



**Toolkit for Safeguarding Indigenous
heritage and knowledge**



Traditional Owner acknowledgement

The Great Barrier Reef Marine Park Authority acknowledges the continuing Sea Country management and custodianship of the Great Barrier Reef by Aboriginal and Torres Strait Island Traditional Owners whose rich cultures, heritage values, enduring connections and shared efforts protect the Reef for future generations.

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Published by the Great Barrier Reef Marine Park Authority (Authority) in the interests of openness and transparency as to the outputs arising from projects funded by the Authority.

ISBN 978-0-6487531-4-8

This Toolkit is published in its original form, as prepared by Markwell and Associates, except that the Authority has made minor modifications for clarity including:

- substituted references to 'the Authority' with references to either 'partner' or 'non-Indigenous partner';
- substituted some references to the 'Great Barrier Reef Marine Park' with 'Great Barrier Reef Region'; and
- amended clause 5.5(b) of Part 3 – Agreement Template, to prohibit non-Indigenous parties from using Shared Indigenous Knowledge for commercial purposes.

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This publication should be cited as:

Markwell and Associates Pty Ltd 2020, *Toolkit for safeguarding Indigenous heritage and knowledge*, GBRMPA, Townsville.

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Part 1: Protocol

Toolkit for safeguarding Indigenous heritage and knowledge

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What is this protocol and why is it needed?

Purpose

There are over 70 Traditional Owner groups in the Great Barrier Reef Region (the region). This Protocol forms part of the Safeguarding Indigenous Heritage and Knowledge project (the Project), funded by Reef 2050 Long-Term Sustainability Plan partners for the *Reef 2050 Integrated Monitoring and Reporting Program (RIMReP)*. The Project recognises the rights of Indigenous people to protect/safeguard/manage their heritage and respects their rights in traditional knowledge and traditional cultural expression. The establishment of formalised arrangements with management agencies and other parties is considered foundational to achieving a basis for sharing information for improved management practices. The Project provides a framework for making formalised arrangements through the Protocol, Guidelines, and “Indigenous Knowledge Sharing Agreement Template”.

The Protocol articulates best practice principles and objectives for parties engaging with Great Barrier Reef (the Reef) Traditional Owners:

- in respecting and recognising Aboriginal and Torres Strait Islander people, their rich cultures and unique association with the region
- for effective and culturally appropriate Traditional Owner-empowered engagement and partnerships
- to develop and implement Indigenous Heritage and Knowledge Sharing Agreements with region Traditional Owners.

Structure

The Protocol is the overarching document in a suite of products and should be read in conjunction with:

- the “Guidelines for Safeguarding Indigenous Heritage and Knowledge”
- the “Indigenous Knowledge Sharing Agreement Template”.

The definitions adopted in this Protocol are also adopted in the Guidelines and Agreement Template.

Context

Through their lores and customs, Aboriginal and Torres Strait Islander peoples have time immemorial connections with the region. The Reef as we know it today formed between 5000-6000 years ago in the Holocene period during which Traditional Owners occupied the lands and waters as part of their traditional homeland estates (Country). According to some Indigenous belief systems, Traditional Owners were intrinsic to the co-creation of the Reef and, as a consequence, developed complex knowledge systems (information) and important heritage values associated with the Great Barrier Reef Marine Park (the Marine Park). As the Traditional Owners of the region, Aboriginal and Torres Strait Islander people are the experts and primary source of information on their values and how these values are best expressed and managed, including whether and how information on these values is shared for Marine Park management.

For Traditional Owners, concern around the preservation and maintenance of traditional knowledge is activated by both a desire to conserve biodiversity, but also by a desire to live on their ancestral lands, to preserve their traditional livelihoods, to safeguard local food security and, to the extent possible, exercise local economic, cultural and political autonomy¹.

Traditional Owners have deep connections, intimate knowledge and heritage values associated with the Reef. This Protocol outlines principles for working in partnership with Traditional Owners to protect their heritage values, conserve biodiversity and enhance the resilience of the region.

Indigenous heritage is dynamic. It includes tangible and intangible expressions of culture that link generations of Indigenous people over time. Indigenous people express their cultural heritage through ‘the person’, their relationships with Country, people, beliefs, knowledge, lore [law], language, symbols, ways of living, sea, land and objects all of which arise from Indigenous spirituality².

The Secretariat of the Convention of Biological Diversity continues to work with Indigenous peoples and local communities on addressing traditional knowledge. The following is a comprehensive interpretation from the Convention on Biological Diversity of traditional knowledge³:

Traditional knowledge refers to the knowledge, innovations and practices of Indigenous and local communities around the world. Developed from experience gained over the centuries and adapted to the local culture and environment, traditional knowledge is transmitted orally

1 Langton, M., & Rhea, Z. M. (2005). Traditional indigenous biodiversity-related knowledge. *Australian Academic & Research Libraries*, 36(2), 45-69.
2 Australian Heritage Commission. (2002). *Ask First: A guide to respecting Indigenous heritage places and values*.
3 <https://www.cbd.int/traditional/what.shtml>

from generation to generation. It tends to be collectively owned and takes the form of stories, songs, folklore, proverbs, cultural values, beliefs, rituals, community laws, local language, and agricultural practices, including the development of plant species and animal breeds. Traditional knowledge is mainly of a practical nature, particularly in such fields as agriculture, fisheries, health, horticulture, and forestry.

The development of formal processes for access, use and retention of Traditional Owner information and knowledge is vital to inform management decisions that assist Traditional Owners to continue to protect and express their heritage values. A range of measures to protect knowledge have been implemented by Reef Traditional Owners, including but not limited to digital libraries, registers, cultural knowledge management system inventories, web portals, and in situ management projects that rely on local Indigenous Knowledge.

Having the appropriate protocols in place ensures Traditional Owners can understand and agree to the ways their information will be used, stored, managed, protected and maintained.

Traditional Owners control their intellectual property and other information relating specifically to their heritage, as an integral aspect of its value and rights and interests possessed.

Principles

In developing and implementing partnerships and agreements with Traditional Owners, partners should acknowledge and draw from, where appropriate, the internationally recognised principles set out in relevant international instruments⁴.

Throughout this document, those wishing to implement partnerships and agreements with Traditional Owners in the region are referred to as “partners”.

