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# Restoration Agreement

The State of Queensland  
Australian Rainforest Conservation Society Inc.

Conformed and consolidated version of the Restoration Agreement  
executed on 27 June 2008  
as amended by the Deed of Variation dated [\*] 2012

## Table of Contents

<b>1.</b>	<b>Definitions and interpretation</b>	<b>2</b>
1.1	Definitions	2
1.2	Interpretation	6
1.3	Consents or approval	7
<b>2.</b>	<b>Grant of Licence</b>	<b>7</b>
2.1	Grant of Licence and Section 34 Authority	7
2.2	Exclusive and non-exclusive licence	8
2.3	Third Party Interests	8
2.4	Leased Property	8
<b>3.</b>	<b>Further Term</b>	<b>8</b>
3.1	Extension of Term	8
<b>4.</b>	<b>Licence Fee</b>	<b>8</b>
<b>5.</b>	<b>Licensor's Rights of Entry</b>	<b>9</b>
5.1	Right of entry	9
5.2	Requirements for entry	9
<b>6.</b>	<b>Changes to Land</b>	<b>9</b>
6.1	Changes by agreement	9
6.2	Removal by default	9
<b>7.</b>	<b>Steering Committee</b>	<b>10</b>
7.1	Steering Committee	10
7.2	Role of Steering Committee	10
7.3	Matters for Steering Committee	10
<b>8.</b>	<b>Scientific Committee</b>	<b>10</b>
8.1	Scientific Committee	10
<b>9.</b>	<b>Steering Committee</b>	<b>11</b>
9.1	Licensor's appointees	11
9.2	Licensee's appointees	11
9.3	Conduct of Steering Committee	11
9.4	Consideration of proposals	11
<b>11.</b>	<b>Approved Works</b>	<b>12</b>
11.1	Works to be approved	12
11.2	Approval of works	12
11.3	Proposals for works	12
11.4	Approved Works	13
11.5	Unapproved works	13
11.6	Obligations relating to Approved Works	13
11.7	Licensee' obligations	14
<b>12.</b>	<b>Licensee's Obligations</b>	<b>14</b>
12.1	Obligations relating to Improvements	14
12.2	Other obligations	14



12.3	Other restrictions	15
12.4	Regular reporting	16
12.5	Financial reporting	16
<b>13.</b>	<b>Improvements and Security</b>	<b>16</b>
13.1	Maintenance by Licensee	16
13.5	Removal of improvements	17
13.6	Security	17
13.7	Damage or destruction	17
<b>14.</b>	<b>Outgoings and Service Charges</b>	<b>17</b>
14.1	Responsibility for Outgoings	17
14.2	Responsibility for Service Charges	17
14.3	Telephone costs	17
<b>15.</b>	<b>Scientific Research</b>	<b>17</b>
15.1	Ownership of intellectual property	17
15.2	Licence to use Scientific Research	17
<b>16.</b>	<b>Termination</b>	<b>18</b>
16.1	Expiry or termination of this Agreement	18
16.2	Remedy of Default	18
16.3	Termination for Default	18
16.4	Default	18
16.5	Termination by either party	19
16.6	Licensee to vacate	19
16.7	Consequences of termination	19
<b>17.</b>	<b>Licensor's Indemnity</b>	<b>19</b>
<b>18.</b>	<b>Insurance</b>	<b>19</b>
18.1	Insurance of Improvements	19
18.2	Licensor's Insurance	20
18.3	Licensee's insurance	20
<b>19.</b>	<b>Limitation of Liability</b>	<b>20</b>
19.1	No consequential loss	20
19.2	Maximum liability of Licensee	20
19.3	Maximum aggregate liability of Licensee	21
<b>20.</b>	<b>Confidentiality</b>	<b>22</b>
20.1	Confidentiality obligation	22
20.2	Permitted Disclosure	22
<b>21.</b>	<b>GST</b>	<b>22</b>
<b>22.</b>	<b>Notices</b>	<b>23</b>
<b>23.</b>	<b>Dispute Resolution</b>	<b>24</b>
23.1	Negotiation	24
23.2	Mediation	24
23.3	Termination	24
23.4	Court proceedings and other relief	24

23.5	Continuation of rights and obligations	24
<b>24.</b>	<b>Entire Agreement</b>	<b>25</b>
<b>25.</b>	<b>Amendment</b>	<b>25</b>
<b>26.</b>	<b>No Agency or Partnership</b>	<b>25</b>
<b>27.</b>	<b>No Interest in Land</b>	<b>25</b>
<b>28.</b>	<b>Assignment</b>	<b>25</b>
<b>29.</b>	<b>No Waiver</b>	<b>25</b>
<b>30.</b>	<b>Further Assurances</b>	<b>25</b>
<b>31.</b>	<b>No Merger</b>	<b>26</b>
<b>32.</b>	<b>Costs and Stamp Duty</b>	<b>26</b>
<b>33.</b>	<b>Governing Law and Jurisdiction</b>	<b>26</b>
<b>34.</b>	<b>Severance</b>	<b>26</b>
<b>35.</b>	<b>Appointment of Authorised Officers</b>	<b>26</b>
<b>36.</b>	<b>Grant to Licensee</b>	<b>26</b>
36.1	Grant	26
36.2	Use of Grant	27
36.3	Review of Grant	27
36.4	Funding Arrangement	27
<b>Schedule 1</b>		<b>28</b>
	Properties	28
<b>Schedule 2</b>		<b>31</b>
	Access Purposes	31
<b>Schedule 3</b>		<b>32</b>
	Springbrook Rescue Restoration Plan	32

**Date**

27 June 2008

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1. **The State of Queensland** (represented by the Environmental Protection Agency) ABN **87 221 158 786** of Level 10, 160 Ann Street, Brisbane, Queensland, 4000 (the *Licensor*).
2. **Australian Rainforest Conservation Society Inc.** ABN 26 678 648 760 of 19 Colorado Avenue, Bardon, Brisbane, Queensland, 4065 (the *Licensee*).

**Recitals**

- A The Licensor has allocated major funding to the acquisition of freehold properties in the Springbrook area for the purposes of conservation under a project known as 'Springbrook Rescue'.
- B The aim of the Project is to restore rainforest and other vegetation on specified properties owned or to be acquired by the Licensor or the Licensee in order to protect, present and restore World Heritage values and integrity in the Springbrook area.
- C The Licensee is a non-profit registered environmental organisation whose principal purpose is to achieve the preservation of all areas of rainforest remaining in Queensland. The Licensee is incorporated in Queensland under the *Associations Incorporation Act 1981* which imposes a range of obligations on the Licensee including the provision of audited annual financial reports to the Queensland Government.
- D The Licensee has established a sub-fund, called the Springbrook Rescue Fund, to receive gifts and other contributions and payments received for the purpose of research about and restoration, maintenance and preservation of rainforest in the vicinity of Springbrook.
- E The parties have agreed on a Restoration Plan for properties under the Project and the Licensee has agreed to manage and carry out the Restoration Plan and any works required under any regeneration plans for properties under the Project that are protected areas under the *Nature Conservation Act 1992*.
- F The parties have agreed that the Licensee will have the right to use and occupy the Land under a licence from the Licensor for purposes related to the Project on the terms and conditions of this Agreement.
- G The parties have agreed to co-operate, in the manner provided in this Agreement, in the planning, approval, implementation and monitoring of the works which will be carried out by the Licensee and to monitor the overall implementation of the Restoration Plan and any Regeneration Plans.
- H The Chief Executive is authorised under section 34 of the *Nature Conservation Act 1992* to

make an agreement in relation to land in a protected area.

It is agreed as follows.

## 1. Definitions and interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise:

**Accommodation Buildings** means those buildings designated in schedule 1 (together with those areas immediately surrounding the Accommodation Buildings required for access, parking and use of the Accommodation Buildings) and any other buildings on any Property that the parties agree in accordance with clause 6 are Accommodation Buildings.

**Access Purposes** means the purposes for which the Licence is granted as set out in schedule 2 and any other purposes that the parties agree in writing.

**Approvals** means:

- (a) any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a Government Agency; and
- (b) in relation to anything which will be fully or partly prohibited or restricted by any Law if a Government Agency intervenes or acts in any way within a specified period after lodgement, filing, registration, or notification, the expiry of that period without intervention or action.

**Approved Improvements** means Improvements which are required by the Licensee to use the Land for the Access Purposes as nominated by the Steering Committee under clause 7.3(g) and agreed by the parties.

