Recipient in writing from time to time and including the following information:</p> <ul style="list-style-type: none"> (a) an outline of Project activities undertaken and outcomes achieved during the specified Reporting Period(s) in the Project Plan; (b) an outline of any Project activities planned for the relevant Project Period(s) that did not take place, the reasons for this, and any plans to rectify; (c) the total expenditure by the Recipient on the Project claimed as Eligible Project Costs to date; (d) the amount of any Unspent Funds, the reason why the Unspent Funds have not been spent, and a prediction of when the Recipient expects that the Unspent Funds will be spent; (e) details of the amount and type of Contribution made by the Recipient and each of the Partners to the Project; (f) any adverse matter which may materially affect the Project or the Recipient; (g) a declaration signed by the Contact Officer testifying as to the truth and veracity of the information submitted in support of the claim; and (h) any other information and material reasonably requested by the 	To Be Determined on Project by Project basis

Report	Report contents and form	Submission date
	Department relating to the Project.	
Financial Acquittal Report/s	<p>The submission of a Financial Acquittal Statement clearly documenting the receipt and expenditure of the Funding, Recipient Contribution and Partner Contributions in a format notified by the Department.</p> <p>Financial acquittal should include the following:</p> <p>(a) the total expenditure by the Recipient on the Project claimed as Eligible Project Costs to date;</p> <p>(b) evidence of the expenditure on the Project in the form of an official financial statement signed by an certified practising accountant showing expenditure claimed by the Recipient as Eligible Project Costs;</p> <p>(c) the amount of any unspent Funding, the reason why the unspent Funding have not been spent and a prediction of when the Recipient expects that the unspent Funding will be spent; details of the amount and type of Contribution made by the Recipient and Partners to the Project.</p>	<p>To Be Determined on Project by Project basis</p> <p>Default:</p> <p>Must be provided with progress reports and final reports</p>
Final report	<p>A report in the format specified by the Department via its SmartyGrants system including any other information and material reasonably requested by the Department and notified to the Recipient in writing from time to time and including the following information:</p> <p>(a) an outline of the work on the Project from the Commencement Date to the date of completion of the Final Project Period;</p> <p>(b) a summary of the key achievements of the Project including information to support the evaluation of the Project (including details of the commercial potential of the Project to Queensland);</p> <p>(c) an outline of how the Project has contributed to the Recipient's future development; facilitated the collaboration between the Recipient and the Participants on the Project; and benefited Queensland;</p> <p>(d) details and evidence of the amount and type of financial contribution made by the Recipient and Partners to the Project up to the date of the Final Report;</p> <p>(e) a declaration signed by the Contact Officer testifying as to the truth and veracity of the information submitted in support of the claim; and</p> <p>(f) any other information and material reasonably requested by the Department relating to the Project.</p>	37 months after project commencement

Report	Report contents and form	Submission date
Update Report	<p>An Update Report is a report in the format as notified in writing from time to time by the Department to the Recipient including:</p> <p>(a) concerning the translation and commercialisation of the Project's research outcomes;</p> <p>(b) an outline of how the Project has contributed to the Recipient's development; facilitated the collaboration between the Recipient and the Participants on the Project; and benefited Queensland</p> <p>(c) a declaration signed by the Contact Officer testifying as to the truth and veracity of the information submitted in support of the claim; and</p> <p>(d) any other information and material reasonably requested by the Department relating to the Project.</p>	To Be Determined on Project by Project basis

Item 10 Assets: (clauses 11 and 25.1)

The Grant may be used to purchase Assets up to a maximum total value of 10% of the Grant during the Term. Purchase of an Asset identified in the Detailed Project Plan, requires prior written approval of the Department. .

Item 11 Insurance: (clause 15)

Public Liability:	\$10,000,000.00	During the Term
Workers' Compensation:	As required by law	During the Term
Professional Indemnity:	\$5,000,000.00	During the Term and for 12 years after the Expiry Date
	TBD – is dependent on the individual project.	
Insurance of Assets against risk, loss or damage	Full insurable risk value	During the Term

Item 12 Key Personnel: (clause 1.5 and 25.1)

Key Person 1: insert name, insert position

Key Person 2: insert name, insert position

Key Person 3: insert name, insert position

Item 13 Special Conditions: (clause 25.1)

SC1 Additional Definitions

1.1 These additional terms are defined as follows:

“Collaborative Agreement” means an agreement between the Recipient and a Partner or Partners in relation to the Activity.

SC2 Intellectual Property and Collaborative Agreement

2.1 The Recipient and Partners must enter into a Collaborative Agreement or Collaborative Agreements in relation to the Activity, on or before insert period.

2.2 The Collaborative Agreement must provide for the ownership and/or licensing, and commercialisation of Intellectual Property generated or further developed by the Activity as between the Recipient and Partners.

2.3 The Recipient must provide a copy of the signed Collaborative Agreement to the Department by insert period.

SC3 Commercialisation

3.1 The parties acknowledge that the intent of the Activity is for the Recipient and/or Partners to commercialise the product or service developed by the Activity.

3.2 The parties will exercise reasonable commercial endeavours to commercialise the product or service developed by the Activity, within 5 years of the Activity End Date.

SC4 Promotion of Activity and Publication of Results

4.1 The Recipient must:

- (a) actively promote the Activity to the media and public;
- (b) contribute information and attend media/promotion events if requested by the Department; and
- (a) publish the results of the Activity, subject to commercial in confidence obligations between the Recipient and the Partners.

SC5 Update Report

Upon Department request (which may be made at any time up to two years after the Activity End Date), the Recipient must provide an Update Report to the Department. The content of the Update Report is further specified in Item 9 Schedule 1.

SC6 Survival

Special Conditions 3 to 6 survives the termination or expiration of this Agreement.

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 this agreement or which are significant (e.g. involve intellectual property, warranties, indemnities or liability). If no Special Conditions insert “NIL”.