1. Respect and recognition

1.1 Recognising Aboriginal and Torres Strait Islander peoples

Aboriginal and Torres Strait Islander peoples

Partners recognise:

- Aboriginal and Torres Strait Islander peoples are the first peoples of Australia and the original inhabitants of this country. Australia’s Indigenous peoples are two distinct cultural groups made up of Aboriginal peoples and Torres Strait Islanders. Within these two broadly described groups there is great diversity, exemplified by the over 250 different language groups spread across the nation⁵.
- There are more than 70 Aboriginal and Torres Strait Islander Traditional Owner groups that assert rights and interests in the Reef Marine Region and its natural and cultural heritage. The vast majority of region Traditional Owners are Aboriginal Traditional Owner groups.

Traditional Owners

Partners acknowledge that a Traditional Owner is an Indigenous person:

- who is recognised in the Indigenous community or by a relevant representative Aboriginal or Torres Strait Islander body as having spiritual or cultural affiliations and / or responsibilities with a site or area in the region or as holding native title in relation to that site or area⁶
- who is entitled to undertake activities under Aboriginal or Torres Strait Islander custom or tradition in that site or area.

Indigenous Elders and knowledge holders

Partners acknowledge that Indigenous Elders may or may not be elderly Indigenous people and include:

- Elders within families who are regarded as leaders for their family; and
- Elders who are recognised by other Indigenous families and groups because they hold strong cultural knowledge and continue to practice their traditional lores and culture.

Partners must engage with the latter group of Elders regarding cultural decision-making matters affecting their Traditional homeland estate.

⁴ Including the: 2007 United Nations Declaration on the Rights of Indigenous Peoples; 1992 Convention on Biological Diversity; 2010 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization to the Convention on Biological Diversity; On-going negotiations under the World Intellectual Property Organization’s Intergovernmental Committee on Intellectual Property Rights and Genetic Resources, Traditional Knowledge and Folklore towards an international legal instrument; The 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage; and the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage.

⁵ Indigenous Australians: Aboriginal and Torres Strait Islander people <https://aiatsis.gov.au/>

⁶ *The Great Barrier Reef Marine Park Act 1975*

Indigenous Knowledge holders

Partners recognise that Indigenous Knowledge holders are Traditional Owners who hold specific cultural knowledge and authority regarding their lores, customs, and heritage values. They are recognised within their Traditional Owner group for this knowledge and authority. Indigenous Knowledge holders have the cultural authority to pass on, withhold and speak about cultural knowledge to others. Indigenous Knowledge holders may or may not be Elders or elderly.

The decision of who is an Elder and / or Indigenous Knowledge holder can only be made by each Traditional Owner group according to its decision-making processes.

Women, men and young people

Partners recognise that Aboriginal and Torres Strait Islander men, women and young people have distinct roles and responsibilities within their Traditional Owner group and for their Country. Partners recognise that Traditional Owners have specific men's and women's cultural business, lores and customs. Specifically, there are some cultural matters that only men or women can exclusively discuss, engage with, and make decisions on.

Partners recognise that young Aboriginal and Torres Strait Islander people are the future leaders within Traditional Owner groups and acknowledge their integral roles within their individual Traditional Owner groups.

1.2 Respect for Traditional Owners' cultural rights and responsibilities

Australia has supported the UN Declaration on the Rights of Indigenous Peoples, and Article 31 states that:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

Partners recognise Traditional Owners' interests in and cultural responsibilities for the air, lands, waterways, and natural resources of the Reef. Traditional Owners have traditionally inhabited and used the Reef for many generations, resulting in the formation of Indigenous Knowledge over time.

Partners recognise region Traditional Owners' rights to practice their lores and customs, including through the application of the Native Title Act and Marine Park Act. These rights include, but are not limited to, their rights to: camp, hunt, fish, have access to and use of the natural and cultural resources, share and exchange resources derived from the land and waters, participate in cultural and spiritual activities, maintain and protect places of importance under traditional lores, customs and practices, conduct ceremonies and rituals, transmit Indigenous (traditional) knowledge to members of their Traditional Owner group, including knowledge of particular sites, places and values within their Traditional homeland estate.

These are inherent and inalienable rights, not permitted rights.

1.3 Respect for Traditional Owners' diversity

Partners acknowledge over 70 distinct and diverse Traditional Owner groups across the region. These Traditional Owner groups have and continue to discharge their obligations to care for their Country in accordance with their customary lores and cultures. Partners understand that each Traditional Owner group has its own distinct lores, customs, language and culture for its traditional homeland estate. These groups may share some common cultural attributes and histories of trading and collaboration, however, they are recognised as distinct Traditional Owner groups.

Partners recognise Traditional Owners as a distinct group of people with specific rights and interests in the region and the Marine Park. As such, the Great Barrier Reef Marine Park Authority (the Authority) distinguishes them as Traditional Owners and partners in the management of the Marine Park rather than users. This is inscribed in the Authority's enabling legislation and regulations⁷.

Partners acknowledge that the diversity and distinctiveness of each Traditional Owner group requires a tailored and culturally appropriate approach to its people and traditional estates.

In tandem with this Protocol and the Guidelines it cannot be assumed 'a one size fits all' engagement approach will be appropriate, as what may work for one Traditional Owner group may not work for another.

The lifestyles and societies of Aboriginal and Torres Strait Islander people are varied: some live on Country and some live away from their traditional homeland estate. Rather than make assumptions about culture and lifestyle, partners should specifically ask about their aspirations, priorities, community protocols and cultural practices.

⁷ Great Barrier Reef Marine Park Act 1975

1.4 Recognition that the Marine Park is a living, cultural landscape

Partners recognise that Traditional Owners assert that the region was and continues to be traditionally owned by Aboriginal and Torres Strait Islander people. Partners recognise the Reef has meaning, purpose and significance to Traditional Owners, from the smallest sand cay to the largest reef.

Partners recognise that Traditional Owners view the region as a living cultural landscape. Traditional Owners have obligations and responsibilities to care for each other and their Country in accordance with their lores and customs. These lores and customs are derived from ancestral creation beings who inscribed meaning (lores / customs) into everything, living and non-living. They persist and evolve from social, economic, and environmental values held by Traditional Owners. Therefore, Traditional Owners do not separate themselves from Country, rather they are embedded into its fabric.

Partners recognise that Aboriginal and Torres Strait Islanders assert their health and well-being are inextricably linked to the health of the region and that this is a reciprocating relationship.

2. Traditional Owner-empowered engagement and partnership

2.1 Recognising Traditional Owners as Indigenous heritage experts and owners

Partners acknowledge Traditional Owners are the owners and experts of their own heritage. They must have an active role in decisions or decision-making that has an affect or impact on their heritage values and as such:

- Partners acknowledge that Traditional Owners have always held ownership of any intellectual property of their heritage values and that such rights are not affected by their sharing of that Indigenous Knowledge.
- Partners agree that any intellectual property rights in Shared Indigenous Knowledge are not assigned by sharing.
- Partners will not assert, or permit a Third Party to assert, that it owns any intellectual property right in Shared Indigenous Knowledge.
- Partners will have a Privacy Policy and abide by the Privacy Act.