**Approved Works** means:

- (a) Restoration Works;
- (b) other works, including Scientific Research, as provided for in, or contemplated by, the Restoration Plan or a Regeneration Plan; and
- (c) works approved in accordance with clause 11.

**Auditor** means a person who is:

- (a) registered as a company auditor or public accountant under a law in force in a State or Territory; or
- (b) a member of The Institute of Chartered Accountants in Australia, CPA Australia or the National Institute of Accountants; and
- (c) neither an employee of nor associated with the Licensee.

**Authorised Officer** means:

(a) in the case of the Licensee, any member of the management committee, director, officer or employee of the Licensee notified by the Licensee to the Licensor to be an Authorised Officer in accordance with clause 35, for the purposes of this Agreement; and

(b) in the case of the Licensor, a person appointed by the Licensor to be an Authorised Officer in accordance with clause 35, for the purposes of this Agreement.

**Balance Land** means the area of the Land exclusive of the Accommodation Buildings and the Laboratory.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which the banks are open for business in Brisbane.

**Chief Executive Officer** means the Director-General of DERM or the chief executive officer of the department or Government Agency responsible for the Project from time to time and includes any delegate of the Director-General or that chief executive officer from time to time.

**Commencement Date** means the date that the last party signs this Agreement.

**Committees** means the Steering Committee and the Scientific Committee or either one of them as the case may require.

**Confidential Information** means any information in any way relating or pertaining to, or in connection with this Agreement but does not include any such information that is in or comes into the public domain other than as a result of a breach of this Agreement by the Licensee and any outcomes of Scientific Research conducted by or on behalf of the Licensee under this Agreement.

**Consideration** has the meaning given by the GST Law.

**Default** has the meaning given in clause 16.4.

**DERM** means the Department of Environment and Resource Management.

**Expiry Date** means that date which is 10 years after the Commencement Date.

**Further Term** means an extension of the Term for a further period which may be granted by the Licensor under clause 3.

**Government Agency** means a government or government department, a governmental, semi-governmental or judicial person or a person (whether autonomous or not) charged with the administration of any applicable Law.

**GST** has the same meaning given by the GST Law.

**GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.

**GST Group** has the meaning given by the GST Law.

**GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

**Improvements** means the buildings and other improvements on the Land, or any part of the Land, including the Accommodation Buildings and the Laboratory and any Services.

**Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

**Laboratory** means the buildings designated in schedule 1 (together with those areas immediately surrounding the Laboratory required for access, parking and use of the Laboratory) and any other buildings on any Property that the parties agree in accordance with clause 6 are laboratories.

**Land** means the Properties and any other land owned by the Licensor (including National Park and National Park Recovery areas) that the parties agree in accordance with clause 6 is to be a Property and Land for the purposes of this Agreement and all Improvements.

**Law** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, rule or subordinate legislation.

**Lease** means a written lease agreement for a Leased Property.

**Leased Property** means a Property that is leased to the Licensee by the Licensor under a written lease agreement.

**Licences** means the licence granted in clause 2.1(a) and the Section 34 Authority granted in clause 2.1(b).

**Licence Fee** means the amount set out in clause 4.

**Licensee's Personnel** means the Licensee's employees, officers, consultants, agents, contractors, members, volunteers and invitees or any of them.

**Licensor's Personnel** means the Licensor's employees, officers, consultants, agents, contractors and invitees or any of them.

**National Park** means a part of the Land dedicated as a protected area in the class of national park by the Governor in Council under the *Nature Conservation Act 1992*.

**National Park Recovery** means a part of the Land dedicated as a protected area in the class of national park (recovery) by the Governor in Council under the *Nature Conservation Act 1992*.

**Outgoings** means all amounts incurred, accrued, paid or payable by or levied on the Licensor in respect of the Land including:

- (a) rates, taxes, charges (excluding charges for water, sewerage, garbage collection, levies but including fire levies), assessments, duties, impositions, surcharges and fees of any Government Agency or under any Law;
- (b) all insurance premiums and amounts payable in respect of insurances (including stamp duty) paid or payable in respect of the Land, for public liability, workers' compensation or any other insurable risks in respect of the Land;
- (c) all fees, costs and other expenses in relation to the ownership, operation, maintenance and repair of the Land and the Services, including costs relating to items of a structural or capital nature (subject to any contrary provision in this Agreement); and
- (d) any GST paid by the Licensor in relation to any Outgoings.

**Project** means the Springbrook Rescue project referred to in recital A.

**Property** means a discrete part of the Land being each Property set out in schedule 1 while owned by the Licensor and any other Land that the parties agree in accordance with clause 6 is to be a Property for the purposes of this Agreement.

**Regeneration Plan** means a plan of that name approved by the Chief Executive Officer under the *Nature Conservation Act 1992* in relation to a National Park Recovery area.

**Restoration Plan** means the Springbrook Rescue Restoration Plan set out in schedule 3 and any variation to or replacement of it agreed by the parties from time to time in accordance with this Agreement which applies to all Land except National Park Recovery areas which are covered by a Regeneration Plan.

**Restoration Works** means works for the restoration of rainforest and other vegetation as provided for in, or contemplated by, the Restoration Plan or a Regeneration Plan and may include:

- (a) construction of shade structures for propagation purposes;
- (b) mowing and slashing;
- (c) brush cutting and weed eating;
- (d) weed removal;
- (e) herbicide treatments;
- (f) ripping, ploughing, tilling and disturbing the soil;
- (g) seed collection and plant propagation including greenhouse facilities;
- (h) planting;
- (i) mulching;
- (j) erosion control;
- (k) removal of exotic or introduced flora and fauna, including removal of exotic or introduced fish from artificial dams before deconstruction to avoid escape downstream; and
- (l) the use and storage of pesticides and herbicides.

**Scientific Committee** means the Scientific Committee established under clause 8.

**Scientific Research** includes collection, gathering and analysing samples and data, investigations and reporting to the Licensor in relation to flora and fauna, climate and other parameters affecting the environment generally.

**Section 34 Authority** means a licence granted by the Chief Executive Officer under the *Nature Conservation Act 1992* in relation to a National Park and or National Park Recovery area.

**Service Charges** means all charges for water, gas, electricity, sewerage, garbage and waste disposal.

**Services** means all improvements and appurtenances located on the Land for the supply of water, sewerage, electricity and gas to the Land.

**Steering Committee** means the Steering Committee referred to in clause 7.

**Tax Invoice** has the meaning given by the GST Law.

**Taxable Supply** has the meaning given by the GST Law excluding the reference to section 84-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Term** means the term of this Agreement (including the Licence) starting on the Commencement Date and ending on the Expiry Date, unless this Agreement is terminated earlier in accordance with this Agreement.

**Third Party Interests** means any lease or licence, or other right of occupation or access over any part of the Land.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.
- (e) A reference to a *person* includes an individual, estate of an individual, corporation, authority, association or joint venture (whether incorporated or unincorporated), trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (f) A reference to a clause, schedule annexure or party is a reference to a clause, schedule, annexure or party to or of this Agreement.
- (g) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated, ratified, extended or replaced, except to the extent prohibited by this Agreement or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.
- (h) A reference to *writing* includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form including a communication by electronic mail.
- (i) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns, including persons taking by way of novation (and, where applicable, the party's legal personal representatives).
- (j) A reference to legislation or to a provision of legislation includes a modification, consolidation, re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it, including delegated legislation.
- (k) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (l) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes

an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.

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- (m) A reference to *dollars* and \$ is to Australian currency.
- (n) A reference to an *asset* includes any real or personal, present or future, tangible or intangible property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived from the property or asset.
- (o) All references to time are to Brisbane time.
- (p) A reference to a party using its *best endeavours* or *reasonable endeavours* does not include a reference to that party paying money in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing) or in circumstances that are commercially onerous or unreasonable in the context of this Agreement and the circumstances of the Licensee as a non-profit charitable organisation or providing other valuable consideration to or for the benefit of any person or agreeing to commercially onerous or unreasonable conditions (and an obligation on a party to use its *best endeavours* or *reasonable endeavours* does not oblige that party to pay money in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing) or in circumstances that are commercially onerous or unreasonable in the context of this Agreement and the circumstances of the Licensee as a non-profit charitable organisation or provide other valuable consideration to or for the benefit of any person or to agree to commercially onerous or unreasonable conditions).
- (q) Mentioning anything after *includes*, *including*, *for example*, or similar expressions, does not limit what else might be included.
- (r) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.

### 1.3 Consents or approval

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

## 2. Grant of Licence

### 2.1 Grant of Licence and Section 34 Authority

- (a) The Licensor grants to the Licensee for itself and the Licensee's Personnel, a licence in common with Licensor, to use and occupy the Properties, excluding National Park and National Park Recovery areas of the Properties, for the Licence Fee, for the Access Purposes for the Term.

