

MEMORANDUM OF AGREEMENT
ESTABLISHING A PROJECT BETWEEN
THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,
UNITED STATES DEPARTMENT OF COMMERCE,
AND THE UNIVERSITY OF QUEENSLAND, AUSTRALIA
UNDER THE LINKAGE PROJECT GRANT
BY THE AUSTRALIAN RESEARCH COUNCIL

1. PARTIES & BACKGROUND

This document constitutes an agreement between the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, and the University of Queensland (UQ), a public research university in Australia.

UQ has been awarded a Linkage Project Grant by the Australian Research Council (ARC) to conduct a research project with the Australian Institute of Marine Science (AIMS), the Great Barrier Reef Marine Park Authority (GBRMPA) and NOAA entitled, “New Tools for Managing Ecosystem Responses to Climate Change on the Southern Great Barrier Reef” (Project).

UQ will enter into a separate agreement with its other Industry Partners for the purposes of undertaking the Project.

The parties have chosen to participate in this project so that they may be involved in the development of an understanding of the responses of corals to thermal and light stress, and how geography and oceanography play into this complex response. NOAA intends to take the knowledge gained from this work and use it to derive better satellite-based algorithms for predicting the onset and eventual mortality rate for a bleaching event.

The current understanding of the coral bleaching phenomenon is incomplete. We understand that corals have thermal thresholds beyond which they experience significant stress. We know that the threshold varies in space and know that this is linked to the temperature climatology of the ambient water; however the relationships to the climatology have only been tested on the scale of entire reefs and only in two dimensions. We are yet to investigate these relationships at sub-reef scale and in three dimensions (i.e. recognizing that the temperature and its climatology vary with depth and location on an individual reef). We also have virtually no idea about the relationship between light and bleaching mortality, other than it is likely to be the key to being able to predict mortality rates as a result of a bleaching event.

2. AUTHORITIES

NOAA has authority under United States law to participate in the Project under:

- (1) 33 U.S.C. § 883d which authorizes NOAA to increase engineering and scientific knowledge by conducting developmental work for the improvement of surveying and cartographic methods, instruments, and equipments; and to conduct investigations and research in geophysical sciences (including geodesy, oceanography, seismology, and geomagnetism).
- (2) 33 U.S.C. § 883e, which authorizes NOAA to enter into agreements, with, and to receive and expend funds made available by, any State or subdivision thereof, any Federal agency, or any public or private organization, or individual, for surveys or investigations authorized herein, or for performing related surveying and mapping activities, including special-purpose maps, and for the preparation and publication of the results thereof, and to establish the terms of any agreement entered into under this section, including the amount of funds to be received, and may contribute that portion of the costs incurred by NOAA, including shiptime and personnel expenses, which NOAA determined represents the amount of benefits derived by the Administration from the agreement.
- (3) Coral Reef Conservation Act, 16 U.S.C. §§ 6401-6409.

(4) Memorandum of Understanding Through Which NOAA, U.S. Department of Commerce, is Cooperating with The University of Queensland to Expand Collaboration on the Coral Reef Watch Project (August 2005).

3. PURPOSE & RESPONSIBILITIES OF THE PARTIES

The purpose of this agreement is to perform research to better understand coral reef bleaching as it relates to environmental stress. Research will include mesocosm experiments of coral bleaching, physical oceanography and hydrodynamic modelling, studies of within reef variability in bleaching patterns, and improvement of NOAA Coral Reef Watch bleaching products. The knowledge gained from this work will be used to develop better satellite-based algorithms for predicting the onset and eventual mortality rate for a bleaching event.

NOAA Contribution

NOAA will work with UQ to:

- Perform research to contribute to an understanding of the hydrodynamics of Heron Reef on the southern Great Barrier Reef (Australia) that will produce an understanding of:
 - i. Three dimensional temperature climatology; and
 - ii. Connectivity during a spawning event.

NOAA will be contributing funds and in-kind resources, as outlined below:

Amount Contributed (U.S. \$) by NOAA						
Year 1	Year 2	Year 3	Year 4	Year 5	TOTAL	
250,000	300,000	300,000	250,000	250,000	1,350,000	Cash
560,000	640,000	640,000	600,000	500,000	2,940,000	In-kind
830,000	940,000	940,000	850,000	750,000	5,290,000	Total

The aforementioned dollar amounts can be amended with the authorization of both parties.