2.2 Recognition of Indigenous decision-making and self-determination

When engaging with Traditional Owners, partners will be responsive to and respectful of the diverse and dynamic nature of Traditional Owners' decision-making and structures. This includes traditional decision-making processes according to their lores and customs, as well as contemporary decision-making structures and governance processes (Indigenous trusts, boards, organisations, and committees) that have been developed in accord with their peoples' lores and customs.

2.3 Free, prior and informed consent

In engaging with Traditional Owners, partners respect the principles of free, prior, and informed consent. These principles empower Indigenous peoples with the 'right to give or withhold their free, prior, and informed consent to actions that affect their lands, territories and natural resources and their lifestyles'⁸.

Free, prior, informed and consent includes but is not limited to:

- **Free** - there is no manipulation or coercion of Indigenous people, and the process is self-directed by those affected by a project.
- **Prior** - implies that consent is sought sufficiently in advance of any activities being either commenced or authorised, and time for the consultation process must be guaranteed by the relative agents.
- **Informed** - suggests that the relevant Indigenous people receive satisfactory information on the key points of a project such as the nature, size, pace, reversibility, the scope of a project, the reason for it, and its duration. Of the four terms, 'Informed' is the more difficult, as different groups may find certain information more relevant. The Indigenous people should also have access to the primary reports on the economic, environmental, and cultural impact of a project. The language used must be able to be understood by Indigenous people.
- **Consent** - means a process in which participation and consultation are the central pillars.

Consent to any agreement or action should be interpreted as Indigenous peoples have reasonably understood it⁹.

Free, prior, and informed consent affords Aboriginal and Torres Strait Islander peoples the right to self-determination and self-governance in decisions that may affect their knowledge and cultural values.

8 United Nations Permanent Forum on Indigenous Issues <https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2.html>
9 Native Title Report 2005: Annexure 3: Summary of free, prior and informed consent (Australian Human Rights Commission)

2.4 Integrity, inclusion, deliberation and influence

Partners recognise that Aboriginal and Torres Strait Islander communities are exposed to a large amount of consultation. Therefore, when engaging with Traditional Owners and other Indigenous people, partners will be thoughtful in their approach by tailoring the engagement according to the nature of the activity and to the Traditional Owner's specific protocols, requirements and circumstances. Partners will adopt the following core principles of integrity, inclusion, deliberation, and influence:

- **Integrity:** openness and honesty about the scope and purpose of engagement.
- **Inclusion:** opportunity for a diverse range of values and perspectives to be freely and fairly expressed and heard.
- **Deliberation:** sufficient and credible information for dialogue, choice and decisions, and space to weigh options, develop common understandings and to appreciate respective roles and responsibilities.
- **Influence:** Indigenous people have input in designing how they participate, when policies and services reflect their involvement and when the people's impact is apparent¹⁰.

The genuine and thoughtful application of these core principles will assist to develop and maintain trust and rapport with Indigenous people and demonstrate respect for their heritage values.

2.5 Full and effective participation

Partners value Traditional Owners' full and effective (active) participation in matters that may affect them. Partners will consider the nature and purpose of the engagement and develop the appropriate engagement approach prior to engaging with Traditional Owners.

Partners will:

- take a flexible approach to engaging with Traditional Owners
- seek to minimise inconvenience to Traditional Owners by utilising existing and authorised Traditional Owner decision-making systems
- understand if there are local events, sorry (period of mourning) and ceremony business that may impact on their work
- respond to Traditional Owner needs and aspirations to participate effectively and abide by the principles outlined in this protocol
- recognise the need to consider gender issues and other sensitive or relevant matters in communicating within a cultural context.

3. Active protection and benefit sharing

3.1 The requirement for delivery of tangible benefits

Partners will undertake engagement with Traditional Owners that identifies and results in tangible benefits to Traditional Owners for access to, use and sharing of their knowledge. These benefits will be agreed with Traditional Owners in accordance with their aspirations and decision-making processes. Any changes to the nature of the Indigenous Knowledge required or the scope of its use requires new consent to be sought from the respective knowledge holder.

Indigenous Knowledge associated with genetic resources will not be used for commercial or non-commercial research without appropriate access permissions or a benefit sharing agreement under Commonwealth law or pursuant to relevant international agreements.

3.2 Equitable sharing of benefits

Partners aim for agreements with Traditional Owners that have fair and equitable sharing of outcomes and benefits between both parties. Both parties need to be satisfied they are receiving appropriate outcomes (benefits) commensurate with the Indigenous Knowledge shared.

3.3 Active protection of Indigenous heritage and transmission of Indigenous Knowledge

Partners will act in good faith and:

- be open and honest about how, when, where and what will happen with the data once information is provided (full disclosure)
- ensure that access includes all permissions on who can access what data and how they can use it and when
- ensure proper permissions are collected for use of images and quotes from Traditional Owners.
- Partners will strive to identify and support measures for Traditional Owners to actively participate in 'on-Country' recording, transmitting (passing on to others), protecting, storing, managing and, where appropriate, promoting the knowledge and heritage values they hold for areas within the region.

3.4 Ongoing consent

Data collection, usage, storage, and ongoing permission to access is not a 'one-off' arrangement. It is a systemic and ongoing process that requires beneficial outcomes for Traditional Owners for the duration the partner needs to use the information or the Indigenous Knowledge holders agrees to share it. Consent may be provided for a one-off, time-limited period or could be ongoing. Ongoing benefits to Traditional Owners should be identified, agreed to and measured for each agreement.

4. Storage, management, access and use of shared Indigenous Knowledge

4.1 Use of Indigenous Knowledge

Partners will embed in the design of their knowledge management systems, ways of implementing the principles outlined in this Protocol and the requirements of individual Indigenous Knowledge Sharing Agreements.

4.2 System design

Partners note that Indigenous Knowledge Sharing Agreements will set out specific requirements for managing Indigenous Knowledge and that these may differ from agreement to agreement. Partners will ensure appropriate classification and permissions protocols and processes are employed within knowledge management systems to ensure the proper use of shared Indigenous information that is, for example, secret, sensitive, sacred, or gender specific.

Partners acknowledge that systems designed to provide for the storage, management, access and use of Indigenous Knowledge are highly valued by Traditional Owner groups for their own knowledge management purposes. Partners will facilitate authorised Traditional Owner groups' access to their own Indigenous Knowledge stored on knowledge management systems.