- (b) The Licensor grants to the Licensee for itself and the Licensee's Personnel a Section 34 Authority to enter National Park and National Park Recovery areas of the Properties, for the Licence Fee, for the Access Purposes for the Term.

## **2.2 Exclusive and non-exclusive licence**

Subject to clause 2.3 and any other provisions of this Agreement, the grant of the Licences gives the Licensee:

- (a) exclusive rights to undertake the Restoration Works on the Land;
- (b) exclusive rights to use and occupy all or parts of the Accommodation Buildings and the Laboratory; and
- (c) non-exclusive rights to use and occupy the Balance Land.

## **2.3 Third Party Interests**

The Licences are subject to all valid titles, interests, rights, licences, easements and reservations affecting the Land at the Commencement Date, or at the date the Land becomes subject to this Agreement.

The Licensor will notify the Licensee before granting a Third Party Interest after the Commencement Date.

## **2.4 Leased Property**

The terms of any written lease agreement between the parties for a Leased Property prevail over the terms of this Agreement to the extent of any inconsistency.

# **3. Further Term**

## **3.1 Extension of Term**

If:

- (a) the Licensee requires an extension of the Licences in order to continue the successful implementation of the Restoration Works;
- (b) the Licensee gives notice to this effect to the Licences prior to the Expiry Date; and
- (c) the Licensee is not in breach of the terms of this Agreement,

then the Licensor must give proper consideration to and may, but is not obliged to, grant an extension of the Licences for a further period of 10 years, or such shorter period as the Licensor may reasonably determine, on the terms of this Agreement, or such other terms as may be agreed by the parties. The Licensor will notify the Licensee as to whether or not an extension of the Licences is approved and if approved, the terms of the new Licences, no later than 30 Business Days after notification is received from the Licensee.

# **4. Licence Fee**

If demanded, the Licensee must pay a licence fee of \$1 to the Licensor on or before the Commencement Date.

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## 5. Licensor's Rights of Entry

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### 5.1 Right of entry

The Licensee acknowledges that the Licensor and the Licensor's Personnel may enter the Land with all necessary materials and equipment at all times for any purpose, but in particular:

- (a) to inspect the state and condition of the Land;
- (b) to carry out Approved Works that are the responsibility of the Licensor under this Agreement;
- (c) to carry out repairs that the Licensor is entitled to carry out under clause 13 and repairs that are the responsibility of the Licensor under this Agreement;
- (d) to remedy any breach as permitted under clause 16.2;
- (e) to comply with all Laws and notices of any Government Agency affecting the Land; and
- (f) to confirm compliance by the Licensee with the terms of this Agreement.

In exercising its rights under this clause 5.1, the Licensor must not interfere with the rights of the Licensee under this Agreement or conflict with the Restoration Plan.

### 5.2 Requirements for entry

The Licensor agrees to comply with, and ensure that the Licensor's Personnel comply with, the Licensee's reasonable requirements for hygiene protocols to prevent weed dispersal and contamination, so that the entry does not cause environmental harm to the Land. Within 30 days after the Commencement Date, the Licensee must give notice to the Licensor and the Steering Committee of its standard requirements for entry. However the Licensee may amend its standard requirements or impose additional or different requirements in any particular case. The requirements of this clause 5.2 do not apply in an emergency.

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## 6. Changes to Land

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### 6.1 Changes by agreement

From time to time, the parties may agree to amend the details in schedule 1 by:

- (a) including land owned by the Licensor which is to become Land for the purposes of this Agreement (including the Licences);
- (b) removing a Property or part of the Land;
- (c) including buildings which are to become Accommodation Buildings, or a Laboratory for the purpose of this Agreement (including the Licence); and
- (d) removing Accommodation Buildings or a Laboratory.

Amendment of schedule 1 will be in accordance with the requirements of clause 25.

### 6.2 Removal by default

In addition to any other right of the Licensor arising from any breach by the Licensee of this Agreement, the Licensor by notice to the Licensee, effective immediately, may remove a Property or

part of the Land (other than Leased Property) from being Land for the purposes of this Agreement if the Licensee fails to remedy a breach of this Agreement relating to that Property or part of the Land, in accordance with clause 16.2.

## **7. Steering Committee**

### **7.1 Steering Committee**

The parties agree that the Springbrook Rescue Steering Committee that has been established and maintained by the parties before the Commencement Date will continue in operation from the Commencement Date as the Steering Committee for the purposes of this Agreement.

### **7.2 Role of Steering Committee**

The role of the Steering Committee is to act as an advisory committee of and to the parties (and to avoid doubt, the Committee does not have the power to bind either party) in relation to policy, administration and property matters which are the subject of this Agreement.

### **7.3 Matters for Steering Committee**

Subject to clause 7.2, matters to be considered by the Steering Committee, in consultation with the Scientific Committee, as relevant, include to:

- (c) consider, and as thought appropriate, make a recommendation to the Licensor and the Licensee to approve or reject a proposal for works other than Restoration Works;
- (d) monitor and report to the parties as to the carrying out of the Approved Works;
- (e) consider, and as thought appropriate, make a recommendation to the Licensor and the Licensee as to any proposal for modifications to the Restoration Plan, a Regeneration Plan, or any Approved Works that may be proposed by a party;
- (f) consider, and as thought appropriate, make a recommendation to the Licensor and the Licensee as to the matters referred to in clause 6.1;
- (g) consider and nominate which Improvements are required by the Licensee to use the Land for the Access Purposes; and
- (h) carry out any other purposes required or contemplated by this Agreement, a Regeneration Plan, or the Restoration Plan as being a matter for the Steering Committee, or that parties may agree to refer to the Steering Committee at any time.

## **8. Scientific Committee**

### **8.1 Scientific Committee**

A Scientific Committee will be established by the Steering Committee to facilitate specialist input to the implementation of the Restoration Plan and Regeneration Plans. The Scientific Committee may provide advice by responding to specific requests by the Steering Committee. It may also assist the implementation of the Restoration Plan and Regeneration Plans in less formal ways such as by acting as a reference group for proposing or evaluating ideas and for problem solving. The membership of the Scientific Committee will be determined by the Steering Committee.

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## 9. Steering Committee

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### 9.1 Licensor's appointees

The Licensor may appoint three persons to the Steering Committee and may remove and replace those appointees at any time. The Licensor must give notice to the Licensee promptly of any appointment or replacement of its appointees.

### 9.2 Licensee's appointees

The Licensee may appoint two of its members to the Steering Committee and may remove and replace those appointees at any time. The Licensee must give notice to the Licensor promptly of any appointment or replacement of its appointees.

### 9.3 Conduct of Steering Committee

Unless the parties agree otherwise:

- (a) the Steering Committee must meet at least twice in each calendar year;
- (b) the Steering Committee may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they determine;
- (c) a quorum for the Steering Committee meetings is three members comprising at least two members appointed by the Licensor and one member appointed by the Licensee;
- (d) the Licensor may nominate one of the Licensor's appointees to the Steering Committee to be the chair of a particular meeting or all meetings of the Committee;
- (e) it is the intention of the parties that decisions of the Steering Committee will generally be reached through consensus but if that is not possible in a particular case, questions arising at a Committee meeting will be decided by a majority of votes of Committee members present;
- (f) all members of the Steering Committee are entitled to vote on all questions arising at a Committee meeting regardless of any actual or potential conflict of interest;
- (g) all members of the Steering Committee may sign a written resolution instead of holding a meeting; and
- (h) the Steering Committee must take minutes of its meetings and keep the minutes available for inspection on reasonable notice by any member of that Committee or a party. The Licensor is responsible for ensuring that the minutes are taken and kept.

### 9.4 Consideration of proposals

When considering any matter, the Steering Committee may liaise with the parties as it considers appropriate and request any amendments or further information as reasonably required.

## 11. Approved Works

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### 11.1 Works to be approved

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- (a) The Licensee must not carry out, or permit to be carried out on the Land any works, including any Scientific Research, unless they are Approved Works.
  - (b) If the Licensor wishes to carry out works on the Land other than:
    - (i) Approved Works; or
    - (ii) works required by Law or the requirements of a Governmental Authority for purposes other than in relation to the Project; or
    - (iii) works consistent with the objectives and terms of the Restoration Plan or any Regeneration Plan and the objectives of the Project,

then the Licensor will refer the proposal to the Steering Committee for consideration.