UQ Contribution

UQ will work with NOAA to:

- Lead the effort to derive an understanding of coral physiology (in particular the variation in thermal thresholds, but also in light accumulation leading to mortality) and genetics that will spatially “mirror” the hydrodynamics of Heron Island.
- Provide access to some of the facilities of Heron Island Research Station (e.g., station boats), accommodation costs, and staff salaries (research and general).

ARC will be providing approximately \$1.2 million Australian dollars in research funds outlined in Schedule 4. These amounts are also outlined below:

Amount Contributed (Australian \$) by ARC						
Year 1	Year 2	Year 3	Year 4	Year 5	TOTAL	
220,000	220,000	220,000	220,000	220,000	1,100,00	Cash
12,074	24,148	24,148	12,074	0	72,444	APAI scholarship
234,074	244,148	244,148	234,074	220,000	1,172,444	Total

UQ will also be contributing funds and in-kind resources outlined in Schedule 3. These amounts are outlined below:

Amount Contributed (Australian \$) by UQ						
Year 1	Year 2	Year 3	Year 4	Year 5	TOTAL	
147,487	147,487	147,487	147,487	147,487	737,435	Cash
387,567	387,567	387,567	387,567	262,259	1,812,526	In-kind
535,054	535,054	535,054	535,054	409,746	2,549,961	Total

The aforementioned dollar amounts provided by UQ and NOAA can be amended with the authorization of both parties.

Commitment of Funds

This agreement is for the initial year and shall act as an umbrella agreement for further transfers to fulfill the project purposes. However, additional funding is subject to the availability of funds and will be carried out by annual amendment to this agreement and is subject to legal review. The parties intend to fund a total of five years, as indicated in the tables above.

5. CONTACTS

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 The University of Queensland
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Dr. C. Mark Eakin
 Coral Reef Watch Project Coordinator
 NOAA/NESDIS/ORR/ORAD – E/RA31
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 1335 East-West Highway
 Silver Spring, MD 20910 USA
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 fax : +1 301-713-3136 e-mail: Mark.Eakin@noaa.gov

6. PERIOD OF AGREEMENT AND MODIFICATION

This agreement will become effective when signed by all Parties. The agreement will terminate on December 31, 2011, but may be amended at any time by mutual consent of the Parties. The Parties will review this agreement at least once every three years to determine whether it should be revised, renewed or cancelled.

7. OTHER PROVISIONS

I. Liaison

UQ shall liaise with and report to the Commonwealth as reasonably required by the Commonwealth during the period of this Agreement.

II. Conditions of the Award

The terms of this Agreement (including any Further Special Terms) are subject to the Conditions of Award. In the event of inconsistency between this Agreement and the Conditions of Award, the Conditions of Award prevail to the extent of the inconsistency.

III. Schedules

The Parties agree to contribute and participate in the conduct of the Project or that part of the Project (including with respect to the UQ awarded Student Project component) allocated to each of them in accordance with this Agreement including its Schedules: (i) Schedule 1: definitions; (ii) Schedule 2: Intellectual Property Rights and Business Confidential Information; (iii) Schedule 3: ARC Linkage Grant Application; (v) Schedule 4: (with respect to terms relevant to NOAA as an Industry Partner or UQ in its capacity as the Institution) the Conditions of Award (ARC Linkage Funding Contract).

IV. Funding

Subject to UQ receiving the Commonwealth Funds from the ARC:

- (a) UQ will provide its contribution and administer the Project Funds and Commonwealth Funds in accordance with the Conditions of Award at Schedule 4; and
- (b) NOAA will provide to UQ its Industry Partner Contributions as set out in the Grant Application at Schedule 3 and subject to the availability of funds.

V. Chief Investigator(s) or Partner Investigator(s)

The relevant responsible Party under the Conditions of Award will appoint the person(s) identified at Item A3 of the Grant Application as the Chief and Partner Investigator(s) for the Project. In the event that the Chief Investigator(s) or Partner Investigator(s) cease to be employed by his/her respective Party then the relevant responsible Party will (subject to the Conditions of Award) appoint, such other of that Party's research staff as is suitably qualified to complete the Project.

