

ALLIANCE AND FUNDING AGREEMENT

BETWEEN

**Noosa Shire Council
(ABN 97 969 214 121)
("Noosa Council")**

-AND-

**THE NATURE CONSERVANCY LIMITED
(as Trustee for The Nature Conservancy Australia Trust)
(ABN 83 243 328 398)
("TNC")**

ALLIANCE AND FUNDING AGREEMENT

dated 28th day of July, 2019

PARTIES:

Noosa Shire Council (ABN 97 969 214 121) of 9 Pelican St, Tewantin QLD 4565 ("**Noosa Council**")

AND

The Nature Conservancy Limited A.C.N. 104 635 654 as Trustee for The Nature Conservancy Australia Trust (ABN 83 243 328 398) having its principal office at Suite 2-01, The 60L Green Building, 60 Leicester Street, Carlton, VIC 3053, Australia ("**TNC**")

(each, a "**Party**" and collectively, the "**Parties**").

BACKGROUND

- A. Noosa Council is a local government constituted for a public purpose under the *Local Government Act 2009*.
- B. Noosa Council's objective is to work with the Noosa Shire community to shape Noosa Shire's future and the vision is "*Noosa Shire - Different by Nature*".
- C. TNC is an Australian Public Company limited by guarantee
- D. TNC's mission is: "*To conserve the lands and waters on which all life depends.*"
- E. Both Parties wish to engage and work together to achieve the common goal of conserving, protecting and restoring marine and estuarine environments and ecosystems in the Noosa Shire, for the environmental, social, economic and cultural benefits they provide to the community of Noosa Shire and visitors.
- F. In particular, both Parties wish to engage in respect to:
 - a. shellfish reef restoration project; and
 - b. marine conservation activities,in the Noosa Council's local government area, in accordance with the provisions of Schedule A - Project Description and Deliverables (collectively, the "**Project**")

OPERATIVE PROVISIONS

1. DEFINITIONS

- 1.1. **Agreement** means this agreement including schedules.
- 1.2. **Background IP** means Intellectual Property rights owned by or licensed to a Party as at the date of the Agreement, or acquired or developed by a Party during the term of the Agreement independently of the activities carried out under the Agreement, which that Party has the right to license to third parties and which are necessary or desirable for the performance of the services, the Deliverables or proper use of the goods.

- 1.3. **Contact Officer** means, for a Party, the person nominated in clause 19, or such other person a Party nominates in writing to the other Party, from time to time.
- 1.4. **Deliverables** means the work, tasks and activities which are identified as a deliverable in Schedule A which are required to be undertaken to deliver the Project.
- 1.5. **Executive Level Forum** means the group constituted pursuant to clause 13.
- 1.6. **Force Majeure** means an exceptional event or circumstance:
- 1.6.1. that impacts a Party;
 - 1.6.2. that is beyond the Party's control;
 - 1.6.3. against which the Party could not reasonably have guarded before entering this Agreement;
 - 1.6.4. that the Party could not have avoided or overcome by the exercise of reasonable care; and
 - 1.6.5. that is not substantially attributable to the other Party.
- Examples (assuming the foregoing criteria are met):*
- (a) war, civil commotion, terrorist action;
 - (b) natural disaster (such as flood, bushfire, earthquake, major cyclone, viral epidemic);
 - (c) non-natural disaster (such as explosion, contamination, aviation or maritime disaster);
 - (d) general strike, embargo;
 - (e) failure or non-availability of essential systems, facilities, equipment, or supplies.
- 1.7. **Grant** means the maximum monetary sum of \$1.2 million exclusive of GST that Noosa Council will pay, by way of instalments, to TNC to contribute to funding the Project to the extent agreed under, and payable in accordance with, this Agreement.
- 1.8. **Information Privacy Principles** means the Information Privacy Principles contained in the *Information Privacy Act 2009 (Qld)*.
- 1.9. **Insolvency Event** means:
- 1.9.1. For a Party subject to the *Corporations Act 2001* (Cwlth):
 - 1.9.1.1. (if a company) entering voluntary administration;
 - 1.9.1.2. (if a company or a Part 5.7 body¹) failing to satisfy a statutory demand;
 - 1.9.1.3. passing a voluntary winding up resolution, voluntarily applying to be wound up, or suffering presentation of an application for its winding up;
 - 1.9.1.4. suffering the appointment of a provisional liquidator;
 - 1.9.1.5. being wound up or being deregistered.

¹ Part 5.7 bodies encompass certain corporations that are neither companies nor exempt public authorities nor corporations sole, certain foreign corporations, and certain unincorporated associations and partnerships.

- 1.9.2. For a local government:
 - 1.9.2.1. suffering the declaration, by a court of competent jurisdiction, that it is unable to pay its debts as and when they fall due; or
 - 1.9.2.2. suffering dissolution as a legal entity without another entity acceding to its functions.
- 1.9.3. For a Party in any event:
 - 1.9.3.1. suffering the appointment of a receiver, which appointment is not terminated, postponed, or enjoined within 14 days after it is made;
 - 1.9.3.2. suffering an encumbrancee taking possession of its assets or any of them;
 - 1.9.3.3. failing to pay a judgment debt, or to have the judgment set aside, within 21 days after the judgment is given against it;
 - 1.9.3.4. failing to secure the return of an asset within 21 days after a creditor or an encumbrancee lawfully seizes it.
- 1.10. **Intellectual Property** means without limitation, all copyright, patents, designs, database rights, trademarks, trade secrets, Confidential Information and know-how (whether registered, applied for, registrable or unregistered) and all other intellectual property rights whether or not registered or registrable excluding Moral Rights that are not transferable.
- 1.11. **Measurable Outcome** means an outcomes specified in Schedule A associated with a Deliverable to measure the achievement of the associated Deliverable.
- 1.12. **Parties** mean Noosa Council and TNC.
- 1.13. **Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, which is received or learnt by TNC from any source as a consequence of or in the performance of its rights and obligations under this Agreement.
- 1.14. **Phase II** means the activities described in Schedule A under the heading "Phase II".
- 1.15. **Phase III** means the activities described in Schedule A under the heading "Phase III".
- 1.16. **Project** means the shellfish reef restoration project and marine conservation activities detailed in Schedule A in accordance with the budget detailed in Schedule B.