The Licensor will notify the Licensee of those proposed works before commencing the works and the Licensee is relieved of its obligations under this Agreement to the extent that those obligations are inconsistent with the works carried out by the Licensor.

### 11.2 Approval of works

- (a) The Licensee must submit plans for any proposed works that are not already Approved Works:
  - (i) to the Steering Committee for a recommendation as to whether to approve or reject the plans; and
  - (ii) to the Licensor for approval.
- (b) No later than 30 Business Days after receiving the plans, the Licensor must notify the Licensee as to whether or not the plans are approved. If the plans are not approved, then the Licensor will specify in the notice what amendments are required to obtain the Licensor's approval. If the Licensee accepts the Licensor's required amendments, the Licensee will amend the plans in accordance with the Licensor's notice and resubmit the plans for approval. The Licensor must notify the Licensee as to whether or not the amended plans are approved no later than 30 Business Days after the amended plans are submitted.
- (c) If the amendments required by the Licensor are not accepted by the Licensee or the amended plans are not approved by the Licensor then the parties will refer the matter to dispute resolution under clause 23.

### 11.3 Proposals for works

A proposal for works under clause 11.2 must include details of:

- (a) the works including all plans and specification for the works;
- (b) those parts of the Land the works relate to;
- (c) the purpose and reasoning for the works;
- (d) the proposed commencement and expiry date for the works; and

- (e) the key Licensee's Personnel or Licensor's Personnel as the case may be (including any contractors) who will be responsible for the works.

## **11.4 Approved Works**

Once approved by the Licensor, the works approved under this clause 11 are Approved Works.

## **11.5 Unapproved works**

Where the Licensee has commenced or completed works on the Land which are not Approved Works or are not authorised in accordance with this Agreement or by any relevant Government Agency, the Licensor may require:

- (a) details of the works be provided to the Steering Committee for a recommendation and to the Licensor for approval as Approved Works; and/or
- (b) the works to be removed or demolished and any damage to the Land to be made good.

## **11.6 Obligations relating to Approved Works**

Each party carrying out Approved Works must:

- (a) carry out Approved Works in accordance with the relevant approval and in accordance with any Approval obtained by the Licensor or the Licensee (as applicable) for any particular Approved Works;
- (b) carry out the Approved Works in a proper and workmanlike manner;
- (c) ensure that the Approved Works are carried out by persons who are appropriately qualified, trained, experienced and supervised as required by the nature of the particular Approved Works and that in performing the Approved Works all such persons at all times use due care and skill;
- (d) provide at its own cost all labour, materials, plant and equipment required to carry out the Approved Works;
- (e) use quality materials in carrying out the Approved Works;
- (f) engage reputable contractors, subcontractors and consultants as approved in the relevant approval for the Approved Works;
- (g) properly supervise and co-ordinate all of the Licensee's Personnel or the Licensor's Personnel (as the case may be) and contractors, subcontractors and consultants engaged in carrying out the Approved Works;
- (h) use reasonable endeavours to complete the Approved Works within the approved timeframe;
- (i) notify the other party and the Steering Committee of any material delay in completing the Approved Works within the approved timeframe after becoming aware of the delay and give reasons for the delay and an estimate when the Approved Works will be completed; and
- (j) ensure that any Approved Works are conducted in such a way as to preserve and allow the regeneration of the rainforest and other native flora on the Land and to minimise

disturbance to other native flora and fauna and the release of any exotic or introduced flora and fauna into the surrounding land.

## 11.7 Licensee' obligations

When carrying out Approved Works, the Licensee must:

- (a) maintain full and proper records of all Approved Works performed and provide the Licensor and the Steering Committee with access to inspect and take copies of the records upon reasonable notice;
- (b) keep the Licensor and the Steering Committee informed of all material discussions and provide copies of all material correspondence between the Licensee and any other persons which would adversely impact on the quality or completion (including time of completion) of any Approved Works; and
- (c) provide the Licensor and the Steering Committee with a copy of the final as constructed plans for any Approved Works (excluding Restoration Works and Scientific Research)

## 12. Licensee's Obligations

### 12.1 Obligations relating to Improvements

Other than in accordance with the Approved Works or with the Licensor's prior consent, the Licensee must not:

- (a) materially alter, remove or add to any fixed structure in the Land, erect any fixed structure of a material nature on the Land, or conduct any works of a material or structural nature of any kind in the Land;
- (b) erect or affix any blinds, awnings, partitions or other fixtures or fittings to the Improvements or any part of them; or
- (c) cut, hole, drill or damage any of the walls, ceilings or other parts of the Improvements.

### 12.2 Other obligations

The Licensee must:

- (a) ensure that the Licensee's Personnel comply, if appropriate, with the Licensee's obligations under this Agreement;
- (b) comply with all Laws to the extent applicable to the Licensee's use of the Land;
- (c) comply with all Laws and the requirements of Government Agencies in connection with the Land and the Licensee's use and occupation of the Land and the Services;
- (d) comply with the Licensor's rules and regulations (provided they are consistent with this Agreement) as advised from time to time by the Licensor, in relation to the use of the Land and the Services;
- (e) comply with any reasonable directions issued to the Licensee by the Licensor with respect to the access to and use of the Land by the Licensee (provided they are consistent with this Agreement);

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- (f) comply with all relevant safety standards in relation to the Licensee's use of the Land;
  - (g) ensure all the Licensee's Personnel who use or occupy the Land are covered for workers' compensation under, and to the extent required by Law;
  - (h) keep the Laboratory and the Accommodation Buildings, if used by the Licensee, tidy and free of rubbish;
  - (i) repair in a proper way any damage to the Land resulting from any breach of, or default under this Agreement by the Licensee or caused or contributed to by the Licensee's use and occupation of the Land, any act or omission on the part of the Licensee, the Licensee's Personnel, or any other person on the Land with the Licensee's consent, except to the extent caused or contributed to by the breach of, or default under this Agreement by, or the negligence or wilful misconduct of, the Licensor or the Licensor's Personnel;
  - (j) ensure the Licensee and the Licensee's Personnel while in use and occupation of the Land use all reasonable endeavours and measures to ensure the continual protection and minimal interference and damage to the native flora and fauna of the Land and the surrounding Land;
  - (k) only use the Improvements and the Services for the purposes for which they were constructed;
  - (l) promptly notify the Licensor of any material damage to the Land or the material defective operation of any Services (however caused) immediately after becoming aware of that matter;
  - (m) notify the Licensor and any relevant Government Agency of any risks to the health or safety of persons using the Land (including notifiable diseases occurring within the Land) immediately after becoming aware of such risks; and
  - (n) apply the net proceeds (if any) from fees charged by the Licensee for use of Accommodation Buildings and from operating any business on a Leased Property, to the Springbrook Rescue Fund 2 (being the fund established by the Licensee in accordance with its rules) to be used, in accordance with the Licensee's environmental purposes for:
    - (i) the purposes specified in Recital B including acquisition of land by the Licensee for those purposes;
    - (ii) Scientific Research associated with the purposes specified in Recital B; and
    - (iii) maintenance and repair costs and Service Charges for the Approved Improvements and all costs incurred by the Licensee in exercising its rights and performing its obligations under this Agreement.

## 12.3 Other restrictions

Other than in accordance with this Agreement or the relevant Approval for Approved Works, or with the Licensor's prior consent, the Licensee must not:

- (a) use the Land for any purposes except the Access Purposes;
- (b) store or use any inflammable, volatile, explosive or dangerous substances in the Land, except in accordance with the Approved Works;

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- (c) do anything on the Land that the Licensor reasonably considers is dangerous, annoying, offensive, immoral or illegal;
  - (d) pollute, contaminate or carry out any activity which may cause harm to the environment or in any way bring any known pollutants or carcinogens or other contaminants in to the Land or the surrounding land and their environment;
  - (e) do anything that interferes with, obstructs access to, damages or overloads the Services;
  - (f) carry out any activity that would constitute a nuisance to any Third Party Interests, adjoining tenants or owners of land or any passing motor traffic or pedestrians using any streets adjacent to the Land; or
  - (g) paint, affix or erect or permit to be painted, affixed or erected any signs, notices or advertisements on any part of the Land.

## 12.4 Regular reporting

Within 3 months after:

- (a) the end of each calendar year during the Term of this Agreement; and
- (b) termination of this Agreement,

the Licensee must provide to the Licensor a progress report which details the status and progress of the activities to be undertaken in accordance with the Approved Works carried out by the Licensee during the year.