VI. Reports and the Commonwealth

The Parties acknowledge and agree that:

- (a) Under the Conditions of the Award, UQ must submit Reports and certain statements to the Commonwealth, with UQ providing a copy of each Report to its partners; and
- (b) NOAA and collaborating Institutions under the corresponding Multi-Lateral Agreement must contribute to and assist UQ, as reasonably necessary, with all Reports UQ must provide to the Commonwealth under the Conditions of Award; and
- (c) Prior to submitting Reports and statements to the Commonwealth, UQ will provide NOAA with a copy and an opportunity to advise UQ within 30 days of the provision of a draft Report or statement (or within another timeframe agreed among the Parties) whether such Reports or statements incorporate Confidential Information or Background Intellectual Property of that Party; and
- (d) UQ will amend any Reports and statements which NOAA advises UQ would involve disclosure of identified, specific Confidential Information or Background Intellectual Property.

Where the Commonwealth seeks UQ's permission to disclose Confidential Information contained in any Project-related Reports or statements to any person other than an officer of the ARC, UQ must:

- (a) advise NOAA of any circumstance in which the Commonwealth has requested UQ's permission to disclose Confidential Information; and
- (b) make available a copy of each of the Reports to NOAA as requested; and
- (c) consult with NOAA in respect of any Confidential Information contained in the Reports and statements; and
- (d) notify the Commonwealth in pursuance of the Conditions of Award that, if Reports and statements contain Confidential Information of NOAA, that information is confidential and therefore should not be disclosed by the Commonwealth except in accordance with the provisions of the Conditions of Award and only to that extent.
- (e) UQ shall submit annual Project Progress Reports to NOAA annually within one month of the expiration of each year of the Project for the term of the Project or its earlier expiration subject to earlier termination of the Project within any given year.

VII. Acknowledgments

A publishing Party must acknowledge the contribution of each Party and the Commonwealth of Australia through the ARC in any proposed publication, report, formal public announcement, or promotional or advertising material produced for and as a result of the Project.

VIII. Accounts

UQ will open a ledger account for the Project and deposit the Project Funds into that account.

The Commonwealth Funds will be deposited into a separate account.

The Project account shall be included in the UQ's grant accounts that are reviewed as part of a risk-based audit conducted by the Queensland Audit Office under the supervision of the Queensland Auditor-General, the external auditor of the University accounts ("External Auditor").

If any report is issued by the Queensland Audit Office or External Auditor on the Project account and/or if any discrepancy in the Project account is identified, UQ, through its qualified accountant, shall provide NOAA with details of such a discrepancy and/or any report immediately. UQ may request an internal review of the account in accordance with appropriate financial practices.

IX. Invoicing

UQ will:

- (a) Issue an invoice to NOAA for its cash contributions on a quarterly basis in advance, subject to the preceding milestone or stage of the Project having been completed or delivered by UQ; and
- (b) Annually invoice NOAA for its contribution; and
- (c) Carry forward unspent Project Funds from year to year during the term; and
- (d) Annually submit to NOAA, upon request, a certificate stating that the Project Funds were used for the purposes for which they have been provided, and show receipts and disbursements against the Project Funds provided; and
- (e) Provide a copy of the certificate in sub-clause (b) to NOAA within 60 days of the end of the financial or academic year.

X. Termination/Retirement/Withdrawal/Expulsion of Parties

1.1 Withdrawal from Project

Subject to clause X 2 (c), NOAA may withdraw from the Project by giving four (4) months notice to UQ.

1.2 Expulsion from Project

- (a) A Party may be expelled from the Project by notice from UQ if Due Cause exists in relation to that Party and remains unremedied after 30 days following written notice to that Project Participant.
- (b) For the purposes of clause X 1.2 (a) , Due Cause means:
 - (i) failure to make Project Contributions when required by the Project Details;
and
 - (ii) unauthorised use or Commercialisation of Intellectual Property; and
 - (iii) any other material breach of this agreement in relation to the Project or of the Project Details, including failure to meet Milestones; and

- (iv) change or proposed change to personnel that is likely to adversely affect the Project; and
- (v) failure to remedy a Conflict in relation to the Project under clause XI to the satisfaction of the other Party.