2. INTERPRETATION

- 2.1. In this Agreement except where the context otherwise requires:
 - 2.1.1. the singular includes the plural and vice versa and a gender includes other genders;
 - 2.1.2. a reference to a Party to this Agreement or any other document or Agreement includes its, his or her administrators, executors, successors and permitted assigns;

- 2.1.3. a reference to an item, clause or schedule is a reference to an item, clause of or schedule to the Agreement and references to the Agreement includes its schedules and annexures;
- 2.1.4. where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- 2.1.5. a reference to a document or Agreement including this Agreement includes a reference to that document or Agreement as amended, novated, supplemented, varied or replaced from time to time;
- 2.1.6. unless a contrary intention appears, expressions and terms expressly used in this Agreement which are defined in the law as at the date of these Agreement have the same meanings as have been ascribed to them in the law as at the date of the Agreement;
- 2.1.7. a reference to a statute, regulation, ordinance, code or other law or section or schedule of a statute, regulation, ordinance, code or other law includes all statutory instruments or regulations issued under any of them and any statutory modification or re-enactment, or substitution, of any of them;
- 2.1.8. where a Party comprises two (2) or more persons, an Agreement or obligation to be performed or observed by that Party binds those persons jointly and severally and a reference to that Party includes a reference to any one or more of those persons;
- 2.1.9. Headings are for convenience only and do not affect the interpretation of the Agreement;
- 2.1.10. The Agreement may not be construed adversely to a Party just because that Party prepared it;
- 2.1.11. Where the day on or by which something must be done is not a business day, that thing must be done on and/or by the following business day;
- 2.1.12. All monetary amounts are in Australian dollars.

3. RELATIONSHIP BETWEEN THE PARTIES

- 3.1. The Agreement does not result in the formation of any relationship of employer and employee, partnership, agency, or franchise.
- 3.2. Each Party is solely responsible for payment to their own employees, contractors, subcontractors and agents for any and all amounts due and payable by way of salary, superannuation, leave entitlements, allowances or such other benefits that those employees, contractors, subcontractors and agents might be entitled to.
- 3.3. Each Party is required to comply with all applicable legislation in respect of their employees, contractors and agents at their own cost.
- 3.4. Each Party must comply at their own cost and expense with any Acts, Rules, Regulations, Industry Codes, Australian Standards, and other legal requirements imposed by government departments, bodies or authorities.
- 3.5. To be clear, TNC has no authority to engage the services of any person or entity as an employee, contractor to, or agent of, Noosa Council.

- 3.6. To be clear, Noosa Council has no authority to engage the services of any person or entity as an employee, contractor to or agent of, the TNC.
- 3.7. Neither Party may incur any liability on behalf of the other Party, nor bind the other Party to any agreement, contract, liability or other obligation, unless the other Party provides express consent in writing in advance.

4. PURPOSE

Both Parties agree that the intention of this alliance is to:

- 4.1. capitalise on the expertise of The Nature Conservancy's global networks and experience (through knowledge brokering, mentoring, study tours and access to subject matter experts) to improve Noosa River management and strengthen the long-term social, environmental and economic health and resilience of the Noosa River and surrounding marine environment;
- 4.2. demonstrate a leading example of a replicable, environmentally-focused, collaborative alliance that achieves superior outcomes for the environment and local communities compared to existing river and marine management models; and
- 4.3. increase government (State and Federal), private, industry and community support for restoration and conservation-focused activities that improve the long-term social, economic and environmental health and resilience of the Noosa River and surrounding marine environment.

5. TERM

- 5.1. The term of this Agreement is from 30 July 2019 to 30 September 2022.
- 5.2. The Parties may agree in writing to extend this Agreement for a further period or periods.

6. TERM

Both Parties agree:

- 6.1. to undertake Phase II and Phase III oyster reef restoration activities in the lower Noosa estuary as detailed in Schedule A in consultation and working with stakeholders including Kabi Kabi, industry and community;
- 6.2. to provide strategic conservation support for planning, implementation, peer review and evaluation associated with appropriate elements of the Noosa River Plan and other coastal and marine management plans as detailed in Schedule A;
- 6.3. to provide assistance and advice with the coordination of ecological and social research required to improve the health of the Noosa River and other initiatives and projects associated with the conservation and protection of the Noosa River systems and coastal and marine system as detailed in Schedule A;
- 6.4. to provide critical evaluation and advice on potential reform of current and future management activities (e.g. commercial and recreational fishing, recreation, tourism, wetland restoration, sediment and nutrient inflows, community engagement, climate change adaptation/mitigation approaches) as detailed in Schedule A; and,

- 6.5. to acknowledge and value the goals and aims of each other's agency, including the objectives of their respective strategic programs; but that by working collaboratively together, the overall vision and individual goals and aims of both Parties can be more effectively achieved.