## 12.5 Financial reporting

- (a) The Licensee, at the Licensee's cost must ensure that financial statements of the Licensee are prepared and audited by an Auditor for each financial year during the Term and provide the Licensor with a copy of the audited financial statements each year.
- (b) The Licensee must ensure that the financial statements of the Licensee include and separately identify all income and expenditure relating to the Properties.
- (c) The Licensor must not disclose, give or give access to anyone to the Licensee's audited financial statements or any other information about the Licensee's financial affairs unless required to do so by law or with the Licensee's prior written consent.

## 13. Improvements and Security

### 13.1 Maintenance by Licensee

The Licensee is responsible for the carrying out of and the costs of all regular maintenance and repairs of Approved Improvements to the extent necessary to keep them suitable, fit and adequate for use by the Licensee as contemplated by this Agreement. Other than as provided in this clause 13.1, the Licensee is not responsible for the carrying out of, or costs of regular maintenance and repairs, or structural alterations and repairs to any Improvements.

## **13.5 Removal of improvements**

The removal or demolition of any building or other structure on the Land is the responsibility of the Licensor. A program for removal and demolition of buildings on a Property by the Licensor must be referred to the Steering Committee under clause 11.1(b).

## **13.6 Security**

The Licensee must use its best endeavours to ensure the security of any Accommodation Buildings and the Laboratory that are used exclusively by the Licensee but the Licensee is not responsible for the security of the rest of the Land other than its responsibility in relation to its own conduct and the conduct of the Licensee's Personnel as provided in this Agreement.

## **13.7 Damage or destruction**

If the Improvements, or any of them, or Services to them are damaged or destroyed, then –

- (a) the Licensor will not be responsible for the repair or replacement of them; and
- (b) with the prior approval of the Licensor (having considered any recommendation from the Steering Committee) the Licensee may undertake the necessary repair or replacement, at its own cost, if it wishes to continue to use and occupy the damaged or destroyed Improvements or Services.

## **14. Outgoings and Service Charges**

### **14.1 Responsibility for Outgoings**

Other than as expressly provided in this Agreement, or as agreed by the parties, the Licensor will pay the Outgoings.

### **14.2 Responsibility for Service Charges**

The Licensee will pay that reasonable proportion of the Service Charges that relate to the Licensee's use and occupation of the Land.

### **14.3 Telephone costs**

The Licensee may arrange for telephone services to the Land on the account of the Licensee and must pay for those services. The Licensee is not responsible for any telephone services to the Land that are not provided under an account of the Licensee.

## **15. Scientific Research**

### **15.1 Ownership of intellectual property**

Subject to clause 15.2, the Licensor acknowledges that it is not entitled to any rights to any intellectual property in connection with the results of any Scientific Research.

### **15.2 Licence to use Scientific Research**

If the Licensee is the owner of any Scientific Research, the Licensee will grant to the Licensor, or otherwise, the Licensee will use reasonable endeavours to procure for the Licensor, a perpetual,

irrevocable, free, world wide, royalty free, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt and exploit the results of any Scientific Research, provided such use by the Licensor is for non-commercial purposes.

## 16. Termination

### 16.1 Expiry or termination of this Agreement

This Agreement, including the Licence, ends on the earlier to occur of:

- (a) the Expiry Date; and
- (b) the date this Agreement is terminated in accordance with this Agreement.

### 16.2 Remedy of Default

Where the Licensee is in breach of this Agreement, other than as provided under clause 16.4, the Licensor may give the Licensee notice of the breach and request the Licensee to remedy the breach. If the Licensee fails to remedy the breach within the time specified in the notice (not being less than 30 days after receiving notice of the breach), the Licensor may remedy the breach at the cost of the Licensee.

### 16.3 Termination for Default

Where the Licensee fails to remedy a Default within a reasonable time, not being less than 30 days, after receiving notice of the Default from the Licensor, the Licensor may immediately terminate this Agreement by notice to the Licensee.

### 16.4 Default

In clause 16.3, *Default* means that the Licensee:

- (a) makes an arrangement or composition with its creditors or suffers an administrator, receiver, or manager to be appointed on behalf of its creditors;
- (b) is wound up, goes into liquidation, or passes a resolution to go into liquidation (including for the purpose of reconstruction) or becomes subject to any petition presented or proceedings taken or instituted in any court for its compulsory winding-up which are not withdrawn or dismissed within 30 days, or becomes subject to the supervision of the Court either voluntarily or otherwise howsoever;
- (c) fails to pay any money payable by the Licensee to the Licensor under this Agreement within 30 days after that money becomes payable;
- (d) suffers any distress levied or executed against any of its assets which materially affects its ability to perform its obligations under this Agreement;
- (e) ceases to carry on business;
- (f) the members of the Licensee pass a special resolution to wind up the Licensee; or
- (g) the Licensee receives notice under section 93 of the *Associations Incorporation Act 1981* to show cause why the incorporation of the Licensee should not be cancelled.

## 16.5 Termination by either party

Without prejudice to the Licensor's rights under clause 16.3, if in the reasonable opinion of a party the continued operation of this Agreement is not consistent with the principles and purposes of the Project or the Restoration Plan, that party may terminate this Agreement by six months' notice to the other party.

## 16.6 Licensee to vacate

When this Agreement ends, the Licensee must:

- (a) promptly remove all its property from the Land and vacate the Land; and
- (b) make good, if requested by the Licensor, any damage caused to the Improvements by removing the Licensee's property and vacating the Land.

Any of the Licensee's property which is not removed from the Land within one month of the date when this Agreement ends, vests in the Licensor absolutely

## 16.7 Consequences of termination

- (a) Termination of this Agreement for any reason does not affect any accrued rights or remedies of either party.
- (b) Termination of this Agreement has the effect that any lease to the Licensee of Leased Property terminates on the date of termination of this Agreement unless the lease of the Leased Property provides or the parties agree otherwise.
- (c) Clauses 1, 20, 21, 29, 31 and 33 survive termination of this Agreement.

## 17. Licensor's Indemnity

The Licensor indemnifies the Licensee to the relevant extent from against all claims, losses, damages, liabilities, costs and expenses that may be incurred or sustained by the Licensee or any person claiming through the Licensee or for which the Licensee may become liable, whether during the Term or after termination of this Agreement, caused by:

- (a) any breach of, or default under this Agreement by the Licensor; or
- (b) anything (including damage, loss, injury and death) caused or contributed to (to the relevant extent) by the negligence, default or wilful misconduct of the Licensor or the Licensor's officers and employees.

This indemnity is a continuing obligation, separate and independent from the other obligations of the Licensor, and survives termination or expiry of this Agreement.

## 18. Insurance

### 18.1 Insurance of Improvements

Subject to clause 18.3, the Licensee is not required to take out or maintain any insurance in respect of any risks to any part of the Land, including any Improvements to which the Licensee has exclusive use.

## 18.2 Licensor's Insurance

The Licensee must not do anything that could reasonably be expected to:

- (a) prejudice the Licensor's insurance over the Land and Improvements; or
  - (b) increase the premium for that insurance,
- without the Licensor's consent.

## 18.3 Licensee's insurance

- (a) The Licensee must take out and maintain for the Term of this Agreement a public liability insurance policy with respect to any liabilities of the Licensee to the Licensor and any third parties for the death or injury of any person or any loss, damage or destruction of any property with a reputable insurer (approved by the Licensor with such approval not to be unreasonably withheld or delayed) for an amount being not less than \$10,000,000.
- (b) The public liability insurance policy effected by the Licensee must be in the name of the Licensee and must otherwise be effected on the usual terms and conditions of public liability insurance policies taken out by non-profit voluntary organisations.
- (c) The Licensee must promptly notify the Licensor if it is unable to take out or maintain the insurance referred to in paragraph (a).
- (d) As soon as reasonably practicable after a request is made by the Licensor to the Licensee, the Licensee must produce a current insurance policy or certificate of currency in respect of its insurance conforming with the requirements of this clause.
- (e) The requirements of this clause are without prejudice to and do not affect the operation of the limitations of liability contained in this Agreement.

## 19. Limitation of Liability

### 19.1 No consequential loss

Despite any other provision of this Agreement or a Lease, the Licensee is not liable to the Licensor to make any payment (whether by way of indemnity, damages or otherwise) for any breach, or default under this Agreement or a Lease, or for negligent or wilful misconduct in relation to this Agreement or a Lease or the Land (including a Leased Property) in connection with any indirect or economic loss. For the purpose of this clause:

- (a) the following losses are not indirect or economic: property damage or losses arising from third party claims in respect of property damage, personal injury, nervous shock or death; and
- (b) the following losses are indirect, consequential or economic: loss of profit, loss of business opportunity, payment of liquidated sums, penalties or damages under any other agreement or deed (other than this Agreement).