2. Termination of Project

(a) NOAA may terminate a Project upon 30 days written notice to UQ if:

- (i) a milestone is not achieved by the date it was required to be met and remains not achieved after 45 days following a notice from NOAA to UQ (or longer period of time specified by NOAA in the notice);

(b) Provided that:

- (i) if required by the Conditions of Award, the Commonwealth has been informed of the proposed termination and does not object to the termination of the Project; and

(c) Consequences of withdrawal from Project:

- (i) If a Party withdraws or is expelled from the Project, the Party will from the date of effect of the withdrawal or expulsion:
 - (aa) cease to be a Party;
 - (bb) be relieved of its obligations to make Project Contributions, to carry out, report on or manage the Project, or otherwise participate in the Project.

XI. Conflict of Interest

The Parties recognize that to the best of their knowledge after making diligent enquiries, at the date of signing this Contract, this is a collaborative project arrangement between UQ and NOAA and no conflict exists or is likely to arise in the performance of their obligations under this Contract.

If, during the Funding Period, a conflict or apparent or potential conflict arises or is likely to arise in relation to a Party that Party must:

- (a) notify in writing the other Party of that conflict and of the steps the Party proposes to take to resolve or otherwise deal with the conflict;
- (b) make full disclosure to the other Party of all relevant information relating to the conflict; and
- (c) take steps reasonably required to resolve or otherwise deal with that conflict.

XII. Assignment and Sub-Contracting

The Parties must not assign any other Party of their rights under this Contract without the prior written consent.

UQ and NOAA must not, without the approval of the other party, sub-contract the performance of any part of its obligations under this Contract.

XIII. Relationship with the Commonwealth

A Party will not by virtue of this agreement be, or for any purpose be deemed to be, an employee, partner, or agent of the Commonwealth.

XIV. Use of a Party's Name, Release of information, & Public Announcements

A Party must not use the name or logo of the other Party without the prior written consent of that Party.

Any materials or statement offered to inform the public of the nature of this project, or to promote the existence of the project and the parties, shall only be released to the public upon the mutual consent of the parties.

UQ and/or the Commonwealth is principally responsible for making public announcements about the Project Centre and NOAA must not make any public announcement in relation to the Project or this agreement without obtaining UQ's prior approval, except if required by law or a regulatory body in which case NOAA must, to the extent practicable, first consult with and take into account the reasonable requirements of UQ.

XV. Interpretation

Should disagreements arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

SCHEDULE 1

1. In this Agreement, unless the contrary intention appears:

“Agreement” means the terms and conditions set out in this Agreement including its schedules.

“APAI” means an Australian Postgraduate Award (Industry) referred to in the Conditions of Award.

“ARC” means the Australian Research Council, as established under the *Australian Research Council Act 2001* (Commonwealth of Australia) or subsequent legislation, as amended from time to time, to make recommendations to the Minister on the allocation of research funds, and includes the members of its committees and panels.

“Chief Investigator” means the person or persons named at A3 of the Grant Application as Chief Investigator(s) for the Project.

“Collaborating Institution” or “Collaborating Institutions” means respectively a Party or Parties referred in the Grant Application other than the University or the Industry Partner’s identified in the Application and at the header of this Agreement

“Commonwealth” means the Commonwealth of Australia through the ARC.

“Commonwealth Funds” means the amount or amounts payable for the Project as specified in Schedule A of the Conditions of Award and the ARC Linkage Grant Application.

“Conditions of Award” means the Australian Research Council Funding Contract between the Commonwealth of Australia as represented by the ARC and the University regarding funding for linkage projects to commence in 2004 attached at Schedule 4 of this Agreement.

“Contribution” means the financial and in-kind contribution for the Project of NOAA (the Industry Partner’s Contribution) and also the contributions of each Collaborating Institution (where Collaborating Institutions are included as Parties in the Agreement) provided to the University and includes any Background Intellectual Property, Assets & Materials and Confidential Information contributed by NOAA or each Collaborating Institution in accordance with this Agreement for the purposes of conducting the Project.