7. OBLIGATIONS

- 7.1. Both Parties agree to:
- 7.1.1. work collaboratively in the planning, design, construction and management of shellfish reefs in the Noosa River and in achieving the objectives of this Agreement; and
 - 7.1.2. ensure that all personnel utilised by it in connection to this Agreement are appropriately qualified, competent and experienced in the provision of required services
- 7.2. TNC agrees to:
- 7.2.1. lead the delivery and project management of Phase II and Phase III activities associated with shellfish reef and achieve each Measurable Outcome for a Deliverable as detailed in Schedule A; and
 - 7.2.2. provide Noosa Council access to subject matter experts in the fields of conservation planning, fisheries, aquaculture, restoration and community engagement to provide strategic guidance, expertise and advice to Noosa Council's senior executives, environment and river management staff as detailed in Schedule A; and
 - 7.2.3. provide assistance to Noosa Council with strategic conservation planning, creation of river, estuary and coastal management plans and activities, and evidence-based decision analysis as detailed in Schedule A; and
 - 7.2.4. act as the lead proponent for, and use all reasonable endeavours to obtain, all State government permits, authorities and approvals, unless it is agreed otherwise by both Parties.
- 7.3. Noosa Council agrees to:
- 7.3.1. provide reasonable access to environmental management employees, planning and permitting employees, engineers, plant operators and other Noosa Council employees that may be of assistance in the delivery of the Project and the objectives of this Agreement; and
 - 7.3.2. commit to supporting the Project to ensure it can be effectively embedded within Noosa Council priorities for the benefit of the local community; and
 - 7.3.3. provide access to environmental and engineering reports, scientific studies, management plans, data, metadata and other information that may be of use to TNC in the planning and assessment of shellfish reef restoration and other conservation activities associated with alliance objectives and the Project; and
 - 7.3.4. use all reasonable endeavours to obtain all local government permits and approvals associated with shellfish reef restoration Phase II and Phase III.

- Costs associated with applying for and obtaining local government permits and approvals will be funded from the Grant payable to TNC; and
- 7.3.5. investigate opportunities for TNC to use open storage space to temporarily store materials associated with reef construction (e.g. recycled shells) and provide plant equipment such as excavators and trucks and their operators as in-kind contributions towards construction of Phase II and Phase III oyster reef restoration where appropriate;
 - 7.3.6. assist in locating secure office space for up to two TNC employees on a casual basis.

8. FUNDING

- 8.1. Both Parties will contribute to the costs associated with the Project to the value of AUD\$1.2 million exclusive of GST each over 3 years.
- 8.2. For clarity, subject to this Agreement, the Grant agreed to be paid by Noosa Council is the limit of Noosa Council's liability under this Agreement.
- 8.3. Noosa Council makes the Grant to TNC on the condition that TNC matches the Grant with its own monetary co-contribution of AUD\$1.2 million.
- 8.4. TNC will use and expend its monetary co-contribution of AUD\$1.2million to contribute to funding the delivery of the Project and achieve the Deliverables in accordance with this Agreement.
- 8.5. Subject to clause 8.6, Noosa Council will pay the Grant in four instalments by transfer to TNC's bank account detailed below in AUD.

ANZ Bank, Edward & Charlotte Sts, Brisbane, QLD 4000, Australia

Account name - The Nature Conservancy

Account no - 1078 28043

BSB number - 014 015

SWIFT code – ANZBAU3M

- 8.6. Noosa Council will pay to TNC the Grant by way of the following instalments subject to TNC delivering, and demonstrating to Noosa Council achievement of, the Deliverables in accordance with this Agreement:
 - 8.6.1. AUD\$179,237, by no later than 30 days after the last Party executes the Agreement and notifies the fact of execution by the Party to the other Party,
 - 8.6.2. AUD\$200,000 upon TNC delivering and demonstrating to Noosa Council achievement of the Measurable Outcomes numbered 1, 2, 3, 4, 5, 8 and 13(a) in the Project Deliverables in Schedule A, to the satisfaction of Noosa Council (acting reasonably);
 - 8.6.3. AUD\$492,962, subject to the payment being not earlier than 30th July 2021, upon TNC delivering and demonstrating to Noosa Council achievement of the Measurable Outcomes numbered 6; and for the relevant financial year, 7, 8, 9, 10 and 11; and 12; 14; and 20, in the Project Deliverables in Schedule A, to the satisfaction of Noosa Council (acting reasonably);

- 8.6.4. AUD\$328,400, subject to the payment being not earlier than 30th July 2022, upon TNC delivering and demonstrating to Noosa Council achievement of the Measurable Outcomes numbered, for the relevant financial year, 7, 8, 9, 10 and 11; and 15; 16; 17; and 19, in the Project Deliverables in Schedule A, to the satisfaction of Noosa Council (acting reasonably);
- 8.6.5. No payment- The Final Project Report is due 30th September 2022
- 8.7. The Grant and the instalment amounts are shown exclusive of GST. GST means goods and services tax under the GST Law, as that expression is defined in *A New Tax System (Goods and Services Tax) Act 1999*.
- 8.8. TNC must only use the Grant paid by Noosa Council to undertake the Project in accordance with the alliance objectives and the Deliverables as articulated in this Agreement.
- 8.9. If TNC uses or applies the Grant for the purposes other than the Project and the Deliverables specified in this Agreement it will constitute a material breach of this Agreement and result in termination of this Agreement in accordance with clause 17.1.
- 8.10. TNC will endeavour to seek further funding support for the Project through a variety of funders including philanthropic, foundation, corporate and government sources. The implementation of objectives outlined in this Agreement is not contingent on this additional funding
- 8.11. TNC will prepare, and provide to Noosa Council, 6 monthly² Project status reports including budget spend to date.

9. COSTS

- 9.1. Noosa Council and TNC shall each bear their own costs of and incidental to the negotiation, preparation and execution of this Agreement, including any costs incurred in relation to the discussions which are contemplated by this Agreement.
- 9.2. Any activities undertaken by Noosa Council or TNC under or in reliance on this Agreement will be at their own risk and expense.
- 9.3. In addition to the Grant from Noosa Council and TNC's own monetary co-contribution, Noosa Council and TNC will each make in-kind contributions through input from key management staff and personnel, consistent with the mutual interest in achieving the Project and objectives of this Agreement.