### 19.2 Maximum liability of Licensee

- (a) The maximum amount that the Licensor may recover from the Licensee (whether by way of damages or otherwise) at any time for a breach, default or event or series of breaches,

defaults or events relating to the same or substantially similar facts, matters, conditions or circumstances caused by or arising under or in connection with:

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- (i) the use and occupation of the Land (including a Leased Property) and the Improvements by the Licensee or the Licensee's Personnel;
- (ii) any breach of, or default under this Agreement or a Lease by the Licensee;
- (iii) anything (including damage, loss, injury and death) caused or contributed to (to the relevant extent) by the negligence, default or wilful misconduct of the Licensee or the Licensee's Personnel in relation to this Agreement or a Lease or the Land (including a Leased Property); or
- (iv) any other liability of the Licensee to the Licensor arising under or in connection with this Agreement or a Lease or the Land (including a Leased Property) for any reason whatsoever,

other than for a breach, default or event for which the Licensee is insured at the relevant time under a policy of insurance taken out by the Licensee under clause 18.3 or under the terms of a Lease (as to which paragraph (b) applies) is \$5,000.00.

- (b) The maximum amount that the Licensor may recover from the Licensee (whether by way of damages or otherwise) at any time for a breach, default or event or series of breaches, defaults or events relating to the same or substantially similar facts, matters, conditions or circumstances caused by or arising under or in connection with:
  - (i) the use and occupation of the Land (including Leased Land) and the Improvements by the Licensee or the Licensee's Personnel;
  - (ii) any breach of, or default under this Agreement or a Lease by the Licensee;
  - (iii) anything (including damage, loss, injury and death) caused or contributed to (to the relevant extent) by the negligence, default or wilful misconduct of the Licensee or the Licensee's Personnel in relation to this Agreement or a Lease or the Land (including a Leased Property); or
  - (iv) any other liability of the Licensee to the Licensor arising under or in connection with this Agreement or a Lease or the Land (including a Leased Property) for any reason whatsoever,

for which the Licensee is insured at the relevant time under a policy of insurance taken out by the Licensee under clause 18.3 or under a Lease is the amount actually paid by the relevant insurer in respect of that breach, default or event or series of breaches, defaults or events relating to the same or substantially similar facts, matters, conditions or circumstances.

### **19.3 Maximum aggregate liability of Licensee**

The maximum aggregate amount that the Licensor may recover from the Licensee (whether by way of damages or otherwise) at any time for all breaches, defaults and events caused by or arising under or in connection with:

- (a) the use and occupation of the Land (including a Leased Property) and the Improvements by the Licensee or the Licensee's Personnel;

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- (b) any breach of, or default under this Agreement or a Lease by the Licensee;
  - (c) anything (including damage, loss, injury and death) caused or contributed to (to the relevant extent) by the negligence, default or wilful misconduct of the Licensee or the Licensee's Personnel in relation to this Agreement or a Lease or the Land (including a Leased Property); or
  - (d) any other liability of the Licensee to the Licensor arising under or in connection with this Agreement or a Lease or the Land (including a Leased Property) for any reason whatsoever,

is \$50,000.

## 20. Confidentiality

### 20.1 Confidentiality obligation

Subject to clause 20.2, the Licensee and the Licensee's Personnel must:

- (a) keep the Confidential Information confidential and not disclose, give or give access to it to anyone;
- (b) do everything reasonably necessary to safeguard the confidentiality of the Confidential Information;
- (c) not use or allow Confidential Information to be used for any purpose except the performance of the Licensee's obligations under this Agreement;
- (d) not make copies, or allow copies to be made, of the Confidential Information except to give to the Licensor, the Chief Executive Officer or the Steering Committee; and
- (e) not issue any information, publication, document or article for publication concerning the Licence or this Agreement, or anything which occurs on the Lands in any media.

### 20.2 Permitted Disclosure

The Licensee may disclose Confidential Information:

- (a) with the prior consent of the Licensor;
- (b) if required to do so by law; or
- (c) if required to do so in connection with legal proceedings relating to this Agreement.

## 21. GST

- (a) If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.
- (b) Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost,

expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

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- (c) The GST Amount is payable on the earlier of:
- (i) the first date on which all or any part of the Consideration for the Taxable Supply is provided; and
  - (ii) the date five Business Days after the date on which a Tax Invoice is issued in relation to the Taxable Supply.
- (d) Any reference in this Agreement to price, value, sales, revenue or a similar amount (**Revenue**), is a reference to that Revenue exclusive of GST.
- (e) Any reference in this Agreement (other than in the calculation of Consideration) to cost, expense or other similar amount (**Cost**), is a reference to that Cost exclusive of GST.
- (f) This clause will continue to apply after expiration or termination of this Agreement.

## 22. Notices

- (a) Any notice, demand, consent, claim, approval, request or other communication (a **Notice**) given or made under this Agreement:
- (i) must be in writing and signed by the sender or an Authorised Officer of the sender;
  - (ii) must be addressed and delivered to the intended recipient at the address or fax number below or the address or fax number last notified by the intended recipient to the other party after the date of this Agreement:

A to the Licensor: The State of Queensland (represented by the Department of Environment and Resource Management)  
GPO Box 2454  
Brisbane Qld 4001  
Attention: Paul van Nimwegen

B to the Licensee: Australian Rainforest Conservation Society Inc.  
PO Box 2111  
Milton Qld 4064  
Attention: Aila Keto  
Fax: 07 3368 3938; and

- (iii) will be deemed to be given:
  - (A) 2 Business Days after deposit in the mail with postage prepaid;
  - (B) when delivered by hand; or

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- (C) if sent by facsimile transmission, upon apparently successful transmission being noted by the sender's facsimile machine prior to close of business at 5.00pm. Facsimile transmissions received after 5.00pm will be deemed to be received at the start of the next Business Day.

## 23. Dispute Resolution

### 23.1 Negotiation

If there is a dispute or difference (*Dispute*) between the parties arising out of or in connection with this Agreement, then no later than five Business Days after a party notifies the other party in writing of the Dispute, a senior representative from each party must meet and use all reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

### 23.2 Mediation

- (a) If the Dispute is not settled on or before that date which is five Business Days after notification under clause 23.1, the parties will, if mutually agreed, submit the Dispute to mediation administered by the Institute of Arbitrators and Mediators Australia (*IAMA*).
- (b) The mediator will be an independent person agreed between the parties or, failing agreement, a mediator will be appointed by the President of IAMA.
- (c) Any mediation meetings and proceedings under this clause must be held in Springbrook or another place agreed by the parties.

### 23.3 Termination

If:

- (a) the Dispute is not settled by mediation under clause 23.2; or
- (b) no agreement is reached to refer the Dispute to mediation under clause 23.2,

on or before that date which is 28 days (or any other period agreed to in writing between the parties) after the appointment of a mediator under clause 23.2, either party may terminate this Agreement, effective immediately, by notice to the other, without limiting the remedies available to a party at law or in equity.

### 23.4 Court proceedings and other relief

A party may not start court proceedings in relation to a Dispute until it has exhausted the procedures in this clause, unless the party seeks injunctive or other interlocutory relief.

### 23.5 Continuation of rights and obligations

Despite the existence of a dispute or difference each party must continue to perform this Agreement to the greatest possible extent.

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## 24. Entire Agreement

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This Agreement contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct and prior agreements and understandings between the parties in connection with its subject matter.

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## 25. Amendment

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This Agreement may be amended only by another agreement executed by or on behalf of the parties.

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## 26. No Agency or Partnership

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This Agreement does not constitute any party the agent of another or imply that the parties intend constituting a partnership, joint venture or other form of association in which any party may be liable for the acts or omissions of another. No party has authority to pledge the credit of another.

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## 27. No Interest in Land

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The rights conferred on the Licensee by this Agreement are personal rights in contract only and the grant of the Licence does not confer upon the Licensee any tenancy, estate or interest in the Land or any part of it. Legal possession and control of the Land at all times remains vested in the Licensor and this Agreement does not operate as a demise, or constitute any contract of tenancy of the Land.

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## 28. Assignment

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- (a) The Licensee cannot sub-license or part with or share possession of the Land without the prior written consent of the Licensor.
- (b) Neither party may assign, novate, charge, encumber or otherwise deal or transfer with any of its rights or obligations under this Agreement, or attempt or purport to do so, without the prior consent of the other party.
- (c) The consent of the relevant party may be withheld in its absolute discretion without giving any reason for doing so.