Schedule 2 – Terms and conditions

1. Recipient's obligations

1.1 Performance of the Activity

The Recipient must:

- (a) commence the Activity by the Activity Commencement Date;
- (b) carry out the Activity in accordance with this agreement and with due care and skill;
- (c) if applicable, carry out the Activity in accordance with the Detailed Project Plan;
- (d) meet each of the Milestones;
- (e) complete the Activity by the Activity End Date;
- (f) provide the Recipient's Contribution for the purposes of the Activity;
- (g) ensure each Partner provides the Partner's Contribution for the purposes of the Activity;
- (h) not do anything or become involved in any situation which, in the reasonable opinion of the Department, reflects unfavourably upon the State of Queensland and/or the Activity;
- (i) comply with:
 - (i) the terms and conditions of this agreement;
 - (ii) applicable Laws (including obtaining and maintaining any licence or authorisation required for the Recipient to carry out the Activity) and the Standards (if any);
 - (iii) standards of professional care and diligence of the industry to which the Recipient belongs; and
 - (iv) the Department's reasonable requests, directions and requirements, to the Department's satisfaction; and
- (j) comply with the Guidelines and maintain eligibility under the Guidelines;
- (k) communicate with, report and provide information to the Department's Contact as reasonably required by the Department; and
- (l) use a prudent and reasonable procurement process to ensure value for money in relation to the expenditure of the Grant.

1.2 Detailed Project Plan

The Recipient must:

- (a) monitor and evaluate the progress of the Activity against the Detailed Project Plan;
- (b) advise and seek the Department's approval of any changes to the Detailed Project Plan; and
- (c) advise the Department of any adverse event which may impact on progress against the Detailed Project Plan as soon as it occurs and, in any event, not later than 10 Business Days of the occurrence of the event.

1.3 General obligations

- (a) The Recipient acknowledges and agrees that all its personnel are the Recipient's responsibility including payment of all employee wages and entitlements.
- (b) If the Recipient is aware of an Allegation, then the Recipient must report the Allegation to a relevant authority, including the Queensland Police Service. In this clause 1, **Allegation** means an allegation against the Recipient or its Representatives in connection with the Grant or the provision of the Activity which raises a reasonable suspicion of misconduct, dishonesty or unlawful behaviour of a serious nature.

1.4 Notifications

The Recipient must promptly notify the Department:

- (a) of any matters that the Recipient reasonably considers may affect the Recipient's ability to carry out the Activity or meet any other obligations under this agreement;
- (b) if the Recipient is unable to carry out the Activity within the monetary limit of the Grant or by the Activity End Date;
- (c) of any matter that may affect the Recipient's eligibility to continue receiving the Grant and/or eligibility under the Guidelines;
- (d) of any allegation of misconduct or dishonesty concerning the Recipient or its Representatives or Partners and any report made under clause 1.3(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 Activity.

1.5 Key Personnel

- (a) The Recipient will not, without the Department's prior consent:
 - (i) allow Key Personnel to delegate any part of the Activity tasks allocated to the Key Personnel; or
 - (ii) allocate tasks unconnected with the Activity to any of the Key Personnel that may affect the Key Personnel's ability to perform Activity tasks allocated to them until such Activity tasks are completed.
- (b) If any of the Key Personnel are not available to perform any of the Activity tasks allocated to them the Recipient will immediately:
 - (i) give notice to the Department of the circumstances; and

- (ii) if so requested by the Department, replace that person at no cost to the Department, with a person satisfactory to the Department who is of substantially equivalent experience and expertise.
- (c) The Department may, on reasonable grounds, give notice requiring the Recipient to remove Key Personnel from working on the Activity. Upon receipt of such a notice, the Recipient will, at no cost to the Department, promptly remove and replace that person with a person satisfactory to the Department who is of substantially equivalent experience and expertise.

2. Grant

2.1 Department's obligations

- (a) The Department will pay the Grant to the Recipient in the instalments (if any) and on the date(s) specified in Schedule 1.
- (b) The Department may in its absolute discretion, withhold payment of an instalment of the Grant to the Recipient until:
 - (i) the Recipient has shown to the Department's satisfaction (allowing the Department reasonable time to assess its satisfaction) that it has met all Milestones due on or before the payment date for the instalment;
 - (ii) the Recipient has issued a tax invoice, if applicable, to the Department for the instalment;
 - (iii) the Recipient has submitted to the Department, to the Department's satisfaction, all Reports due on or before the payment date for the instalment;
 - (iv) the Recipient has made the relevant Recipient's Contribution due on or before the payment date for the instalment;
 - (v) the Recipient has ensured each Partner has made the relevant Partner Contribution due on or before the payment date for the instalment; and
 - (vi) the Department is reasonably satisfied that the Recipient is not otherwise in breach of this agreement.
- (c) Any payment to the Recipient by the Department is not an admission or acceptance by the Department that the Recipient has complied with this agreement.
- (d) The Department may in its absolute discretion, make a reduced payment under clause 2.1(b) corresponding to the relevant Contribution amount, if the Recipient has made a partial relevant Recipient Contribution or ensured a partial Partner Contribution under clause 2.1(b),

2.2 No further funding

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

3. Activity management

- (a) Each party must nominate a Contact 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 by written notice to the other party in accordance with clause 23.
- (c) The Contacts will meet to review the performance of the Activity and this agreement upon reasonable written notice given by either party.

4. Use of the Grant

4.1 Expenditure of the Grant

- (a) The Recipient must use the Grant only:
 - (i) for the purposes of the Activity and in accordance with this agreement;
 - (ii) for Activities occurring up to the Activity End Date or earlier termination of this agreement; and
 - (iii) in accordance with the eligible expenditure requirements of the Guidelines.
- (b) The Recipient must not use any or all of the Grant, without the Department's prior written approval, to:
 - (i) provide security for any purpose;
 - (ii) make a loan or gift for any purpose;
 - (iii) pay sitting fees to directors, management committee members, members of the Recipient's organisation or any other person;
 - (iv) make payments that are inconsistent with the Activity;
 - (v) reimburse expenses that the Recipient incurred prior to the Commencement Date;
 - (vi) relieve cash flow problems in the delivery of the Recipient's other services or activities funded from other sources;
 - (vii) expend the Grant other than in accordance with the eligible expenditure requirements of the Guidelines; or
 - (viii) purchase any asset, other than an Asset.
- (c) The Recipient must hold the Grant in an account in the Recipient's name and in the Recipient's sole control, with an Approved Financial Institution.
- (d) The Recipient must keep a record of the date, amount, recipient and purpose of any

cash cheque issued or cash advance made using the Grant.