“Conflict” refers to a conflict of interest or duty, risk of a conflict of interest or duty, or an apparent conflict of interest or duty arising through a Party engaging in any activity, obtaining any interest or coming under or taking on any duty that interferes with or restricts or is likely to interfere with or restrict that Party in fulfilling its obligations under this Agreement fairly and independently.

“Further Special Conditions” means any further terms agreed by the Parties as set out in Schedule 2 (Item 2).

“Grant Application” means the ARC Linkage Project Grant Application, attached at Schedule 3 to this Agreement, lodged by the University with the ARC.

“Industry Partner” means the Party other than the University identified at the header of this Agreement.

“Industry Partner’s Contribution” means the financial and in-kind contribution for the Project provided by NOAA to UQ and includes any Background Intellectual Property, Assets & Materials and Confidential Information contributed by NOAA in accordance with this Agreement for the purposes of conducting the Project.

“Institution” means the higher education institution or administering organisation as the body responsible for administering the Funding under the “Conditions of Award,” which for the purposes of this Agreement is UQ.

“Internal Purposes” means non-commercial internal research, development, testing and the internal operational purposes of a Party. For the avoidance of doubt, Internal Purposes shall not include:

- (a) the sale or provision of the Project IP to any third party nor its incorporation in any product or process directly or indirectly provided to a third party;
- (b) the right to sub-licence the Project IP;
- (c) subject to this Agreement, allowing the Project IP to be placed in the public domain; or
- (d) commercialization of the Project IP.

“Partner Investigator/s” means the person or persons identified by the acronym “PI” at A2 of the Grant Application.

“Partner Representative” means the person or persons representing NOAA on the Project.

“Personnel” means any person or persons, employees, officers, directors, agents and sub-contractors and in the case of the University, any Student involved in the conduct of the Project. (See Part E8 Description of Personnel of the Grant Application in Schedule 3)

“Project” means the project described in recital A of this Agreement and detailed in Part E Project Description of the ARC Linkage Grant Application.

“Project Completion” means the conclusion of the Project within the designated term for the Project in accordance with the Grant Application or any extension thereof agreed to in writing by the Parties and as approved by the Commonwealth.

“Project Funds” means the cash contributions forming part of the University's Contributions and the Industry Partner's Contributions under the ARC Linkage Grant Application.

“Qualified Accountant” means a registered company auditor or a member of the Institute of Chartered Accountants or the Australian Society of Certified Practising Accountants, where that person is acting in a professional capacity as an accountant.

“Reports” include the End of Year Report, Exceptions Report, Final Report, and Progress Report referred in the Conditions of Award.

“University's Contribution” means the financial and in-kind contributions including, but not limited to, the Background Intellectual Property, Assets & Materials and Confidential Information contributed by UQ in accordance with this Agreement, the Conditions of Award and Grant Application for the purposes of conducting the Project.

SCHEDULE 2

Intellectual Property Rights and Business Confidential Information

1. General Obligations

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Agreement. Rights to such intellectual property shall be allocated as provided in this Schedule.

2. Scope

A. This Schedule is applicable to all cooperative project activities undertaken pursuant to this Agreement, except as otherwise specifically agreed by the Parties.

B. For the purposes of this Agreement, “intellectual property” shall mean the subject matter listed in Article 2 of the Convention Establishing the World Intellectual Property Organization, done in Stockholm, 14 July 1967, and may include other subject matter as agreed by the Parties.

C. Each Party shall ensure, through contracts or other legal means with its own participants, if necessary, that the other Party can obtain rights to intellectual property allocated in accordance with this Schedule. This Schedule does not otherwise alter or prejudice the allocation between a Party and its nationals, which shall be determined by that Party’s laws and practices.

D. Except as otherwise provided in this Agreement, disputes regarding intellectual property arising under this Agreement shall be resolved through discussion between the Parties in accordance with the provisions in this Agreement. Upon mutual agreement of the Parties, a dispute may be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless the Parties agree otherwise in writing, the arbitration rules of UNCITRAL shall govern.

3. Allocation of Intellectual Property Rights

A. Ownership: Any intellectual property created by persons employed or sponsored by one Party under cooperative activities shall be owned by that Party and intellectual property created by persons employed or sponsored by both Parties shall be jointly owned by the Parties, but such intellectual property shall be commercially exploited only by mutual agreement.