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## 29. No Waiver

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A failure to exercise or enforce, or a delay in exercising or enforcing any right, power or remedy provided by law or under this Agreement by a party does not operate as a waiver. A single or partial exercise or waiver of the exercise or enforcement of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

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## 30. Further Assurances

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Each party, at the reasonable request of the other party or as required by law, must promptly do anything necessary (including executing and delivering all further agreements and documents in

form and content reasonably satisfactory to that party) to give full effect to this Agreement and the transactions contemplated by it.

## **31. No Merger**

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

## **32. Costs and Stamp Duty**

Except as otherwise provided in this Agreement, each party must bear its own costs and expenses arising out of the negotiation, preparation, execution and performance of this Agreement. All stamp duty (including fines, penalties and interest) payable on or in connection with this Agreement and any instrument executed under or any transaction evidenced by this Agreement must be borne by the Licensor.

## **33. Governing Law and Jurisdiction**

This Agreement is governed by the laws of Queensland. Each party submits to the jurisdiction of courts exercising jurisdiction there, and waives any right to claim that those courts are an inconvenient forum.

## **34. Severance**

If at any time any 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.

## **35. Appointment of Authorised Officers**

Each party will notify the other of the appointment of an Authorised Officer.

## **36. Grant to Licensee**

### **36.1 Grant**

The Licensor will pay an annual grant to the Licensee for the Term of this Agreement. The grant will be \$10,000.00 for the first year of the Term and will not be less than \$10,000.00 per year for the next 4 years of the Term. If the Licensee does not use the whole of the grant within the 12 month period for which it has been paid, then the Licensee may retain the balance subject to the Licensee satisfying the Licensor of the future need for that money.

## **36.2 Use of Grant**

The Licensee will use the grant for purposes associated with the Project including –

- (a) repair and maintenance costs for the Approved Improvements;
- (b) payment of the Service Charges; and
- (c) costs of undertaking the Restoration Works and the Scientific Research.

## **36.3 Review of Grant**

Each year, the Licensor (in consultation with the Licensee), will review the minimum amount of the grant.

## **36.4 Funding Arrangement**

The Licensor and the Licensee will enter into a funding agreement which will specify the terms and conditions on which the grant will be made.

## Schedule 1

### Properties

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Real Property Description	Property Area (Ha)	Property Name	Property Type
<b>Properties</b>			
Lot 1 on RP 150877	3.044	Warblers	National Park (Recovery)
Lot 1 on SP 100210	1.578	Ankuna	National Park (Recovery)
Lot 12 on RP 201032	32.878	Pallida	National Park (Recovery)
Lot 15 on RP 889011	27.99	Barimbah	National Park (Recovery)
Lot 31 on RP 139816	4.049	The Lodge	National Park (Recovery)
Lot 30 on RP 139816	4.047	Logrunners	National Park (Recovery)
Lot 3 on RP 100199	58.151	Quolls	National Park (Recovery)
Lot 4 on RP 160167	26.112	Kanimbla	National Park (Recovery)
Lot 1 on RP 224325	5.888	Springers	National Park (Recovery)
Lot 1 on RP 56663	14.207	Lyrebird Retreat	Freehold
Lot 10 on RP 201032	9.007	Ashmiha	National Park (Recovery)
Lot 9 on RP 150877	3	Ashmiha	National Park (Recovery)
Lot 2 on RP 119621	7.386	Tucker	National Park
Lot 26 on RP 139816	5.374	Koonjewarre	Freehold
Lot 16 on RP 889011 / L 1 on SP 217889	10.06	Baumann	Freehold
Lot 2 on RP 150877	3.008	Ostwald	Freehold

# Restoration Agreement

Allens Arthur Robinson 

Real Property Description	Property Area (Ha)	Property Name	Property Type
Lot 14 on RP 221033	8.229	Pumila	Freehold
<b>Accommodation Buildings</b>			
Lot 3 on RP 100199	N/A	Quolls	National Park (Recovery)
Lot 12 on RP 201032	N/A	Ashmiha	National Park (Recovery)
Lot 30 on RP 139816	N/A	Logrunners	National Park (Recovery)
Lot 31 on RP 139816	N/A	The Lodge	National Park (Recovery)
Lot 1 on RP 224325	N/A	Springers	National Park (Recovery)
Lot 1 on RP 56663	N/A	Lyrebird Retreat	Freehold
Lot 2 on RP 119621	7.386	Tucker	National Park
Lot 1 on RP 150877	3.044	Warblers	National Park (Recovery)
Lot 26 on RP 139816	5.374	Koonjewarre	Freehold
<b>Laboratory</b>			
Lot 30 on RP 139816	N/A	Logrunners	National Park (Recovery)

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## Schedule 2

### Access Purposes

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The purposes for which the Licensee has access to the Land are:

- (a) Scientific Research and Restoration of the Land for the purposes of the Project; and
- (b) as ancillary to and in support of the purpose stated in paragraph (a), the provision of accommodation, on a full-fee or part-fee or fee-free basis, to members of the Licensee and volunteers involved in carrying out Restoration Work for the Project and members of the public.



## Schedule 3

### Springbrook Rescue Restoration Plan

#### 1. Background

The Queensland Government has allocated major funding to the acquisition of freehold properties in the Springbrook area for the purposes of conservation — ‘Springbrook Rescue’.

The current Springbrook National Park, the southern section of which is included in the Gondwana Rainforests of Australia World Heritage Area, is small and has boundary configuration inconsistent with long-term conservation.

The overall aim of Springbrook Rescue is to restore rainforest on cleared areas and re-create links between sections of the national park, thus creating a more viable World Heritage Area and one which provides a greater potential for its flora and fauna, especially ancient lineages underlying criteria for World Heritage listing, to survive the impacts of future climate change.

The Australian Rainforest Conservation Society has enthusiastically accepted responsibility for managing the restoration program for properties purchased by the Queensland Government. This will be done in the overall context of restoring World Heritage values and integrity across the Springbrook Plateau and surrounding areas with a focus on restoring whole catchments wherever possible.

#### 2. Objectives

- To restore rainforest and other vegetation on specified properties in the context of restoring World Heritage values and integrity on Springbrook
- To carry out restoration in the most cost-effective manner with an emphasis on facilitating natural regeneration
- To acquire, document and disseminate information on rainforest restoration in order to facilitate cost-effective restoration on ecologically meaningful scales

#### 3. Restoration Works

The Restoration Works will be structured to address the issues detailed below.

##### 3.1 Determination of original vegetation

Original vegetation will be determined and mapped as accurately as possible using the following resources:

- Regional Ecosystem maps of pre-clearing vegetation
- surviving vegetation remnants
- historical information



- abiotic parameters including geology, soil type, depth and condition (pH, moisture, compaction), altitude, aspect and landscape position
- reference sites matching as closely as possible abiotic and biotic characteristics

Restoration Works will incorporate a map of original vegetation as determined by this process.

### 3.2 Assessment of current condition

Each Property will be assessed to identify areas of remnant vegetation, advanced regeneration, early regeneration, likely seed sources, dispersal modes, phenological traits and ecological constraints, and the extent and intensity of weed or alien plant infestation and dominance by grasses. To the extent possible, an assessment of likely timing, sources and causes of infestations will be documented. Maps delineating these areas will be prepared.

Where possible, early regeneration will be correlated with abiotic parameters, some of which will be provided by the Wireless Sensor Networks being established at Springbrook by the Queensland Government, as well as with biotic constraints (species pools and soil seed stores, dispersal limitations, predation/or herbivory, etc).

### 3.3 Identification of management requirements

The overall objective is to restore the original vegetation over a reasonable timescale at a minimal cost per hectare. It is recognised that natural regeneration of rainforest is likely to involve successional stages and may take many decades to re-establish the original vegetation. The initial objective will be to restore a canopy and establish micro-environmental conditions approaching those of the mature rainforest. This will facilitate the recolonisation by fauna contributing to World Heritage values, such as Albert's Lyrebird and the Logrunner, and help with buffering against the impacts of climate change.

Within the timeframe of the Licence, it may be possible only to establish that regeneration is on an appropriate trajectory by comparison of various indicators with those of reference sites in rainforest areas at different stages of regeneration (a chrono-sequence of related sites).

The degree of intervention to facilitate natural regeneration will be determined by the need to:

- (a) restore critical habitat requirements of priority fauna species whose populations risk decline in the absence of accelerated regeneration; and
- (b) restore suitable microclimate and structural conditions likely to buffer against impacts of climate change on ancient lineages of flora and fauna.

Possible management components are detailed here.