10. COMMUNICATIONS AND COMMUNITY ENGAGEMENT

- 10.1. The Parties agree to consult, assist and co-operate with one another to ensure all communications and community engagement are conducted in a professional manner and are consistent with each Party's policies. Where appropriate these will be detailed and agreed through relevant project communication plans.
- 10.2. All external communications pertaining to the alliance or arising from related activities may only occur where each Party's nominated delegate has approved in writing the communication.

² A 6 monthly period is a 6 month period ending on 31 December and 30 June.

- 10.3. Each Party must not use the trademarks or logos of the other Party except as expressly provided for in this Agreement or without the consent of the other Party.

11. CONFIDENTIALITY AND INFORMATION PRIVACY

- 11.1. During the course of the performance of this Agreement, the Parties may have access to materials, data, strategies, systems, techniques, financial or other information relating to the other Party and its programs, which is designated as, or by its nature is, confidential (**Confidential Information**).
- 11.2. Each Party agrees not to use, divulge or publish the Confidential Information of the other Party, except:
- 11.2.1. with the prior written consent of the other Party; or
 - 11.2.2. when required to do so by law or parliamentary convention; or
 - 11.2.3. in the case of Noosa Council, at a statutory meeting of Council in respect of which the Project and/or the Agreement is being considered and discussed.
- 11.3. However, information a Party acquires via this Agreement is not confidential if:
- 11.3.1. it is already public knowledge when a Party acquires it; or
 - 11.3.2. it becomes public knowledge post-acquisition otherwise than through breach of confidence by the acquirer;
 - 11.3.3. it is already lawfully in the acquirer's possession, otherwise than through breach of confidence, when a Party discloses it; or
 - 11.3.4. it is obvious or trivial.
- 11.4. Information Privacy
- 11.4.1. Where TNC and/or its personnel have access to and/or are responsible for holding Personal Information in order to fulfil its obligations under this Agreement, it shall:
- a) as a contracted service provider to Noosa Council, comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009 (Qld)* in relation to Personal Information as if TNC were "the agency" and agrees that it will not at any time do an act, or engage in a practice, in respect of Personal Information that would breach an Information Privacy Principle;
 - b) ensure the Personal Information is protected against loss or against unauthorised access, use, modification or disclosure and against other misuse;
 - c) not use Personal Information other than for the purposes of this Agreement, unless required or authorised by law;
 - d) not disclose Personal Information without the prior written agreement of Noosa Council, unless required or authorised by law;
 - e) not transfer Personal Information outside of Australia without the prior written consent of Noosa Council;
 - f) ensure that only authorised personnel who require access in order to perform their duties have access to the Personal Information;

- g) ensure that its personnel do not access, use or disclose Personal Information other than in the performance of their duties;
 - h) immediately notify Noosa Council if it becomes aware that a disclosure of Personal Information is, or may be, required or authorised by law;
 - i) fully co-operate with Noosa Council to enable Noosa Council to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
 - j) comply with such other privacy and security measures as Noosa Council reasonably advises TNC in writing from time to time.
- 11.4.2. Where Noosa Council is not reasonably satisfied, on the basis of information provided to it by TNC, that proper practices are in place to ensure that the privacy and disclosure of information requirements for Personal Information are being observed and maintained, Noosa Council may at any time require TNC to make its personnel aware of its obligations in accordance with this clause 11.4 including, when requested by Noosa Council, requiring those persons to promptly sign a Privacy Deed in the form required by Noosa Council.
- 11.4.3. Any Personal Information exchanged between TNC and Noosa Council shall be dealt with in accordance with the *Information Privacy Act 2009 (Qld)*.
- 11.4.4. TNC must immediately notify Noosa Council upon becoming aware of any breach of this clause 11.4 and must take such steps as is necessary to minimise the consequences to the individuals whose Personal Information was inappropriately disclosed and to reduce the risk of such inappropriate disclosure occurring in the future.
- 11.4.5. TNC acknowledges and accepts that:
- a) a breach by it or any of its personnel of any of the Information Privacy Principles; or
 - b) inappropriate disclosure by it or any of its personnel in breach of the Information Privacy Principles;
- is a material breach of this Agreement.

11.5. Right to Information

- 11.5.1. The *Right to Information Act 2009 (Qld)* ("**RTI Act**") provides members of the public with a legally enforceable right to access documents held by a local government.
- 11.5.2. The RTI Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to the public interest.
- 11.5.3. Information relating to this Agreement is potentially subject to disclosure to third parties pursuant to the RTI Act and any such disclosure will not constitute a breach of this Agreement.
- 11.5.4. If disclosure under the RTI Act, and/or general disclosure of information provided by TNC in connection with this Agreement, would be of substantial

concern to TNC, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, this should be expressly indicated in writing by TNC. Noosa Council cannot guarantee that any information provided by TNC will be protected from disclosure under the RTI Act.

11.6. This clause 11 survives the end or earlier termination of this Agreement.

12. INTELLECTUAL PROPERTY

- 12.1. Intellectual Property resulting from research and development will be owned equally as tenants in common by Noosa Council and TNC.
- 12.2. Background Intellectual Property specifically owned by a Party produced from work conducted independently will remain the property of that Party.
- 12.3. Each Party acknowledges that all Background IP remains the sole property of its owner.
- 12.4. The Intellectual Property arrangements and obligations set out in the Agreement shall survive termination of the Agreement.