4.3 User training

Partners acknowledge that for knowledge management systems to be effective and properly implemented in line with Indigenous Knowledge Sharing Agreements, users of the knowledge management systems must have adequate capacity. Partners will ensure appropriate training and information is provided to all users (including their staff), any third parties who are provided access, and Traditional Owners.

4.4 Informed consent

Partners acknowledge that compliance with free, prior, informed consent is essential to the culturally appropriate and ethical storage, management, access and use of Indigenous Knowledge. Partners commit to ensuring the terms of the consent are fully reflective of the Indigenous Knowledge shared.

Partners understand that more than one Traditional Owner group may hold the same or similar Indigenous Knowledge. Partners understand that consent from each group holding that knowledge must be sought and that different Traditional Owner groups may offer consent on different terms or refuse consent.

4.5 Attribution

To protect the intellectual property and moral rights and interests of Traditional Owners it is essential that the system to store their knowledge provide for accurate acknowledgement and attribution. Partners will ensure features of their knowledge management systems attribute such detail.

4.6 Accessing Indigenous Knowledge consistent with permissions

Consistent with free, prior, informed consent, partners will uphold confidentiality requirements to ensure legal compliance. This will ensure access and use is consistent with the scope of the consent given. Safeguards will be in place to protect against system failures or breaches.

Partners acknowledge that Indigenous Knowledge is often culturally sensitive. The partner's knowledge management system/s will establish safeguards to ensure information is managed in accordance with the consent given. The system/s must be designed to mitigate against failures and breaches.



Part 2: Guidelines

Guidelines for implementing the Protocol for Safeguarding Indigenous heritage and knowledge

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Guidelines for safeguarding Indigenous heritage and knowledge

Purpose

This guideline provides advice on establishing and implementing a set of best practice standards and principles to follow when engaging and negotiating with Great Barrier Reef Region (region) Traditional Owners' to ensure the safeguarding of their heritage and Indigenous Knowledge.

These guidelines form part of the Safeguarding Indigenous Heritage and Knowledge project (the Project), funded by Reef 2050 Long-Term Sustainability Plan (Reef 2050 Plan) partners for the Reef 2050 Integrated Monitoring and Reporting Program (RIMReP). The Project recognises the rights of Indigenous people to protect/safeguard/manage their heritage and respects their rights in traditional knowledge and traditional cultural expression. The establishment of formalised arrangements with management agencies and other parties is foundational to achieving a basis for sharing information for improved management practices. The Project provides a framework for making such formalised arrangements through the Protocol, Guidelines and "Indigenous Knowledge Sharing Agreement Template".

These "Guidelines for Safeguarding Indigenous Heritage and Knowledge" have been developed to operationalise these best practice standards and principles. They offer practical guidance for organisations wishing to partner with region Traditional Owners to:

- effectively engage and negotiate with region Traditional Owners about the care and protection of their heritage
- implement the associated "Protocol for Safeguarding Indigenous Heritage and Knowledge"
- ensure compliance with best practice standards when developing and implementing Indigenous Knowledge Sharing Agreements
- ensure compliance with best practice standards for the identification, documentation, sharing, storage, management and use of Indigenous Knowledge shared under Indigenous Knowledge Sharing Agreements.

Structure

These guidelines are part 2 of a suite of products (the Toolkit) that aim to assist and safeguard Indigenous heritage and associated Indigenous Knowledge within the region and are to be used in conjunction with the other parts of the Toolkit:

- Part 1: "Protocol for Safeguarding Indigenous Heritage and Knowledge" (Protocol)
- Part 3: "Indigenous Knowledge Sharing Agreement template" (Agreement template)
- Part 4: "Indigenous Knowledge Sharing Agreement Consent Form" (Consent Form)

These guidelines follow the same structure as Part 1: Protocol. They provide a "how to" guide to assist partners to successfully implement the best practice principles of the Protocol, engage Traditional Owners with rights and interests in the region; negotiate to establish Indigenous Knowledge Sharing Agreements and share Indigenous Knowledge in an agreed way.

Who are the Traditional Owners of the Great Barrier Reef Region?

Aboriginal and Torres Strait Islander peoples are the two Indigenous groups of Australia. Aboriginal people are the first Australians and are widely recognised as the oldest civilisation in the world. Archaeological evidence of their presence across the continent dates back many tens of thousands of years before the European colonisation of Australia in 1788. Aboriginal people relied on plants, animals, water, and the broader environment for their survival and have deep knowledge about the natural world as well as strong connectedness to spiritual ancestors.

Torres Strait Islander people are sea-faring people connected to the Polynesians and Melanesians of the western Pacific. While many have moved south to the mainland, their homelands lie in the Torres Strait, which is located between the tip of Cape York Peninsula and Papua New Guinea. It is here, northeast of Murray Island (Mer) in the Torres Strait, that the Reef begins. Today, Torres Strait Islanders assert native title rights and interests in the far northern Great Barrier Reef Region (the region).

For both coastal Aboriginal and Torres Strait Islander peoples, foods and resources from the sea are still a valuable part of the modern economy, culture, and diet. There are both similarities and differences between the ways Aboriginal and Torres Strait Islander peoples use the sea in their customary practices. Each group has its own distinctive culture and identity, and often within groups there are many more clans and kinship groups whose discrete characteristics further distinguish one from the other.

Ancestors, languages, and ceremonies can provide a link between coastal clan groups and their particular areas of land and sea Country. Today, trade networks, beliefs, music, art, creation stories, traditional lore and customs maintain a living culture.

Why is it important to engage with the Great Barrier Reef Region Traditional Owners?

Aboriginal and Torres Strait Islander Traditional Owners are the original owners and custodians of the Reef. Partners must acknowledge the continuing sea Country management and custodianship of the Marine Park by Aboriginal and Torres Strait Islander Traditional Owners whose rich cultures, heritage values, enduring connections and shared efforts protect the Reef for future generations.

Recognition of Traditional Owners in Marine Park legislation

The majority of the Reef is covered by the Marine Park, which is managed by the Great Barrier Reef Marine Park Authority (the Authority). The independent Authority was established by the Australian Government's Great Barrier Reef Marine Park Act 1975, and its purpose is to ensure the long-term protection, ecologically sustainable use, understanding and enjoyment of the Marine Park for all Australians and the international community through the care and sustainability of the Marine Park.

The Authority recognises Aboriginal and Torres Strait Islander peoples as the Traditional Owners of the Marine Park. They are not simply stakeholders or a user group, but Traditional Owners with pre-existing and continuing rights and interests explicitly recognised in the *Great Barrier Reef Marine Park Authority Act 1975* and other national legislation and international conventions.