- (e) Where the Recipient receives the Grant to employ staff and is bound by a registered industrial instrument requiring the payment of termination or redundancy payments in appropriate circumstances, the Grant may only be used for termination or redundancy payments if:
 - (i) this agreement is terminated in accordance with clause 22.3; or
 - (ii) the Recipient has obtained the Department's prior written approval.

4.2 Misapplied Grant

- (a) If the Recipient uses the Grant other than in accordance with this agreement (**Misapplied Funds**):
 - (i) the Department may, by written notice, require the Recipient to refund the Misapplied Funds; and
 - (ii) if the Department exercises its rights under clause 4.2(a)(i), then the Recipient must within 10 Business Days of receipt of the notice refund the Misapplied Funds plus any interest on it calculated on daily balances at the rate per annum determined by the Supreme Court of Queensland on judgments by default as applicable at the date of the Department's notice and is fully capitalised on the last day of each month if unpaid; and
 - (iii) if the Misapplied Funds are not repaid in accordance with clause 4.2(a)(ii), the Department may:
 - (A) recover the amount as a liquidated debt due to the Department; or
 - (B) set the amount off against any other amount payable by the Department to the Recipient, whether under this agreement or otherwise.
- (b) Nothing in this clause 4.2 affects the accrued rights or remedies of the Department, including the right to terminate this agreement in accordance with clause 22.4.
- (c) Where the Department becomes aware of Misapplied Funds after the Term, clause 4.2(a) will apply in accordance with clause 22.7(b).

4.3 Unspent funds held by the Recipient

If, at the expiration or termination of this agreement, there remains an amount of the Grant that has not been acquitted or spent by the Recipient in accordance with the terms of this agreement (**Unspent Funds**), then:

- (a) the Recipient must refund the Unspent Funds to the Department within 10 Business Days of termination or expiration of this agreement; and
- (b) notwithstanding clause 4.3(a), the Department may by written notice consent to the Recipient retaining all or part of the Unspent Funds and, if the Department so consents, the Recipient must expend the Unspent Funds for an approved purpose on terms and conditions agreed in writing by the Department (including as contained in the notice from the Department).

5. Reporting and financial acquittal

5.1 Recipient to submit Reports

- (a) The Recipient must:
- (i) submit all Reports to the Department in the form, containing the information, for the reporting periods (if applicable), and on the dates specified in Item 9 of Schedule 1 unless the Department directs otherwise in writing;
 - (ii) in respect of Financial Acquittal Reports (if any), show expenditure of the Grant in accordance with clause 4.1(a);
 - (iii) provide to the Department any other information or material about the Recipient, the Activity, the Grant 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;
 - (iv) complete each Report to the Department's satisfaction; and
 - (v) to the extent that a Report contains Personal Information, obtain all written consents necessary for the Recipient and Department to use and disclose the Reports for purposes related to the Activity and its subject matter, and the Department's internal, non-commercial purposes.
- (b) Where the Activity is funded for only part of a particular reporting period (e.g. if the Commencement Date or the Expiry Date does not coincide with the start or end date of a reporting period), the Report should contain information relevant only to that part of the reporting period.
- (c) The Recipient must complete any Report, information or material required to be submitted under clause 5.1(a) (**Submitted Material**) to the Department's satisfaction. If the Department is not satisfied with any Submitted Material:
- (i) the Department may return the Submitted Material to the Recipient with instructions for satisfactory completion; and
 - (ii) the Recipient must complete and re-submit to the Department the Submitted Material in the time specified by the Department, or if no time is specified, within a reasonable time.
- (d) Upon written request, the Recipient must provide the Department with:
- (i) financial statements that the Recipient is required to lodge under its incorporating legislation, including a declaration from the Recipient's chief executive officer or equivalent stating that the Grant has been used in the relevant financial year for carrying out the Activity; or
 - (ii) an audited financial statement for each 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 Recipient that were not received or incurred in carrying out the Activity.
- (e) The Recipient consents to the Department's use and disclosure (including disclosure to third parties) of the Reports and additional documentation provided under clause 5.1(a)(iii), for purposes related to the Activity and its subject matter, and the Department's internal, non-commercial purposes.

5.2 Eligibility for future grants

The Recipient acknowledges that if it fails to provide Reports showing expenditure of the Grant

in accordance with clause 5.1, the Recipient's eligibility to receive a future grant from the Department may be affected.

6. Records

The Recipient must:

- (a) keep a separate record of the Grant in the Recipient's ledger, and record all expenditure and income relating directly or indirectly to the Activity separate from all other income and expenditure of the Recipient;
- (b) 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 the Activity, including records about the performance of the Activity and whether time frames and performance requirements for the Activity are met; and
 - (ii) its affairs generally,in secure storage for at least 7 years after the Expiry Date; and
- (c) comply with any additional recordkeeping obligations specified in this agreement.

7. Audit and access

7.1 Access to Recipient's premises and records

- (a) The Recipient will give, and will procure its Representatives and Partners to 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 Activity;
 - (ii) examine, inspect and copy any material, including any books and records, in the possession of the Recipient which is relevant to this agreement, including providing all necessary facilities for that purpose;
 - (iii) examine and inspect the performance of the Activity; and
 - (iv) locate and make copies of any of the Recipient's accounts, records, documents and other material that relate directly or indirectly to the receipt, expenditure, or payment of the Grant or the conduct of the Activity.
- (b) The Department's right of access under clause 7.1(a) may be exercised for any reasonable purpose relating to this agreement, including for financial or compliance audits, or reviews of the Recipient's performance of this agreement.
- (c) When accessing premises and/or records in accordance with clause 7.1(a), the Department will use its best endeavours to minimise interference to the Recipient's employees and the conduct of the Activity.