13. GOVERNANCE

- 13.1. The Parties agree that this Agreement will be managed by an Executive Level Forum comprising of at a minimum each Party's nominated Contact Officers (Clause 19), which will be responsible for the governance, strategic management and priority setting for cooperative arrangements intended to be undertaken under this Agreement.
- 13.2. The Executive Level Forum will meet at least twice each financial year with a view to identifying or updating priority areas for cooperation during the following 6 months. When required an alternative representative can be nominated by either Party's nominated contact.
- 13.3. Governance for activities under this Agreement will be through the respective Party Executives (Executive level forum) or their nominated delegation to oversee strategy, budget and communication and community engagement.
- 13.4. The Parties agree to develop specific and appropriate monitoring and evaluation measures and associated reporting for the Project by no later than 6 months after the date of the formation of this Agreement.
- 13.5. For the term of the Agreement, TNC will provide annual reports by no later than 30 days after the end of each financial year.
- 13.6. TNC will provide 6 monthly reports to Noosa Council on the progress and status of delivery of Phase II and Phase III of the shellfish restoration project, including expenditure against grant monies provided by Noosa Council.
- 13.7. A technical advisory group will be established to advise specifically on the shellfish restoration project with at least 3 independent (including Kabi Kabi) expert representatives with appropriate skill, expertise and capabilities.

14. TRUSTEE COVENANTS

- 14.1. TNC acknowledges that it enters this Agreement as trustee of The Nature Conservancy Australia Trust ABN 83 243 328 398.
- 14.2. **Trustee Warranties**

TNC declares that:

 - 14.2.1. it is the sole trustee of the trust;
 - 14.2.2. it has fully disclosed to the other Party the terms of the trust;
 - 14.2.3. it possesses unqualified power under the trust to enter the Agreement;
 - 14.2.4. it possesses unqualified power to discharge all of its obligations under the Agreement;
 - 14.2.5. it enters the Agreement in the proper exercise of its trustee powers;
 - 14.2.6. it is not in breach of trust except as disclosed in writing to the other Party;
 - 14.2.7. it will not breach the trust;
 - 14.2.8. no action has been taken to vest or terminate the trust, and none is proposed;
 - 14.2.9. no beneficiary is presently entitled to trust assets.
- 14.3. **Prohibited Trust Dealings**
 - 14.3.1. TNC must not commit a breach of trust while any of its obligations under this Agreement remain to be discharged.
- 14.4. **Copy Trust Instrument**
 - 14.4.1. TNC must give Noosa Council, if requested, a copy of the deed or deeds comprising the current trust constitution, to enable Noosa Council to verify that the trust:
 - a) is properly constituted; and
 - b) otherwise meets the requirements of this clause 14.
 - 14.4.2. Noosa Council must treat the trust deed/s as confidential.

15. DISPUTE RESOLUTION

- 15.1. The Parties agree that they will cooperate with each other and at all times act in good faith and with the joint objective of successfully carrying out and delivering the Project as contemplated in this Agreement.
- 15.2. 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:
 - 15.2.1. The Contact Officer for a Party may notify the other Party's Contact Officer in writing of the occurrence of a dispute (**Dispute Notice**), and the Executive Level Forum will try to resolve the dispute through negotiation.
 - 15.2.2. If the Executive Level Forum is unable to resolve the dispute within 15 business days from the receipt of the Dispute Notice, the dispute will be referred to:
 - a) for Noosa Council, the person holding the position of Chief Executive Officer (or equivalent); and

- b) for TNC, the person holding the position of Chief Executive Officer (or equivalent).
- 15.2.3. If the dispute is not resolved within 15 business days after its referral to the representatives of each of the Parties under clause 15.2.2, either Party may refer the dispute to a mediator agreed by the Parties or failing agreement by the President for the time being of the Queensland Law Society Incorporated, with costs of the mediator to be shared equally between the Parties. Mediation is to be conducted in Noosa, unless the Parties and the mediator agree otherwise.

16. NOTICES

Unless otherwise provided, any notice required by this Agreement will be deemed properly given on the date it is delivered via email (see below), to an overnight courier service, or deposited by registered or certified mail, postage prepaid, addressed to:

If to Noosa Council:

Noosa Council

PO Box 141

Tewantin QLD 4565

Attn: Kim Rawlings

Email: kim.rawlings@noosa.qld.gov.au & mail@noosa.qld.gov.au

If to TNC:

The Nature Conservancy

60 Leicester Street

Carlton VIC, 3053

Attn: Chris Gillies

Email: Chris.gillies@tnc.org

17. TERMINATION AND LIABILITY

- 17.1. Either Party may terminate this Agreement only for a material breach of this Agreement, having first provided written notice explaining the nature of the breach and allowing either Party at least thirty (30) days from the notice to cure the breach, or if the breach is of a nature that cannot be cured within thirty days, to begin efforts which if completed would cure the breach within a reasonable period.
- 17.2. A Party may choose to terminate the Agreement by notice in writing to the other Party in circumstances where the other Party experiences an Insolvency Event.
- 17.3. In the event the Agreement is terminated, except as provided for in clause 8.9:
- 17.3.1. TNC's liability to Noosa Council under this Agreement is limited to that portion of the Grant received from Noosa Council that, as at the date of the notice of termination, is not legally committed or otherwise expended by TNC in compliance with this Agreement to deliver the Project, subject to and

conditional upon TNC providing Noosa Council with sufficient information and supporting documentation to evidence the expenditure or legal commitment of the claimed portion of the Grant received from Noosa Council, by no later than 7 days after the date of termination of the Agreement.

- 17.3.2. Noosa Council is entitled to recover that portion of the Grant paid by Noosa Council to TNC not expended or legally committed by TNC in compliance with this Agreement to deliver the Project as evidenced by TNC pursuant to clause 17.3.1.
- 17.3.3. TNC must repay to Noosa Council the balance of the uncommitted, unexpended portion of the Grant received from Noosa Council by no later than 30 days after the date of termination of the **Agreement** and provide Council with sufficient information and supporting documentation to evidence the expenditure or legal commitment by TNC of a claimed portion of the Grant received from Noosa Council by no later than 30 days after the date of termination of the Agreement.
- 17.4. In the event the Agreement is terminated each Party must return back to the other Party any materials, documents, information, plans used either wholly or partly for the Project.
- 17.5. Indemnity
 - 17.5.1. TNC (the *indemnifying party*) indemnifies and keeps indemnified Noosa Council (the *indemnified party*) against costs, liability and damages incurred or sustained by the indemnified party directly caused by or arising out of:
 - a) the indemnifying party (including its personnel) breaching the Agreement;
 - b) any actions, claims or demands brought or made against the indemnified party by a third party due to or arising out of the indemnifying party carrying out or failing to carry out its obligations under the Agreement, whether such acts or omissions are wilful, negligent, reckless, unlawful or otherwise.
 - 17.5.2. The indemnity under clause 17.5.1 does not extend to include liability for the consequences due to the indemnified party's (including its personnel's) breach of the Agreement; or wilful, negligent, reckless, or unlawful acts or omissions.