The Great Barrier Reef Marine Park Regulations 1983 empowers the Authority to establish Traditional Use of Marine Resources Agreements, or TUMRAs, with Traditional Owners. TUMRAs provide a framework to enable Traditional Owners and the Authority to agree on traditional use of marine resources within the Marine Park, including:

- animal species proposed to be harvested by Traditional Owners within the Marine Park
- the role that the Traditional Owner will have in managing compliance with the TUMRA
- the monitoring and reporting of the traditional use of marine resources under the TUMRA¹.

A broad definition of 'environment'

Traditional Owners and other Aboriginal and Torres Strait Islander peoples' Indigenous Knowledge about the environment encompasses not only physical components of the environment but Indigenous heritage, specific practices, representations, expressions and skills – as well as the instruments, objects, artefacts and cultural spaces associated with these.

Reflecting this, "environment" is defined very broadly in the *Great Barrier Reef Marine Park Act 1975*. The definition is not limited to the natural environment, but includes:

- ecosystems and their constituent parts, including people and communities
- natural and physical resources
- the qualities and characteristics of locations, places and areas
- heritage values of places
- the social, economic and cultural aspects of a thing mentioned above.

Strengthening engagement with Traditional Owners

Partners should foster and develop processes to increase participation for existing, new, and emerging Traditional Owners and their interests.

It is anticipated that stronger relationships will deliver better environmental outcomes for the region, providing extra support to improve its resilience, and increasing and strengthening the network of people responsible for looking after it.

The Reef 2050 Plan

Developed in 2014 by the Australian and Queensland governments as an overarching strategy for managing the Reef, the Reef 2050 Plan responds to the challenges facing the Reef and presents actions to protect its values, health and resilience, while allowing ecologically sustainable use.

For the first time, actions across government, industry, Traditional Owners, researchers, and the community will be fully integrated to ensure that current and future threats to the Reef are addressed in an effective, efficient, and appropriate manner. Regional and local approaches, based on both local and expert knowledge, will be central to protecting and managing the Reef's values and the community benefits they support.

[Reef 2050 Plan]

¹ The establishment of the TUMRAs are consistent with the requirements within the *Native Title Act 1993*. The implementation of TUMRAs does not in any way hinder or negate any Native title rights and interests Traditional Owners have over their traditional land and sea Country.

What are Indigenous Knowledge Sharing Agreements and why are they needed?

RIMReP is a key part of the Reef 2050 Plan. This coordinated and integrated monitoring, modelling, and reporting program for the Reef and its adjacent catchment will help track the progress towards targets and objectives of the Reef 2050 Plan.

The Australian Government, through the Authority, is leading the design and development of this Program. Information gathered from all key partners, including Traditional Owners and other Aboriginal and Torres Strait Islanders with interests in the Marine Park, is a required input for assessing the effectiveness of the Reef 2050 Plan.

The knowledge and information required for the successful delivery of RIMReP is of core importance to Reef 2050 partners to assist in performing management and regulatory obligations to a high standard, based on the best available science and information. It will cover all aspects of the Marine Park's environment including its natural and physical attributes, heritage values and its social, economic, and cultural aspects.

A key work package arising from RIMReP is *Data Management Systems Work Package DMS4*:

Develop protocols for managing culturally sensitive information, including negotiating data sharing agreements with Traditional Owners, and implementing appropriate storage and handling of this information with Traditional Owners.

The information that Reef 2050 partners and other Reef stakeholders request to negotiate and agree with Traditional Owners for input into the Reef 2050 Plan, RIMReP; management decisions and actions governed under the Marine Park Act may cover different aspects of the environment.

Indigenous heritage and Indigenous Knowledge

Indigenous heritage and Indigenous Knowledge are inextricably linked. They are also communal, which means held and shared by communities and groups. In some cases, individuals will hold and maintain custodial responsibilities and obligations for very specific things. For example, individual Indigenous Knowledge holders may hold information on individual species of plants and animals; places of significance such as water bodies, rivers, water holes and groundwater; and places that are special because of ceremony. There are also important associations with the air and the sky, including stars. Aboriginal and Torres Strait Islander star knowledge has revealed many ways in which they utilise the sun, moon and stars for navigation, calendars, social structure, and ceremony.

Indigenous heritage, transmitted from generation to generation in accordance with lores and customs, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides people with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.

Unlike western knowledge, which is 'learned', Indigenous Knowledge is 'earned' through the intergenerational transference of information in accordance with Aboriginal and Torres Strait Islander lores and customs.

Indigenous Knowledge Sharing Agreements

Under Indigenous Knowledge Sharing Agreements, Indigenous Knowledge holders may agree to share some of their Traditional Owner group's Indigenous Knowledge with partners. These Agreements are partner's key tool for ensuring that any Indigenous Knowledge shared by Traditional Owners remains safeguarded.

Each Agreement sets out the negotiated benefits and the terms and conditions upon which Indigenous Knowledge will be shared.

Indigenous Knowledge Sharing Agreements are process agreements. They establish the processes by which Indigenous Knowledge holders can share Indigenous Knowledge, and partners can receive, manage, and use such Indigenous Knowledge. **Importantly, these agreements are based on relationships built and sustained on trust and mutual respect.**

Each Agreement will reflect national and international best practice and comply with the *Privacy Act 1988* and other Commonwealth policy and guidelines, and customised to meet the requirements of individual Traditional Owner groups.

The Safeguarding Indigenous Heritage and Knowledge agreement process is a guide only as each agreement will be tailored to each party's circumstances, needs and aspirations.

Why do partners want to access, share, and utilise Indigenous Knowledge to care and protect the heritage values of the Great Barrier Reef Region?

In summary, the effective and culturally appropriate sharing of Indigenous Knowledge between Traditional Owner groups and partners is intended to:

- better position Traditional Owners to engage and participate in the management of their Sea Country in partnership with management agencies and other stakeholders
- assist the partners to safeguard Indigenous heritage values by using the best available information obtained from Traditional Owners through data sharing agreements/ processes
- inform RIMReP under the Reef 2050 Plan.