B. Authorship: All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the works unless an author explicitly declines to be named.

C. License: Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from Project activity cooperation under this agreement. In addition, each Party shall be entitled to a non-exclusive, royalty-free license in its country for Internal Purposes in any invention made under this agreement.

D. Allocation: Rights to all forms of intellectual property, other than those rights described in paragraph 3.A, 3.B, and 3.C, above, shall be allocated as follows:

(1) Visiting researchers shall receive for any intellectual property they create, rights, awards, bonuses and royalties in accordance with the policies of the host institution.

(2) (a) Unless otherwise agreed in an implementing or other arrangement, the Parties or their participants shall jointly develop a technology management plan regarding ownership and ownership and exploitation rights to intellectual property created in the course of the cooperative project activities other than those covered by 3.D(1), above. The technology management plan shall consider the relative contributions of the Parties and their participants to the cooperative activities, the degree of commitment in obtaining legal protection and licensing of the intellectual property, and such other factors as are deemed appropriate.

(b) If the Parties or their participants do not agree on a technology management plan under subparagraph (a) within a reasonable time, not to exceed six months from the time a Party becomes aware of the creation of intellectual property created in the course of the cooperative activities, the Parties or their participants shall resolve the matter in accordance with the provisions of paragraph 2.D.

(c) Pending resolution of the matter, any intellectual property created by persons employed or sponsored by one Party under cooperative activities shall be owned by that Party and intellectual property created by persons employed or sponsored by both Parties shall be jointly owned by the Parties, but such intellectual property shall be commercially exploited only by mutual agreement.

(3) Notwithstanding paragraphs 3.D(1) and 3.D(2), above, if either Party believes that a particular project may lead to or has led to the creation of intellectual property not protected by the laws of the other Party, the Parties shall immediately hold discussions to determine the allocation of rights to the intellectual property. If an agreement cannot be reached within three months of the date of the initiation of the discussions, cooperation on the project in question shall be terminated at the request of either Party. Creators of intellectual property shall nonetheless be entitled to awards, bonuses and royalties in accordance with the policies of the host institution employing or sponsoring that employee.

(4) Other Provisions

(a) For each invention made under any cooperative activity, the Party employing or sponsoring the inventor(s) shall disclose the invention promptly to the other Party together with any documentation and information necessary to enable the other Party to establish any rights to which it may be entitled.

(b) Either Party may ask the other Party in writing to delay publication or public disclosure of such documentation or information for the purpose of protecting its rights in the invention. Unless otherwise agreed in writing, the delay shall not exceed a period of six months from the date of disclosure by the inventing Party to the other Party.

4. Background Intellectual Property

A. For the purposes of this Agreement, Background Intellectual Property means pre-existing or independently developed Intellectual Property that is:

- (1) Furnished and made available by a Party for the conduct of the Project and which is identified in Attachment 1 to Schedule 2 at the execution of this Agreement by both Parties; or
- (2) Not identified in Attachment 1 to Schedule 2 at the execution of this Agreement by both Parties, but which is furnished or made available by a Party during the Project term, on prior written confirmation of both Parties, and subsequently listed in Attachment 1 to Schedule 2.

B. Subject to 4.C, below, each Party warrants that, to the best of its actual knowledge after having made proper enquiry within its organisation, its Background Intellectual Property is unencumbered. However, no warranty is provided that Background Intellectual Property will not infringe the Intellectual Property rights of any third party.

C. Where Background Intellectual Property is encumbered, a Party may still furnish such Background Intellectual Property if it is identified as subject to express limitations communicated in writing at the time the Party makes it available for the purposes of the Project. Each Party will inform the other of any Background Intellectual Property provided for the purposes of the Project in which third parties hold Intellectual Property rights and of any conditions attaching to the use of the Background Intellectual Property. Each Party must use that Background Intellectual Property in accordance with, and subject to, the third party rights and conditions.

D. Each Party agrees to grant to each other Party a non-exclusive, non-transferable, royalty free licence to use its Background Intellectual Property for Internal Purposes and for the sole purpose of conducting the Project, subject to any limitations advised in accordance with 2 and 3, above.