18. FORCE MAJEURE

- 18.1. Neither Party will be:
- 18.1.1. in breach of this Agreement as a result of; or
 - 18.1.2. liable for,
- any failure or delay in the performance of its obligations under this Agreement to the extent that such failure or delay is wholly or partially caused, directly or indirectly, by Force Majeure.

19. NOMINATED CONTACT OFFICERS

- 19.1. The Noosa Council Contact Officer for this Agreement is:

Kim Rawlings

Director Environment & Sustainable Development

Noosa Shire Council

9 Pelican St, Tewantin QLD 4565

kim.rawlings@noosa.qld.gov.au

- 19.2. The TNC Contact Officer for this Agreement is:

Chris Gillies

Oceans Lead, Australia Program

The Nature Conservancy

60 Leicester Street Carlton Victoria 3053

Chris.gillies@tnc.org

20. GENERAL

- 20.1. Noosa Council, in its role as a local government, is not obliged to consent to anything to which it would be unlawful to consent, or which relevant officers of Noosa Council consider in their discretion to be unlawful, inappropriate or undesirable. To avoid doubt, nothing contained in this Agreement will affect, prejudice or derogate from the requirements of any statute, proclamation, Order in Council, rule, regulation, ordinance, by-law or local law, or from the rights, powers and authorities of Noosa Council under the provisions of any such enactment or under any declared policy of Noosa Council.
- 20.2. Each person signing the Agreement as an officer or other representative of a Party, assures each other Party or signatory that s/he possesses unrestricted authority to sign in that capacity.
- 20.3. Neither Party is permitted to assign or novate any of its rights or obligations under this Agreement to a third party.

- 20.4. This instrument is an agreement made by deed,³ binding each Party:
 - 20.4.1. irrespective of its terminology (for example, referencing "clauses" and "paragraphs" rather than "covenants"); and
 - 20.4.2. irrespective of whether it is contractual or consideration otherwise passes in return for a promise.
- 20.5. Amendments to this Agreement may be proposed by either Party at any time in writing to the other Party. The terms of any amendments shall be negotiated by appointed contact officers and given effect by written agreement signed by both Parties.
- 20.6. The laws of Queensland, Australia, govern this Agreement.
- 20.7. This Agreement supersedes all previous agreements about its subject matter. This Agreement embodies the entire agreement between the Parties.
- 20.8. A provision is to be treated as omitted from the Agreement if:
 - 20.8.1. the provision is void, unenforceable, or incomprehensible; or
 - 20.8.2. retaining the provision would render the Agreement or part of the Agreement void, unenforceable, or incomprehensible.
- 20.9. The Parties may execute this Agreement in any number of counterparts. When executed and exchanged (which exchange the Parties or any of them may effect by facsimile transmission), the counterparts will be deemed collectively to constitute the instrument of agreement.

³ Relevantly, an agreement made by deed is a special form of written agreement, which might or might not constitute a contract. An agreement made by deed binds the parties irrespective of whether consideration passes between them, i.e. irrespective of whether a party does or promises something in return for what the other, or another, party does or promises. A deed that provides for the passage of consideration between the parties functions also as a contract.

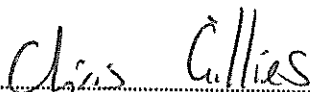
DATED:

Executed by The Nature Conservancy Limited A.C.N. 104 635 654 as Trustee for The Nature Conservancy Australia Trust (ABN 83 243 328 398):

- as its deed;
- under *Corporations Act* sections 127(1) and 127(3);
- by the signatures of a director and a second director/the secretary:



Director



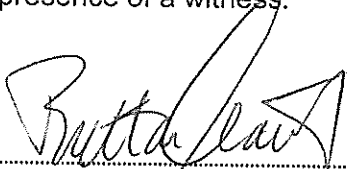
Full name [Print]

Director/Secretary

Full name [Print]

Executed on behalf of **Noosa Shire Council:**

- as a deed;
- pursuant to *Local Government Act 2009* section 236;
- by a Council delegate, who certifies his authority to sign;
- in the presence of a witness:



Delegate



Full name [Print]

Witness

Full name [Print]

SCHEDULE A

PROJECT DESCRIPTION

This project proposes to establish an innovative and regionally significant Noosa River collaborative alliance, between the Noosa Council and the global conservation organization The Nature Conservancy, which seeks to improve the health and resilience of the Noosa River and the industries and local communities that rely on its long-term wellbeing.

The focus is to:

- Improve the health and resilience of Noosa's marine and estuarine environment through innovative restoration and coastal resilience projects;
- Capitalize on the expertise of The Nature Conservancy's global networks and experience (through knowledge brokering, mentoring, study tours and access to subject matter experts) to improve Noosa River management and strengthen the long-term social, environmental and economic health and resilience of the Noosa River and surrounding marine environment;
- Demonstrate a leading example of a replicable, environmentally-focused, collaborative alliance that achieves superior outcomes for the environment and local communities compared to existing river and marine management models; and,
- Increase government (State and Federal), private, industry and community support for restoration and conservation-focused activities that improve the long-term social, economic and environmental health and resilience of the Noosa River and surrounding marine environment.