7.2 Other information to be provided

The Recipient must promptly provide any information requested in writing by the Department, its Representatives or its nominated auditors concerning any aspect of the Activity or the Grant or any term of this agreement.

8. Subcontracting and Partners

- (a) The Recipient must ensure that any subcontractor engaged to perform part of the Activity is suitably qualified, experienced or competent to perform that part.
- (b) The Recipient must ensure each subcontractor effects and maintains insurance policies for the types, amounts and for the periods specified in Item 11 of Schedule 1 as required of subcontractors.
- (c) The Recipient's subcontracting any part of the Activity will not release the Recipient from, or reduce the extent of, its liabilities or obligations under this agreement.
- (d) The Recipient is and will remain liable to the Department for the acts, defaults or omissions of any subcontractor as if those acts, defaults and omissions were those of the Recipient.
- (e) The Recipient is and will remain liable to the Department for the acts, defaults or omissions of any Partner in connection with the performance of the Activity, as if those acts, defaults and omissions were those of the Recipient.

9. 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 Activity Material and Reports will vest, upon creation, in the Recipient.
- (d) The Recipient grants to the Department a non-exclusive, worldwide, perpetual, irrevocable, royalty-free licence (including a right to sub-licence) to use, communicate, reproduce, publish, adapt and modify:
 - (i) the Activity Material;
 - (ii) the Recipient's Background IP to the extent necessary to exercise the rights granted under the licence to the Activity Material; and
 - (iii) the Reports,for the Department's non-commercial purposes.
- (e) The Department grants to the Recipient 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 to the extent the Background IP is incorporated in and necessary to exercise the Recipient's rights in the Activity Material.
- (f) The Recipient will do all things necessary (including obtaining consents) to ensure:
 - (i) the vesting of the Activity Material and Reports in accordance with clause 9(c); and
 - (ii) the licensing of the Activity Material and Reports in accordance with clause 9(d).

10. Acknowledgement

- (a) The Recipient must include acknowledgement of the Grant:

- (i) in its annual report (if the Recipient produces an annual report);
 - (ii) in any public statements and promotional materials about the Activity and any related projects that have been funded wholly or in part by the Department during the Term; and
 - (iii) in accordance with any additional requirements as requested in writing by the Department.
- (b) Any acknowledgment in promotional material about the Activity must include a logo or other branding as required by the Department.
- (c) Before the Recipient may release a public statement or publish promotional material in any media about the Activity, the Recipient must:
- (i) at least 10 Business Days before the proposed statement or publication, provide to the Department a copy of the proposed statement or publication; and
 - (ii) comply with all requests, amendments or conditions that the Department may reasonably require by written notice to the Recipient.

11. Assets

- (a) If Item 10 of Schedule 1 specifies that the Grant may be used to purchase Assets, then the Grant may be used to purchase Assets and this clause 11 applies. If not so specified, then the Grant cannot be used to purchase Assets.
- (b) The Recipient must be the legal and beneficial owner of any Asset purchased either wholly or in part with use of the Grant.
- (c) The Recipient must:
- (i) only use the Asset for purposes directly related to carrying out the Activity, and subject to clause 22.6(a), after the expiry or termination of this agreement only use the Asset in a manner consistent with the objectives of the Activity;
 - (ii) not sell or otherwise dispose of, encumber, use as a security, or otherwise deal with the Asset without the Department's prior written consent;
 - (iii) hold the Asset securely and put in place reasonable safeguards against loss, damage or unauthorised use;
 - (iv) maintain at its expense:
 - (A) the Asset in good working order; and
 - (B) registration and licensing of the Asset, if applicable; and
 - (v) be fully responsible for, and bear all risks relating to, the purchase, use or disposal of the Asset.
- (d) If the Recipient disposes of an Asset during the Term, the Department may, in its discretion, reduce the Grant by the value of the disposed Asset.
- (e) If any Asset is lost, damaged or destroyed during the Term, the Recipient will promptly reinstate the Asset (including from the proceeds of the insurance, if any),

and this clause 11 will continue to apply to the reinstated Asset.

12. Conflict of interest

- (a) The Recipient warrants that, except as notified to the Department as at the date of Commencement Date, no Conflict of Interest exists or is likely to arise in the performance of its obligations under this agreement, by it or its Representatives.
- (b) The Recipient must use its best endeavours (including making all diligent inquiries) to ensure that:
 - (i) a situation does not arise that may result in a Conflict of Interest; and
 - (ii) none of its Representatives engage in any activity or obtains any interest that may reasonably be considered to conflict with, or restrict the Recipient in performing its obligations under this agreement fairly and independently.
- (c) The Recipient must not engage in any activity, transaction or arrangement that would be likely to result in a Conflict of Interest arising or continuing (including any activity, transaction or arrangement which the Department may reasonably view as a Conflict of Interest), unless the Department has given written approval for the Recipient to engage in that activity.
- (d) If, during the Term, a Conflict of Interest arises, or appears likely to arise, the Recipient will notify the Department immediately in writing, provide any information reasonably requested by the Department and to take such steps to resolve or otherwise deal with the Conflict of Interest to the Department's satisfaction.
- (e) The Recipient must ensure a Partner does not engage in any activity, transaction or arrangement that would be likely to result in a Conflict of Interest arising or continuing (including any activity, transaction or arrangement which the Department may reasonably view as a Conflict of Interest), unless the Department has given written approval for the Partner to engage in that activity.
- (f) If, during the Term, a Conflict of Interest arises, or appears likely to arise, in relation to a Partner the Recipient will notify the Department immediately in writing, provide any information reasonably requested by the Department and to take such steps to resolve or otherwise deal with the Conflict of Interest to the Department's satisfaction.

13. Confidentiality

13.1 Confidential Information

Subject to clause 13.2, 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.