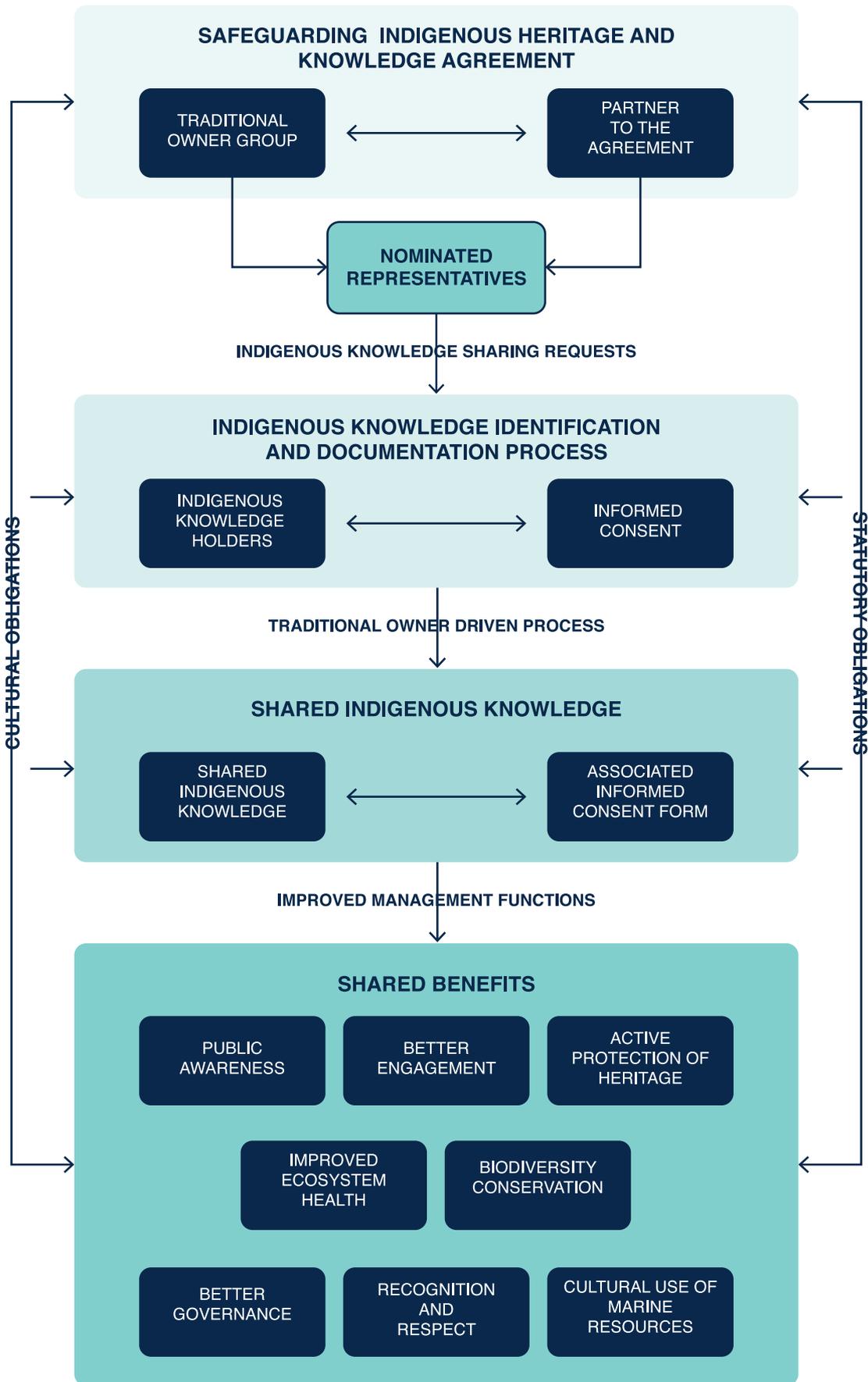


Figure 2: The Safeguarding Indigenous Heritage and Knowledge Agreement process

1. Respect and recognition – ‘the foundations for strong relationships’

1.1 Respect for Aboriginal and Torres Strait Islander peoples

Checklist

1. *Cultural awareness should be a minimum requirement to undertake engagement (particularly negotiations) to safeguard and share Indigenous Knowledge. If you have not done so already, ask your supervisor if you can undertake cultural awareness training as part of your Performance Development Agreement. This will provide you with a good basis to undertake engagement effectively and respectfully*
2. *Seek out other partners or personnel who have existing relationships with and knowledge of Great Barrier Reef Region (the region) Traditional Owner groups and ask for their advice on engagement*
3. *Inform yourself. Undertake some research of Traditional Owners including: their history; aspirations and values; decision-making arrangements; and which members of the Traditional Owner group have primary cultural responsibilities*
4. *Develop an engagement strategy that appropriately accommodates what you know and understand about how the Traditional Owner group does business and what key plans they may have already developed for the Sea Country*
5. *Allow sufficient time and be aware your priorities may not be the same as Traditional Owners*



Star Tip! Ensure you have secured sufficient resources to facilitate the engagement.

Aboriginal and Torres Strait Islander peoples and Traditional Owner groups

Central to any partner's engagement approach is respect for Aboriginal and Torres Strait Islander people and their diversity of experience and expression.

Respect is not only a critical component of any engagement. It is central to any partner's acknowledgement of the domestic and internationally recognised Indigenous rights of Indigenous peoples. To ensure your engagement remains respectful you should, prior to engaging, and at all times:

- be familiar with and confident in cross-cultural engagement protocols. This includes participating in cultural competency training, as required;
- be familiar with some of the key aspects of Indigenous culture, including, but not limited to:
 - the ongoing connections between Traditional Owners and their cultures, lands and water. This means understanding ‘who speaks for Country’
 - working through existing Traditional Owner governance structures (e.g., TUMRA Steering Committees, Land Trust Boards, Cultural Heritage Bodies, Prescribed Bodies Corporate (PBS's))
 - the communal nature of Indigenous relationships and communities
 - the role of Elders and Indigenous Knowledge holders within communities
 - the distinct and equal roles of men and women in Indigenous cultures
 - distinctions between Traditional Owners and other Indigenous people with historical connections to place who may have an interest in the region but do not have any inherent rights over that particular place.

It is important to be aware that you are most likely coming from a position of power and influence inherently greater than that of the Traditional Owners with whom you are engaging.

Do not attempt to resolve issues and conflict at the community level. For example, you may encounter a situation where you are uncertain about who you should engage with or who has authority to speak for a particular place. This situation may come about if there is unsettled recognition or acknowledgement because there is a Native Title claim that has not yet been determined in the courts. Apart from Native Title, which is determined by the courts, other matters often need to be resolved within the community by the Traditional Owners themselves. Before proceeding further, seek advice from colleagues and others (Representative Native Title Bodies (RNTB); Land Councils etc.) with specific knowledge of the Traditional Owner dynamics for that community.

To ensure that your engagement remains respectful, you may:

- resource Aboriginal and Torres Strait Islander peoples' engagement with your organisation (including paying for travel and accommodation costs and provision of independent advice and assistance)
- develop and implement dedicated methodologies for engagement, including tailored engagement strategies
- produce stand-alone communications tools and processes, including plain English summaries and clear, visual presentations
- accommodate Aboriginal and Torres Strait Islander peoples' timelines, engagement protocols, and priorities
- discuss, modify and agree to the engagement approach with each Traditional Owner group.