#### 3.3.1 Facilitation of natural regeneration

Where areas with early stages of regeneration are identified, they will be assessed in relation to threatening processes such as competition from weeds/grasses and predation by grazing animals (e.g. pademelons) resulting from past clearing, fragmentation and land-use factors.



Management actions such as weed removal around plants and temporary fencing will be specified where considered necessary.

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### **3.3.1.1 Weed removal**

In general, weed infestations will not be addressed unless they are inhibiting natural regeneration without active intervention or there is a legal requirement to remove them (e.g. fireweed, groundsel bush, giant rat's tail grass).

Those weeds occurring on the Properties that will be eradicated naturally by shading from advancing regeneration will not be actively removed, unless it can be demonstrated that medium- to long-term benefits can be achieved regarding site capture, accelerated growth or reduced mortality of regenerating species.

It will be recognised that there may be instances where weed/grass control is appropriate for community relations, though this issue would be best addressed through education.

A specific issue is the occurrence of a potentially serious weed, *Aristea ecklonii*, on a number of the specified properties. This weed is not yet officially classified but is currently under assessment. It is dominant across one of the Properties and has the potential to seriously invade the adjoining national park. It will be a primary focus for management of the Property.

Prioritisation of weed control activities across target Properties will be determined by the seriousness of the extent or density of infestation, risk of further spread or environmental harm. Timing will be scheduled according to phenological patterns, i.e. flowering, for ease of detection or prevention of further seeding where seed dispersal is the primary mode of spread.

### **3.3.1.2 Direct seeding**

Where areas of early natural regeneration are identified, consideration will be given to direct seeding combined with weed/grass control in adjoining areas.

### **3.3.1.3 Artificial bird perches**

Retention of dead trees or placement of suitable bird perches to encourage dispersal of fleshy-fruited species will be considered where size of cleared gaps is likely to limit natural spread.

## **3.3.2 Planting**

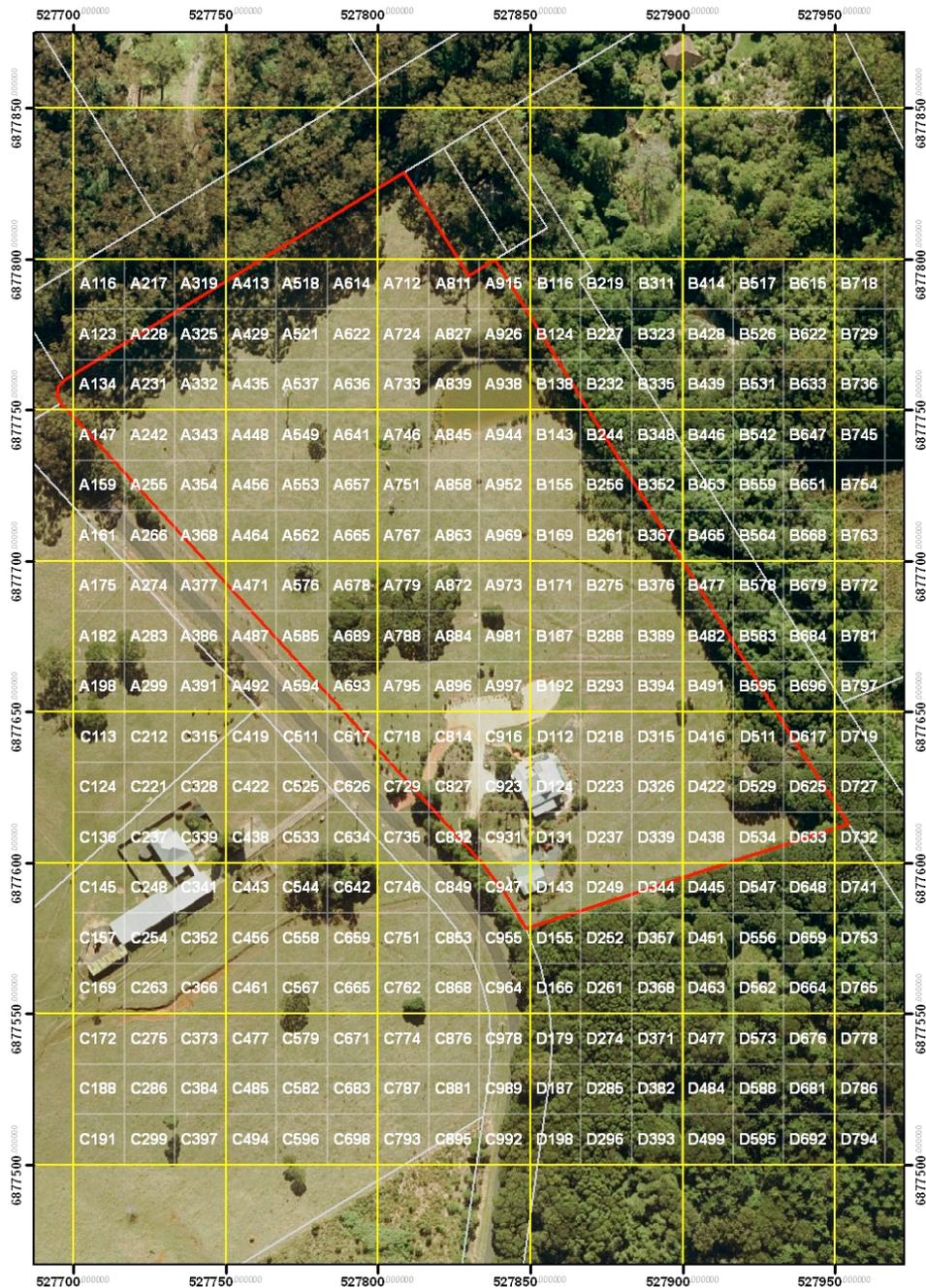
Given the overall focus on natural regeneration, planting will be minimised. Planting may be used to provide future seed sources ("nurseries") within extensive areas dominated by grass where there is essentially no natural regeneration occurring.

Planting, including site preparation, is an expensive method of restoration and is not generally feasible on ecologically meaningful scales.

**3.3.3 Experimental plots**

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In the case of a number of Properties, the restoration area will be divided into a randomised grid of experimental plots, each approximately 280 square metres in area. This will allow for comparisons of the effectiveness of any specific management treatments that are applied. Figure 1 shows the grid for the Property formerly known as ‘Warblers in the Mist’.



**Figure 1.** The experimental grid over the Property formerly known as ‘Warblers in the Mist’ is delineated on the ground by labelled star pickets.



## 4. Landscape context

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The development and implementation of Restoration Works will take cognisance of the landscape context including catchments. Priorities for restoration and weed removal may be determined by the landscape in which a Property resides including existing vegetation, land use on adjoining private property and the presence of typical conduits for weed dispersal such as roads and disturbed riparian areas.

A spreadsheet will be prepared showing flowering and fruiting times for relevant weeds on Springbrook and priorities for dealing with weeds across the various properties.

## 5. Monitoring

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Monitoring will be a fundamental component of restoration. Not only is it necessary to inform ongoing management responses but also to document results for the purpose of disseminating information on rainforest restoration.

Monitoring will incorporate critical elements from Kanowski and Catterall (2007) together with additional elements as deemed necessary.

The Project will involve a new approach to planning on-ground management activities and monitoring results based on a randomised grid rather than limited transects or small plots.

## 6. Review

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The underlying principle of adaptive management will require that Restoration Works will be reviewed regularly and will be amended as required to allow ongoing refinements in approaches aimed at maximising cost-effective restoration.

Flexibility will be necessary to meet unexpected contingencies such as the extensive infestation by *Aristea ecklonii* already encountered on the Property formerly known as “Warblers in the Mist”.

## 7. Reference

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Kanowski, John and Catterall, Carla P. (2007) *Monitoring Revegetation Projects for Biodiversity in Rainforest Landscapes - Toolkit Version 1, Revision 1*. Centre for Innovative Conservation Strategies and School of Environment, Griffith University, Brisbane.

Executed on the dates appearing below

**DRAFT**

Signed for and on behalf of **The State of Queensland** represented by the **Environmental Protection Agency**

this 27th day of June 2008

TERRY WALL

(full name)

DIRECTOR GENERAL

(designation)

in the presence of:

(signature of Keith Scott)

(signature of Terry Wall)

Witness Signature

Signature

KEITH SCOTT

Print Name

Signed for and on behalf of **Australian Rainforest Conservation Society Inc.**

this 27th day of June 2008

by its duly authorised officers :

(signature of Aila Keto)

(signature of Keith Scott)

Signature of Officer

Signature of Officer

AILA KETO

KEITH SCOTT

Print Name

Print Name