13.2 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;
 - (iii) where disclosure is required to be made in accordance with established governmental policies, procedures or for public accountability purposes.

13.3 Limiting disclosure

Before the Disclosee or any of its Representatives discloses any Confidential Information under clause 13.2(e) or 13.2(f):

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

13.4 Breach of confidentiality

- (a) If a party becomes aware of a suspected or actual breach of this clause 13 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 13.

13.5 Return of Confidential Information

The Disclosee will return or destroy (at the Discloser's discretion) material containing Confidential Information when it is no longer required by the Disclosee, or otherwise when directed by the Discloser, except for any Confidential Information required to be retained at law.

13.6 Recipient's undertaking

- (a) The Recipient must ensure that its Representatives are aware of and comply with the obligations of confidentiality in this clause 13.

- (b) The Department may, at any time, require the Recipient to arrange for its Representatives engaged in the performance of the Activity, to give written undertakings in a form reasonably required by the Department relating to the non-disclosure of Confidential Information under this clause 13.

14. Privacy and Personal Information

- (a) This clause 14 applies where this agreement amounts to a “service arrangement” under the *Information Privacy Act 2009* (Qld).
- (b) For the purpose of this clause 14, Personal Information has the meaning given in the *Information Privacy Act 2009* (Qld).
- (c) If the Recipient collects or has access to Personal Information in order to undertake the Activity, the Recipient 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 (including its obligations regarding Reports), as if the Recipient 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 purposes of undertaking the Activity, 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 Recipient’s employees and officers who require access in order to perform their duties;
 - (vii) ensure that the Recipient’s officers and employees do not access, use or disclose Personal Information other than in the performance of their duties;
 - (viii) ensure that the Recipient’s subcontractors who have access to Personal Information comply with obligations the same as those imposed on the the Recipient under this clause 14;
 - (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 Recipient in writing from time to time.
- (d) The Recipient must immediately notify the Department on becoming aware of any breach, suspected breach or complaint alleging something that would, if proved, be a breach of clause 14(c) and provide full details of the breach, suspected breach or complaint.
- (e) On request by the Department, the Recipient must obtain from its Representatives engaged for the purposes of this agreement, an executed deed of privacy in a form

acceptable to the Department.

15. Insurance

- (a) The Recipient must effect and maintain insurance policies for the types, amounts and for the periods specified in Item 11 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 Recipient must provide the Department with evidence in a form acceptable to the Department of the terms and currency of the insurance required under clause 15(a), including copies of insurance policies and any endorsements or amendment to such policies.

16. Warranty

- (a) The Recipient warrants and represents to the Department that it:
 - (i) has the power, authority and ability to enter into this agreement; and will obtain at its own cost all necessary consents, licences and authorisations to perform its obligations under this agreement.
- (b) To the full extent permitted by law, the Department excludes all conditions and warranties not expressly stated in this agreement.

17. Force majeure

17.1 Notice of Force Majeure Event

If either party (**Affected Party**) becomes aware of a Force Majeure Event that is or is likely to prevent it either partially or wholly from complying with its obligations (except payment obligations) under this agreement, it must as soon as reasonably practicable notify the other party of:

- (a) the Force Majeure Event;
- (b) the obligations that the Affected Party is prevented from performing (**Affected Obligations**); and
- (c) the expected duration of the period during which the Affected Party will be prevented by the Force Majeure Event from performing the Affected Obligations.

17.2 Suspension of performance

The Affected Party is not liable for any failure to perform or delay in performing its obligations (other than an obligation to pay money) under this agreement if that failure or delay is the result of a Force Majeure Event provided the Affected Party:

- (a) has notified the other party in accordance with clause 17.1; and
- (b) uses its reasonable endeavours to mitigate the effect of, and remedy the Force Majeure Event.

17.3 Termination

If the Affected Party is prevented from performing the Affected Obligations by a Force Majeure Event for a continuous period of 3 months, either party may terminate this agreement by 30 days written notice to the other party.

17.4 Consequences of termination

If a party terminates this agreement under clause 17.3, the rights and obligations of the parties under this agreement cease provided that any accrued rights or remedies of the parties are not affected.

18. Liability

18.1 Release

The Recipient 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 the Activity or this agreement.

18.2 Liability

The liability of the Department under or in connection with this agreement is limited in aggregate to the amount of the Grant.

18.3 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 bargain, loss or denial of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of production, loss of data or goodwill or credit, loss of reputation or future reputation or publicity, loss of use, loss of interest, damage to credit rating or any indirect or consequential loss, whether arising in contract, tort (including negligence) or otherwise, in connection with this agreement.

19. Indemnity

- (a) The Recipient indemnifies and will defend the Department and its Representatives against all claims, liabilities, losses, damages, costs and expenses (including legal fees, costs and disbursements on a solicitor and own client basis) arising from or incurred in connection with:
- (i) performance or breach of this agreement by the Recipient or its Representatives;
 - (ii) any unlawful, fraudulent or negligent act or omission of the Recipient, the Recipient's Representatives, a Partner or its Representatives, or any person for whose conduct the Recipient is liable;
 - (iii) personal injury (including sickness and death) of any person arising out of or in connection with performance or breach of this agreement by the Recipient or its Representatives;
 - (iv) property damage or loss arising out of or in connection with the performance or breach of this agreement by the Recipient (including damage or loss to property of the Department or any third party); or
 - (v) any actual or alleged infringement of any Intellectual Property Rights or Moral Rights.
- (b) The Recipient's liability to indemnify the Department and its Representatives under clause 19(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 19(a) is in addition to and not exclusive of any other remedies the Department may have against the Recipient at law.
 - (d) 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.
-