E. Subject to 4.C and 4.D, above, where Background Intellectual Property is necessary for the commercialisation of Project Intellectual Property, the parties will negotiate in good faith a grant of license to a commercialising Party (including a right of sub-licence) to use, reproduce exploit and/or adapt the Background Intellectual Property for the relevant commercialisation purpose authorised in accordance with this Agreement.

F. Each Party must regularly review and update the Background Intellectual Property register in Attachment 1 to this Schedule as necessary to reflect all changes that occur. The Party making the update shall notify the other Party of the changes to the register.

G. Each Party must bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this subsection.

5. Business Confidential Information

In the event that information identified in a timely fashion as business-confidential is furnished or created under this Agreement, each Party and its participants shall protect such information in accordance with applicable laws, regulations, and administrative practices. Information may be identified as “business-confidential” if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, and the information is not generally known or publicly available from other sources, and the owner has

not previously made the information available without imposing in a timely manner an obligation to keep it confidential.

6. Student Project and Thesis Intellectual Property Management

A. In the event that any student enrolled at UQ has been awarded and is in receipt of an APAI (Australian Postgraduate Award Industry) scholarship in pursuance of the grant award from the ARC set out in the Grant Application, then the following terms apply to the student's project involvement, including work done toward the generation of the student's thesis and completion of their postgraduate degree requirements at UQ.

B. Students as described in 6.A may publish the results of their research but are subject to the Business Confidential Information or Intellectual Property requirements in this Schedule.

C. The copyright in the student's work, including any thesis, will remain with the student.

D. No additional restriction may be placed on the student's ability to lodge their work for examination.

E. It is a pre-condition to student involvement in the Project that UQ and the student enter into a Student Agreement to ensure that:

(1) The Student assigns Project IP (being all Intellectual Property generated by the student other than thesis copyright Intellectual Property) to UQ (so UQ is able to honour its obligations with NOAA under this Schedule 2 with respect to Intellectual Property) and licenses UQ and the Industry Partner to reproduce the thesis for Internal Purposes;

(2) As long as the student remains enrolled in the course at the University, the student will do everything reasonably necessary to assist UQ to meet its obligations in relation to the Project; and

(3) The student observes the confidentiality requirements set out in this Agreement,

(4) However, nothing in this Agreement will require the Student to continue enrolment in the course.

F. Nothing in this Agreement will prevent the student and UQ from giving the student's thesis to examiners for assessment.

G. The Industry Partner may request that UQ arrange for an examiner to enter into an agreement to protect Business Confidential Information.

H. For the purpose of allowing the Industry Partner to determine whether it requires the examiners to enter into agreements with respect to Business Confidential Information the University, if requested, must provide a copy of the thesis to the Industry Partner prior to its submission to examiners. The Industry Partner must advise the University of whether it requires such agreements within 30 days of receipt of the copy of the thesis.

I. In the event that the Student withdraws from or is unable to continue his or her course of study, UQ will use its best endeavours to replace the student with a person of equivalent skills.

SCHEDULE 3
ARC LINKAGE GRANT APPLICATION

SCHEDULE 4

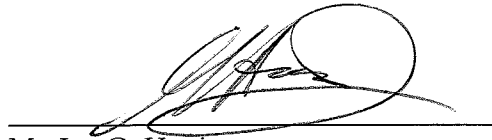
CONDITIONS OF AWARD

ARC -LINKAGE FUNDING CONTRACT

2005 ROUND 2

**To be attached once issued from the Commonwealth and signed by
The University of Queensland and the Commonwealth of Australia**

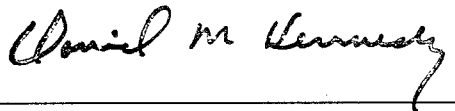
Signed by the parties:



Mr. Ian G. Harris
Director, Office of Research and Postgraduate Studies
University of Queensland

25/9/06, ORPS, BRISBANE

Date and Place



Mr. David Kennedy
Manager, Coral Reef Conservation Program
National Oceanic and Atmospheric Administration
U.S. Department of Commerce

9/21/06 Silver Spring, MD USA

Date and Place