The collaborative alliance will initially prioritize the restoration of oyster reefs in the lower estuary (as described below) as the first activity, with other potential activities including:

- General strategic support/advice for planning, management and evaluation associated with the new Noosa River Plan and other initiatives and projects associated with the river system;
- Coordination of research required to inform the delivery of the implementation of the Noosa River Plan; and
- Critical evaluation and potential reform of current and future management activities (e.g. commercial and recreational fishing, recreation, tourism, wetland restoration, sediment and nutrient inflows, community engagement).

The collaborative alliance will commence on 30 July 2019 and will run for three years and 3 months, with the outcomes of the alliance to be reviewed in July 2022. The total operating budget is \$2.4M exclusive of GST, inclusive of \$1.2M from The Nature Conservancy and \$1.2M Grant from Noosa Council with the expectation that TNC will raise further funding from a variety of other sources to support further delivery of shell fish reef restoration.

Oyster reef restoration methodology will follow standards aligned with best practice oyster restoration and the Society for Ecological Restoration global guidelines. The project will follow a staged approach to restoration;

- *Phase I* – feasibility, which has been completed by the University of the Sunshine Coast (note, Phase I is not part of the Deliverables under this Agreement).
- *Phase II* - optimal design (2019-2020) which seeks to determine the optimal design, locations and most cost effective method of reef restoration.
- *Phase III* – pilot sites and full restoration (2020-2022) which seeks to construct reefs in their final design at two pilot sites for 12 months, then at feasible locations identified during Phase II.

This phased, time bound approach will reduce ecological and financial risks through the application of an adaptive management framework.

PROJECT DELIVERABLES

Objectives	Deliverables	Expected completion date (from 1 July 2019)	Measurable outcomes	Party responsible for Deliverable
Shellfish reef restoration component				
A-1 Project establishment and management Establish effective project governance, management, communication and reporting sufficient to successfully implement shellfish restoration project	<ul style="list-style-type: none"> A Technical Advisory Group (TAG) is established to provide project oversight. This will include a clear terms of reference and consist of representatives from key stakeholders (Noosa Council, TNC, Kabi Kabi and at least two other independent parties). 	6 months	1. Terms of reference for the TAG developed, TAG is established and at least one meeting held. 2. Evidence of Kabi Kabi involvement.	TNC TNC
	<ul style="list-style-type: none"> Appointment of dedicated project manager who is a marine biologist with extensive project management experience, for the term of the Agreement. 	3 months	3. Appointment of Project Manager to oversee the Project.	TNC
	<ul style="list-style-type: none"> A Project Implementation Plan detailing at a minimum: <ul style="list-style-type: none"> A detailed risk assessment associated with the project. A Communications and media plan, outlining media protocols, opportunities and the role of TNC and Council. A Monitoring, Evaluation and Reporting Plan which identified ecological and social monitoring programs, how they will be reported on and how this will fed back into the project. 	6 months	4. A Project Implementation Plan produced by TNC, endorsed by Technical Advisory Group, and delivered by TNC to Noosa Council for presentation and approval by Noosa Council its approval. 5. A Project Implementation Plan presented to Noosa Council by TNC in conjunction with Council officers for its approval, and (if acceptable) approved in writing by Noosa Council by no later than two months after delivery.	TNC TNC & Noosa Council

Objectives	Deliverables	Expected completion date (from 1 July 2019)	Measurable outcomes	Party responsible for Deliverable
	<ul style="list-style-type: none"> Participate in public forums to provide the Noosa community opportunities to learn about the project and TNC. 	Ongoing for the duration of the project	<p>6. Participate in at least three public presentations/forums in the first 9 months after formation of this Agreement, with the purpose to provide the Noosa community opportunities to learn about the project and TNC.</p> <p>7. Participate in at least six public presentations/forums in the 2nd and 3rd financial year of the term of this Agreement, with the purpose to provide the Noosa community opportunities to learn about the project and TNC.</p> <p>8. A minimum three media statements throughout duration of project</p>	TNC
	<ul style="list-style-type: none"> Annual project reports and final report each of which address, at a minimum: <ul style="list-style-type: none"> Activities undertaken during the subject financial year, status and progress against deliverables, budget progress, income and expenditure, report against monitoring and evaluation program and measurable outcomes and outline of proposed upcoming works/activities for future period. 	<p>For each annual project report - Yearly</p> <p>For the final report – 30th September 2022</p>	<p>9. An annual project report (and, when applicable, final report) is prepared and produced by TNC, endorsed by Technical Advisory Group, and delivered by TNC to Noosa Council, within 60 days of the end of each financial year during the term of the Agreement.</p> <p>10. The annual report and, when applicable, final report) in Measurable Outcome 9 is presented to Noosa Council by TNC in conjunction with Noosa Council officers for its approval for endorsement within 90 days of the end of each financial year during the term of the Agreement, and (if acceptable) approved by Noosa Council.</p>	TNC
	<ul style="list-style-type: none"> 6 monthly status and progress reports which address, at a minimum: <ul style="list-style-type: none"> Progress against deliverables and monitoring and evaluation report. 6 monthly financial statements including a statement of Project income/funding and expenditure 	6 monthly	11. 6 monthly status and progress reports, and financial statement, are produced, endorsed by the Technical Advisory Group, and provided to Noosa Council, within 30 days of end of each six (6) month period. Reports and financial statements due at the end of the financial year may be included with annual reports and the final report.	TNC