20. GST

- (a) In this clause 20:
 - (i) words or expressions used that are defined in the GST Act have the same meaning as defined in that Act, unless the context suggests otherwise;
 - (ii) "GST" has the meaning in clause 25.1;
 - (iii) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 20;
 - (iv) a reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts; and
 - (v) a reference to GST payable by or input tax credit entitlement of a party includes any GST payable by, or input tax credit entitlement of, the representative member of any GST group of which that party (or the entity on whose behalf that party is acting) is a member.
- (b) Unless otherwise expressly stated, all consideration to be provided under any other provision of this agreement is exclusive of GST.
- (c) 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 other party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that other party (or an entity on whose behalf the other party is acting) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (d) 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) unless the consideration for that supply is specified to be inclusive of GST, an additional amount will be payable by the party providing consideration for that supply (**Supply Recipient**) equal to the amount of GST payable by the Supplier on that supply (**GST Amount**);
 - (ii) the GST Amount is payable at the same time as any part of the consideration is to be first provided for that supply and the Supplier will provide a tax invoice to the Supply Recipient in respect of that supply, no later than that time;
 - (iii) where GST Amounts are payable between parties to this agreement pursuant to clause 20(d)(i), amounts so payable, to the extent they are equivalent in amount, shall be set off against each other as if paid and each party shall be obligated only to provide the tax invoice referred to clause 20(d)(ii) no later than the time at which the first part of any consideration is provided for that supply.
- (e) If the GST Amount recovered by the Supplier from the Supply Recipient under

clause 20(d) for a supply differs for any reason from the amount of GST paid or payable by the Supplier on that supply, then the Supply Recipient must pay to the Supplier on demand (or the Supplier credit the Supply Recipient with) the amount of that difference. The Supplier must give the Supply Recipient an adjustment note within 14 days after the date of any adjustment event. A demand for payment by the Supplier under this clause 20(e) must be in the form of, or accompanied by, an adjustment note or a tax invoice.

- (f) If a party receiving a payment from the Department under this agreement does not have and cannot provide their Australian Business Number (**ABN**), that party must complete the "Statement by a Supplier" published by the Australian Taxation Office and provide that statement to the Department prior to the date the payment is to be made. If that party does not provide that statement to the Department, that party acknowledges and accepts that the Department may be obliged to withhold an amount from the payment and remit that withheld amount to the Australian Taxation Office.

21. Dispute resolution

21.1 Dispute resolution process

- (a) Subject to clause 21.3, 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 will be referred to:
- (i) for the Recipient, 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 21.1(c), the parties may agree to refer the dispute to a mediator agreed by the parties and on terms agreed by the parties, with costs to be shared equally between the parties.

21.2 Continuity during dispute

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

21.3 Urgent interlocutory relief

Nothing in this clause 21 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.

22. Term, suspension of Grant and termination

22.1 Term

This agreement binds the parties from the date this agreement is executed by the last party to do so and continues until the Expiry Date, unless terminated earlier in accordance with this agreement (**Term**).

22.2 Suspension of Grant

If, in the Department's reasonable opinion, the Recipient has:

- (a) failed to carry out the Activity;
- (b) expended the Grant otherwise than in accordance with clause 4;
- (c) changed any part of the Activity without obtaining the Department's prior written approval;
- (d) not provided any information or Reports as required by this agreement or requested by the Department;
- (e) failed to comply with any relevant legislation; or
- (f) otherwise failed to comply with an obligation under this agreement,

then the Department may suspend payment of all or part of the Grant to the Recipient for a period of time and on specified conditions as notified by the Department.

22.3 Termination or reduction in Term or Activity for convenience

The Department may, at any time, by reasonable written notice, terminate this agreement or reduce the Term or scope of the Activity for convenience, including for a Machinery of Government Change.

22.4 Termination for breach

The Department may terminate this agreement by written notice with immediate effect if the Recipient:

- (a) notifies the Department that it is unable or unwilling to commence or continue with the Activity;
- (b) uses or applies any part of the Grant other than in accordance with this agreement;
- (c) fails to carry out the Activity in accordance with this agreement;
- (d) otherwise breaches a term of this agreement which is not capable of being remedied;
- (e) otherwise breaches a term of this agreement (including but not limited to the provision of a Report) which is capable of being remedied and fails to remedy that breach within 30 days after receiving notice requiring it to do so;
- (f) makes a report under clause 1.3(b);
- (g) fails to refund Misapplied Funds following receipt of a notice, in accordance with clause 4.2;
- (h) fails to maintain eligibility under the Guidelines;
- (i) is or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts;

- (j) amends its constitution or operations in a way that means the Recipient is no longer eligible for the Grant or is no longer able to comply with this agreement;
- (k) becomes subject to any form of external administration;
- (l) enters into an arrangement with the Recipient's creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or
- (m) is wound up, voluntarily or involuntarily.

22.5 Effect of termination or reduction of Term or Activity

- (a) On receipt of a notice of termination or reduction under clause 22.3 or 22.4:
 - (i) each party must take all available steps to minimise any loss resulting from the termination or reduction; and
 - (ii) the Recipient must:
 - (A) immediately stop carrying out its obligations in relation to the Activity as specified in the notice;
 - (B) continue to carry out any part of the Activity not affected by the notice; and
 - (C) provide written evidence to the Department's satisfaction of the amounts (if any) claimed as reasonable costs under clauses 22.5(b) and 22.5(d)(iii).
- (b) If this agreement is terminated by the Department under clause 22.3, the Recipient will be entitled to the reasonable costs (if any) that have been or will be incurred by the Recipient as a direct result of the termination of the agreement and which the Recipient cannot recoup or avoid and which would not otherwise have been incurred by the Recipient if the agreement had continued until the expiry of the Term. The Department's obligation to pay reasonable costs under this clause 22.5(b) is limited to the amount of the Grant.
- (c) If the Term or the scope of the Activity is reduced under clause 22.3, the Department may vary the Grant in accordance with the reduced scope of the Activity or Term.
- (d) Where the Grant is reduced under clause 22.5(c), the Department will:
 - (i) review the scope of the Activity with the Recipient;
 - (ii) pay to the Recipient the Grant instalments that were due up to the date of the reduction; and
 - (iii) pay to the Recipient the reasonable costs (if any) that have been or will be incurred by the Recipient as a direct result of the reduction of the Grant and which the Recipient cannot recoup or avoid and which would not otherwise have been incurred by the Recipient if the Grant amount had continued unaltered until the expiry of the Term.
- (e) For the avoidance of doubt, clauses 18.2 and 18.3 apply to any termination or change to this agreement under this clause 22.