Star Tip! Traditional Owners are busy and you or your project may not be their priority.

Traditional Owners

Traditional Owners are Aboriginal and Torres Strait Islander peoples who hold and maintain custodial responsibilities and obligations for a particular place often referred to as “Country”. They can trace their lineage back to the original inhabitants of their Country and are acknowledged under Australian law and by other Aboriginal and Torres Strait Islander people as having the “right to speak for Country”. This means that their views about protection of the environment, Indigenous heritage, and the flora and fauna of their Country is of paramount importance.

Under the *Great Barrier Reef Marine Park Act 1975* the Authority acknowledges the rights and interests of Traditional Owners in the management of the Marine Park.

- *Traditional Owner means an Indigenous person:*
- *who is recognised in the Indigenous community or by a relevant representative Aboriginal or Torres Strait Islander body as having spiritual or cultural affiliations with a site or area in the Marine Park, or as holding native title in relation to that site or area*
- *who is entitled to undertake activities under Aboriginal or Torres Strait Islander custom or tradition in that site or area.*

[Marine Park Act 1975]

Traditional Owners often (but not always) have made Native Title claims under the *Native Title Act 1993* or may have been determined by the Courts to be Native Title holders. If you want to know if there are any Native Title claims or Native Title holders for a particular part of the region, you can check your internal Traditional Owner contacts registers and / or search the National Native Title Register.

Depending on the place that you are interested in you can ask a Native Title Representative Body for some help: [view a map of NTRB boundaries \(pdf\)](#) to work out which one you need:

- Queensland South Native Title Services
- North Queensland Native Title Representative Body
- Cape York Land Council Aboriginal Corporation
- Torres Strait Regional Authority



Star Tip! The [National Native Title Tribunal website](#) contains a great deal of information about Native Title applications, determinations and agreements.

Indigenous Elders and Indigenous Knowledge holders

Elders are Traditional Owners who have particular cultural authority within their Traditional Owner group. This means that they are respected members of their group who enjoy a higher level of authority and a greater right to “speak for Country”. This is a “soft” authority, not a “hard” power. Elders cannot force or require other members of their group to do or not do something, their authority to influence decisions is relational and founded in respect.

Often (but not always) Elders will be key Indigenous Knowledge holders within their groups; they may have a greater knowledge of Indigenous heritage matters and may hold a greater authority to determine whether or not their Traditional Owner group shares Indigenous Knowledge with partners.

Any engaging partners and personnel should always try to ensure that the sharing of Indigenous Knowledge by Indigenous Knowledge holders and Elders only occurs in accordance with Traditional Owner decision making processes; it is for Elders and Indigenous Knowledge holders to determine the manner in which Indigenous Knowledge is shared and the content of any shared Indigenous Knowledge.

Elders and Indigenous Knowledge holders may be elderly and / or have particular requirements for engagement (in relation to times, places, access etc.). Partners should inform themselves of any such requirements and make every effort to accommodate these requirements.

Some Indigenous Knowledge is particularly sensitive to knowledge holders and their Traditional Owner groups or specific to individuals, families, or clan groups within Traditional Owner groups. Any specific protocols identified by Traditional Owners in relation to discussing, recording, or sharing of culturally restricted Indigenous Knowledge should be observed by partners and their personnel at all times.



Star Tip! Elders and knowledge holders are often key to a successful engagement. Try to ensure that their views remain central to decision-making process and decisions.

Women, men, and young people

Some Indigenous Knowledge is gender specific and only men or women may be engaged to discuss or share certain information. Partners should inform themselves early in any engagement as to whether it is likely that the information required may be gender specific and, if it is, ensure the necessary steps are taken to ensure that cultural protocols identified by the relevant Traditional Owners are maintained at all times.



Star Tip! If gender sensitive Indigenous Knowledge might be shared, make sure you involve the appropriate personnel.

Jointly held Indigenous Knowledge

Some Indigenous Knowledge is held by more than one Traditional Owner group. For example, stories / song-lines may cross several different traditional estates. Partners should be aware that protocols in relation to sharing some Indigenous Knowledge may require engagement and the consent of more than one Traditional Owner group.

Although one Traditional Owner group may share knowledge about a similar story / place another Traditional Owner may not. In all circumstances remember - **only information shared with free, prior, informed consent (such as under an Indigenous Knowledge Sharing Agreement) can be used by partners.**

Traditional Owners living “off Country”

Partners should inform themselves of each community’s approach to the distinctions (if any) between the rights of people living within the external boundaries of that traditional estate (on Country) and those living elsewhere external to their traditional estate (off Country). Some communities make no distinction between such rights and for others it may be fundamental. Some communities have specific protocols for including the view of persons living off Country that will need to be followed. Views within communities about the respective roles of on Country and off Country members may be contested. Partners will need to ensure that they are aware of these issues and navigate with respect for all community members.

Other Indigenous people

There are distinctions between Aboriginal and Torres Strait Islander peoples who are *Traditional Owners* of a particular place, and those who have *historical* connections. Generally, the wishes of Traditional Owners will remain central to any partner’s approach to sharing of Indigenous Knowledge. However, the views of Aboriginal and Torres Strait Islander peoples who have historical connections to places within the region should also be considered in the sharing of Indigenous Knowledge in relation to:

- Indigenous community areas (including old mission stations and reserves)
- places of Indigenous protest
- areas of land where people lived and worked for either a short or long term.

The relationship between Traditional Owners and persons with historical connections are often complex and may be fraught. Partners should inform themselves early in any engagement as to whether it is likely that the information required will lie within the intersection between the rights of Traditional Owners and persons with historical connections and, if this is likely, take the necessary steps to ensure that appropriate cultural protocols are maintained at all times.

1.2 Respecting Cultural Rights and Responsibilities

Checklist

1. ***Familiarise yourself with the difference between a “welcome to Country” and an “acknowledgement of Country”, and the appropriate circumstances for each when conducting your business. Only Traditional Owners can perform a welcome to Country.***
2. ***Staff are encouraged to undertake acknowledgement of Traditional Owners and their connections to Country in a range of ways as appropriate, for instance, during formal engagements – including at the commencement of meetings.***
3. ***Be very sensitive to any discussions that may require Traditional Owners to acknowledge that their property rights over the region have been extinguished or their Indigenous heritage values degraded.***
4. ***Seek to develop program options that enhance Traditional Owners’ connections to Country.***

Central to any partner’s engagement approach is respect of Traditional Owners’ cultural rights and responsibilities to protect Country and practice lores and custom.