Objectives	Deliverables	Expected completion date (from 1 July 2019)	Measurable outcomes	Party responsible for Deliverable
A-2: Site selection Identify suitable restoration sites for Phase II and Phase III and appropriate reef design that minimize estuary-user conflict whilst optimizing reef rehabilitation	<ul style="list-style-type: none"> Oyster reef restoration suitability model incorporating physical parameters of oysters and public and industry usage, access etc. to identify priority sites for restoration. 	12 months	12. Habitat suitability model which incorporates industry, Kabi Kabi and public interests.	TNC
	<ul style="list-style-type: none"> Obtain necessary State government permits/authorities including particular resource allocation authority, for oyster reef restoration Obtain necessary local government permits/approvals including in particular fisheries development approval for oyster reef restoration 	12 months	13. Outcomes: (a) Obtain all required State government permits/authorities for installation of oyster reefs. (b) Obtain all required Local government permits/approvals for installation of oyster reefs are obtained.	13(a) - TNC 13(b) - Noosa Council
	<ul style="list-style-type: none"> Community, industry and stakeholder consultation sufficient to gain majority support for reef restoration locations. 	12 months	14. Records of public and stakeholder consultation, including one-on-one meetings, open forums, media, etc.	TNC
	<ul style="list-style-type: none"> Community, industry and stakeholder consultation to identify most appropriate community volunteering opportunities (e.g. shell recycling, oyster gardens, oyster watch, video monitoring). 	14 months	15. Records of public and stakeholder consultation, including one-on-one meetings, open forums, media, etc.	TNC & Noosa Council
A-3 Community engagement Strengthen community interest, support and participation in Noosa River restoration by establishing a community volunteering program to support reef restoration	<ul style="list-style-type: none"> Establish at least one community volunteering program identified from the above process which takes into account current and future resources, management and interest. 	18 months	16. Record of volunteer hours dedicated to community volunteering programs, such as: shell recycling, oyster gardens, oyster watch, video monitoring.	TNC & Noosa Council
	<ul style="list-style-type: none"> Restoration at two pilot sites (approx. 40m-50m shore length per site) which pilots reefs design, growth and survival. 	24 months	17. At least two (2) sites with at least overall 80m shore length of reef restored, and being actively monitored.	TNC
A-4 Reef restoration Restore oyster reef ecosystems across the lower estuary				

Objectives	Deliverables	Expected completion date (from 1 July 2019)	Measurable outcomes	Party responsible for Deliverable
<p>A-5 Noosa River Plan</p> <p>Provide technical and expert support to Noosa for planning, implementation and evaluation associated with appropriate elements of the Noosa River Plan and other coastal and marine management plans</p>	<ul style="list-style-type: none"> Restoration across multiple further sites, as determined by habitat suitability modelling and outcomes of community consultation. 	36 months	18. In addition to the two pilot sites, a number of sites comprising a minimum of a further aggregated 600m ² surface area of restored oyster reef in the Noosa River estuary.	TNC
	<ul style="list-style-type: none"> Monitoring and evaluation study for both pilot and full restoration sites. Monitoring to include oyster metrics, invertebrates and fish use (detailed in MER plan). 	Ongoing for duration of project, at least 6 monthly	19. Annual monitoring and evaluation report card with 6 monthly status reports to be provided.	TNC
	Marine conservation component			
	<ul style="list-style-type: none"> Run workshop with Noosa Council to identify ongoing focus areas for TNC support. 	9 months	20. Workshop completed.	TNC & Noosa Council
	<ul style="list-style-type: none"> Provide technical/peer review on minimum five plans/reports/studies if requested by Noosa Council. 	Ongoing for duration of project	21. Minimum 5 peer review reports completed during the three year term of this Agreement, if requested by Noosa Council. If Noosa Council requests a peer review, TNC will provide a minimum of 3 experts who are qualified in the relevant area of expertise for Noosa Council consideration and Noosa Council's acceptance of 1 expert for the peer review.	TNC
	<ul style="list-style-type: none"> Facilitate a minimum of three study tours of relevant sites in line with objectives and scope of the program if requested by Noosa Council (flights and incidentals covered separately by Noosa Council, accommodation and other travel covered by this Grant). 	36 months	22. Minimum three study tours completed during the three year term of this Agreement, if requested by Noosa Council.	TNC & Noosa Council
	<ul style="list-style-type: none"> Develop a Conservation Action Plan for specific issues (not yet determined) relevant to the Noosa Estuary (including community workshops) if requested by Noosa Council. 	36 months	23. Conservation Action Plan and Community Workshops completed as required.	TNC & Noosa Council

Objectives	Deliverables	Expected completion date (from 1 July 2019)	Measurable outcomes	Party responsible for Deliverable
	<ul style="list-style-type: none"> Facilitate access to TNC conservation networks and researchers if requested by Noosa Council. 	Ongoing for duration of project	24. A number of new contacts/networks to assist Noosa Council with ongoing and future marine conservation activities.	TNC
	<ul style="list-style-type: none"> Promote Noosa Council's Noosa River Plan and shellfish restoration project in at least one national and one international conference. 	36 months	25. Presentation to at least one national and one international conference.	TNC & Noosa Council
	<ul style="list-style-type: none"> Promote Noosa Council's Noosa River Plan and shellfish restoration project to corporate, philanthropic and state/federal government audiences to establish further support for conservation activities that support the Noosa River Plan. 	Ongoing for duration of project	26. A number of new corporate/ government/ philanthropic alliances and new in-kind support/financial funding contributions.	TNC & Noosa Council

SCHEDULE B – PROJECT BUDGET

PROJECT COSTS	Year 1 - 2019/20	Year 2 – 2020/21	Year 3 – 2021/22	Total
Activity #1 - Strategic planning support	132,904	136,069	139,329	408,303
Activity #2 - Site visits, exchanges, workshops	52,246	52,799	53,368	158,412
Activity #3 - Oyster restoration	404,438	646,999	310,860	1,362,297
Activity #4 – Communication and engagement	62,472	57,920	58,877	179,269
Activity #5 - Project management	106,413	92,136	94,366	292,916
Subtotal	758,473	985,924	656,800	2,401,197
Noosa Council contribution	379,237	492,962	328,400	1,200,599
Total Expense (GST exclusive)	758,473	985,924	656,800	2,401,197