22.6 Obligations after termination or expiration

- (a) The Recipient 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, systems or Assets from the Recipient 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 Recipient must deliver to the Department:
 - (i) all Reports and documents due under this agreement as at the date of termination or expiration;
 - (ii) a cheque or transfer for the amount of any funds repayable to the Department under clause 4.2 and/or clause 4.3, plus any accrued interest as at the date of termination or expiration; and
 - (iii) in the case of termination of this agreement, a final Report in accordance with any requirements specified in Item 9 of Schedule 1, and detailing the present status of the Activity, the extent of achievement of the Activity, the level of success in meeting stated objectives and Milestones and any incidental results and benefits of the Activity.

22.7 Pre-existing rights and survival

- (a) Termination in accordance with this clause 22 is without prejudice to any rights of either party under this agreement existing at the date of termination.
- (b) Clauses 4, 4.3(b), 6, 7, 9, 10, 11(c)(i), 13, 14, 15, 16, 21, 22.6, 22.7 and 24 survive expiration or termination of this agreement for any reason.

23. 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 email transmission to the addressee, or if facsimile details are specified, sent by facsimile transmission to the number of the addressee, in accordance with clause 23(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 facsimile details are specified and the communication is 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 sent by email transmission, upon successful transmission and non-automated confirmation of receipt by the addressee; or
 - (iv) 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.

24. General

24.1 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.

24.2 No relationship

Nothing in this agreement will be taken as giving rise to any express or implied relationship between the parties, or between any party and a Representative of another party, of employment, principal and agent, partnership or joint venture.

24.3 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.

24.4 Assignment

- (a) 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.
- (b) Despite clause 24.4(a), the Department may in its absolute discretion and without the consent of the Recipient assign, novate or otherwise transfer any rights or obligations under this agreement if there is a Machinery of Government Change.

24.5 Amendments

- (a) This agreement may only be varied by a document signed by or on behalf of each party.
- (b) If this Grant is administered using the Smarty Grants administration system, then this agreement may also be varied in accordance with the following process:
 - (i) the Recipient submits to the Department a variation request and declaration, in the form required by the Department, through the Smarty Grants system; and
 - (ii) the Department approves that variation request, by written notice to the Recipient.

- (c) For clarity, the parties each agree that any variation requested and approved in accordance with clause 24.5(b) is legally binding and is made for valuable consideration.

24.6 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.

24.7 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.

24.8 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.

24.9 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.

24.10 Counterparts

- (a) The parties consent to the use of electronic signatures as a method for signing this agreement.
- (b) This agreement may be executed 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.

24.11 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.

24.12 Indemnities

- (a) 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.
- (b) It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this agreement.
- (c) A party must pay on demand any amount it must pay under an indemnity in this agreement.

24.13 Governing law

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

24.14 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 24.14(a).

24.15 No fettering

Nothing in this agreement will be construed as limiting or fettering in any way the exercise (or failure to exercise) by the Department (or any of its Representatives or delegates) of any discretion or the making of a decision or subordinate legislation under any law by the State of Queensland and its Representatives.

24.16 Time is of the essence

Time is of the essence in respect of the Recipient's obligations under this agreement.

24.17 Electronic Signing

- (a) Each party consents to this document and any variations of this document being signed by electronic signature by the methods set out in this clause.
- (b) Subject to law, this clause applies regardless of the type of legal entity of the parties. If this document or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this document and any variation of it:
 - (i) insertion of the person's name on to the document; or
 - (ii) use of a stylus or touch finger on a touch screen to sign the document,

provided that in each of the above cases - words to the effect of 'Electronic signature of me, [NAME], affixed by me on [DATE]' are also included on the document;

- (iii) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the document; or
- (iv) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this document and that electronic signing of this document by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this document transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this document for all purposes.

24.18 Warranties excluded

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.

25. Definitions and interpretation

25.1 Definitions

In this agreement:

Activity means the activity or purpose of the Grant specified in Item 3 of Schedule 1.

Activity Commencement Date means the commencement date specified in Item 4 of Schedule 1.

Activity End Date means the end date specified in Item 4 of Schedule 1.

Activity Material means any material including Intellectual Property Rights, created, written or otherwise brought into existence by or on behalf of the Recipient in the course of carrying out the Activity, excluding Reports.

Approvals means all approvals required to complete the Activity under any legislation or any certificates, licensed consents, permits, approvals and requirements of any government body or organisation having jurisdiction in connection with the Activity, including development approvals, and individual property owner's consent.

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

Asset means the items of property (if any) specified in Item 10 of Schedule 1.

Background IP means Intellectual Property Rights which are made available by a party for the purpose of carrying out the Activity 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 Activity.

Business Day means a day that is not:

- (a) a Saturday, Sunday or a public holiday in Brisbane; or

- (b) a day within the 2 week period commencing on:
 - (i) 25 December, in years where that date falls on a Saturday; or
 - (ii) the last Saturday before 25 December, in years where that date does not fall on a Saturday.

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 (**Disclosee**) that:

- (a) is by its nature confidential;
- (b) is designated or marked by the Discloser as confidential; or
- (c) the Disclosee 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 party's ability to perform its obligations under this agreement or in connection with the Activity.

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.

Detailed Project Plan means (if applicable), the Recipient's project plan for the delivery of the Activity submitted in the Recipient's application, in accordance with clause 1.2.

Eligible Expenses are as defined in the Guidelines.

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

Financial Acquittal Report means a Report about the Recipient's financial performance in connection with carrying out the Activity as specified in Item 9 of Schedule 1.

Force Majeure Event means any circumstances, other than an industrial dispute, that is not caused by or within the reasonable control of a party (**Affected Party**), whether directly or indirectly, but only to the extent that:

- (a) despite the exercise of reasonable diligence, it cannot be (or be caused to be) prevented, avoided or removed by the Affected Party;
- (b) it materially adversely affects (in cost and/or time) the Affected Party's ability to perform its obligations under this agreement;
- (c) the Affected Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of the circumstance on its ability to perform its obligations under this agreement (and to mitigate the consequences of it); and
- (d) the circumstance is not the direct or indirect result of the Affected Party's failure to

perform any of its obligations under this agreement,

and includes:

- (e) acts of God, lightning strikes, earthquakes, floods, droughts, storms, mudslides, explosions, fires or other natural disasters, pandemics, epidemics, acts of war, acts of public enemies, riots, civil commotions, malicious damage, invasions, sabotage, blockades and revolution;
- (f) strikes, lockouts, work bans, blockades or picketing, limitation of work or other industrial disturbance, other than an industrial dispute; and
- (g) the failure of a third party to supply goods, works or utilities provided such a failure is due to a Force Majeure Event affecting the third party.

Government Agency means any government or any public, statutory, governmental, semi-governmental, local governmental or judicial body, entity or authority.

Grant means the amount specified in Item 8 of Schedule 1 and, once received by the Recipient, includes any money earned from:

- (a) the operation of the Activity (for example fees, rent, board, service charges); and
- (b) interest on the Grant.

GST means “GST” as defined in the GST Act and includes:

- (a) amounts payable on account of a notional liability in accordance with Division 177 of the GST Act;
- (b) “GST equivalent” payments under the *GST and Related Matters Act 2000* (Qld) (or similar payments under corresponding legislation of any other State or Territory).

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

Guidelines means “Tourism Activation Fund Activate Ecotourism Infrastructure Guidelines 2022” published by the Department.

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.

Key Personnel means the Representatives of the Recipient or Partners specified in Item 12 of **Error! Reference source not found.**, and any replacement personnel in accordance with clause 1.5.

Laws means all laws, statutes, regulations, by laws, ordinances, orders, awards, proclamations and local laws of the Commonwealth, a State or Territory, any local government or a Government Agency together with any binding requirements and mandatory approvals (including conditions) of the Commonwealth, a State or Territory, any local government or a Government Agency.

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 the milestones specified in Item 5 of Schedule 1.

Moral Rights means the moral rights granted under the *Copyright Act 1968* (Cth), and any similar rights existing under foreign laws.

Partner means a partner entity (if any) assisting the Recipient in the performance of the Activity, as specified in Item 6 of Schedule 1. For clarity, a Partner is not a subcontractor.

Partner's Contribution means the contribution, if any, to be provided by a Partner towards the Activity as specified in 6 of Schedule 1.

Personal Information has the meaning given in the *Information Privacy Act 2009* (Qld).

Recipient's Contribution means the contribution, if any, to be provided by the Recipient towards the Activity specified in Item 6 of Schedule 1.

Reports means the reports (in the form and containing the information) specified in Item 9 of Schedule 1.

Representative means an employee, agent, officer, director, volunteer, contractor, subcontractor or other authorised representative of a party (or in the case of a Partner, of that entity).

Special Conditions means any special conditions specified in Item 13 of Schedule 1.

Standards means the standards for the performance of the Activity or other policies and procedures, specified in Item 7 of Schedule 1.

Term has the meaning specified in clause 22.1.

25.2 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 Recipient, then that expression refers to them, and the obligations of the Recipient 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 or unincorporated), 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.

25.3 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 listed highest above will take precedence over those listed lower to the extent necessary to resolve the inconsistency.

SCHEDULE 3 – Detailed Project Plan

Project Period 1		Start Date: Completion date: 6 months (less one day) from the Start Date
Project activities		
Expected outcomes		
Project Period 2		Commencement date: 6 months from the Start Date Completion date: 12 months (less one day) from the Start Date
Project activities		
Expected outcomes		
Project Period 3		Commencement date: 12 months from the Start Date Completion date: 18 months (less one day) from the Start Date
Project activities		
Expected outcomes		
Project Period 4		Commencement date: 18 months from the Start Date Completion date: 24 months (less one day) from the Start Date
Project activities		
Expected outcomes		
Project Period 5		Commencement date: 24 months from the Start Date Completion date: 30 months (less one day) from the Start Date
Project activities		
Expected outcomes		
Project Period 6		Commencement date: 30 months from the Start Date Completion date: 36 months (less one day) from the Start Date
Project activities		
Expected outcomes		

SCHEDULE 4 – Guidelines

insert

SCHEDULE 5 – Application

insert

Grant Agreement



Executed as an agreement

Signed for and on behalf of the **State of Queensland** acting through the **Department of Tourism, Innovation and Sport ABN 83 481 966 722** by

_____ (full name and position)

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

Signature of Witness
Electronic signature of me **** strike through if not signing electronically**

Signature
Electronic signature of me **** strike through if not signing electronically**

Name of Witness in full

Date

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

Signed by the **insert Recipient** in the presence of:

Signature of Witness
Electronic signature of me **** strike through if not signing electronically**

Signature
Electronic signature of me **** strike through if not signing electronically**

Name of Witness in full

Date

*Option 2: if the Recipient is a company signing under section 127 ****Delete if inapplicable**** OR*

Executed by insert Recipient and ABN/ACN in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of Director/Sole Director
Electronic signature of me **** strike through if not signing electronically**

Signature of Director/Secretary
Electronic signature of me **** strike through if not signing electronically**

Name of Director/Sole Director in full

Name of Director/Secretary in full

Date

Date

*Option 3: if the Recipient is another entity ****Delete if inapplicable**** OR*

Signed for and on behalf of **insert Recipient** by

(full name and position)

in the presence of:

Signature of Witness
Electronic signature of me **** strike through if not signing electronically**

Signature
Electronic signature of me **** strike through if not signing electronically**

Name of Witness in full

Date

*Option 4: if the Recipient is an organisation (such as a government body or university) other than a company or individual ****Delete if inapplicable*****

Signed for and on behalf of the **insert Recipient**
by

(full name and position)

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

Signature of Witness

Signature

Name of Witness in full

Date