Any Traditional Owners a partner engages with will almost certainly assert that:

- they are the original inhabitants of the region
- they hold traditional rights over, interests in, and cultural responsibilities for the air, lands, waterways, and natural resources of the Reef region (whether or not these rights are recognised under Australian law)
- they are the owners and experts of their Indigenous heritage and knowledge that should be valued and recognised by any engaging partners.

Even where current Australian and Queensland law has resulted in extinguishment of native title rights or development of a particular area has been so profound that all physical Indigenous heritage values have been removed, partners should respect that Traditional Owners’ spiritual connections to a place, and their aspirations for control and management of their Traditional estates will remain unaffected.



Star Tip! Remember: Traditional Owners have very good reasons to be upset about their loss of property rights and degradation of Indigenous heritage values in the region. Approach all engagements with understanding and respect.

Assisting Traditional Owners to protect their Country and practice lores and customs

Wherever possible, partners should be responsive to Traditional Owners’ aspirations to:

- practice their lores and customs
- move about, camp, erect shelters and other structures, enter and remain in parts of the region
- hunt, fish, access and use, share and exchange resources derived from land and waters, natural and cultural resources from the region (including water, food, medicinal plants, timber, tubers, charcoal, wax, stone, ochre and resin as well materials for fabricating tools, hunting implements, making artwork and musical instruments)
- hold meetings on Country, participate in cultural and spiritual activities, maintain and protect places of importance, conduct ceremonies and rituals, transmit Indigenous Knowledge to members of their Traditional Owner group including knowledge of particular sites, places and values within their traditional homeland estate.

Partners should inform themselves early and throughout any engagement as to whether it is likely that they will be requested to assist Traditional Owners to protect their Country, practice their lores and customs, and take the necessary steps to ensure that they facilitate such requests wherever possible.



Star Tip! The best way to manage Indigenous heritage values sustainably is in partnership and through empowering Traditional Owners

Strengthening and protecting rights to culture and heritage

It is very important that any partners to an agreement reflect on whether their engagement with a Traditional Owner group is strengthening and protecting that Traditional Owner group's rights to its culture and heritage. If the engagement is in danger of weakening or undermining these rights it should be paused, reviewed and, if necessary, ceased.



Arrangements that improve protection of Indigenous heritage values and strengthen Traditional Owner rights over, access to, and use of the region and its resources are very likely to be supported by Traditional Owners.

Even incremental improvements may help to strengthen relationships between partners and Traditional Owners.

1.3 Respect for Traditional Owners' diversity

Checklist

- 1. Approach engagement with each Traditional Owner group as an unique engagement with people who assert sovereignty over their traditional estates***
- 2. Respect confidentiality between and within Traditional Owner groups***
- 3. Do not assume that Traditional Owner groups will share approaches or aspirations with other Traditional Owner groups***

Each Traditional Owner group is unique. Whilst they may share some commonalities with their neighbours, they will almost certainly view themselves as an entirely distinct people, with separate Country, lores, customs, and practices.

Decision making processes vary significantly from group to group. The roles of Elders, young people, men, and women may be very different. Attitudes to various institutions and organisations, native title and Indigenous heritage protection may also vary a great deal.

When preparing to engage with a Traditional Owner group, it is a good idea for any partners not to make assumptions based on their engagements with other groups.

In particular, it will be best if partners:

- take the time to get to know and understand how each Traditional Owner group wishes to do business with them
- approach engagement with each Traditional Owner group as engagement with a separate group with its own distinct lores, customs, language and culture for its traditional homeland estates
- anticipate that each Traditional Owner group will seek different outcomes from its engagement with partners and will have its own cultural and decision-making protocols, and plan their engagement accordingly
- take the time to get to know and understand the aspirations and values of each group with whom they engage. While some commonalities may exist between groups, partners should not assume that the values and aspirations of one Traditional Owner group are the same as its neighbour's
- approach each group as a unique community with individual drivers and aspirations.



Star Tip! Don't adopt a one-size-fits-all approach to engagement, but instead be prepared to develop a customised engagement strategy with each Traditional Owner group.

1.4 Recognition that the Great Barrier Reef Marine Region is a living cultural landscape

Checklist

1. *Anticipate that Traditional Owners will most likely see the Reef as a “cultural landscape” with corresponding values and priorities.*
2. *Be open to accommodating Traditional Owner group priorities and values within Authority policies and programs.*

Partners should anticipate and plan for the likelihood that Traditional Owners will view the the Great Barrier Reef Region (the region) as a living “cultural landscape”. This means that Traditional Owners’ focus will most likely be on the “cultural significance” of the region and its resources, rather than on the western view of its ecological values.

For example, Traditional Owners are likely to:

- value preservation of species that are of cultural significance to them
- value protection of resources that are of cultural use to them
- be sensitive to any activities that they see affecting their Indigenous heritage values.

This list is by no means exhaustive; the opportunities are almost endless for the priorities of both partners and Traditional Owners to be out of alignment. The legacy of historical misalignment between some of these priorities may be an issue that partners wishing to engage will need to deal with early in an engagement.

It would be very useful for partners to remain aware of and sensitive to these issues during engagement, remembering that:

- the values and priorities of Traditional Owners will probably not correspond to some partner assessments of scientific or natural heritage value and priorities
- the focus of Traditional Owners may not be in relation to areas some partners consider high priority
- Traditional Owner inputs may not fit neatly into the existing recording or reporting frameworks of some partners.

Approached in the right manner, this presents partners with a significant learning opportunity, enabling partners to develop deeper appreciation of the meaning, purpose and significance of the region from a Traditional Owner perspective.

Respect for Traditional Owners’ perspective means that partners should identify at an early stage how Traditional Owner views of the region as a cultural landscape should be reflected in partner approaches, strategies, policies, programs and processes.



Star Tip! Try to imagine what it would be like to see the region as a “cultural landscape” – with new perspectives, new opportunities which may arise for richer relationships with Traditional Owners, and improved region management outcomes for future generations.

2. Traditional Owner empowered engagement and partnership – ‘relationships before transactions’

2.1 Recognising Traditional Owners are the experts and owners of their heritage values

Checklist

1. *Ensure that partners only adopt processes for documenting and reporting on Indigenous heritage and knowledge that have been approved by Traditional Owners, particularly Elders and Indigenous Knowledge holders.*
2. *Do not involve any personnel or third parties in documentation and reporting unless their role and scope has been formally approved in accordance with Traditional Owner group decision-making processes.*

Partners acknowledge that Traditional Owners are the owners and experts of their own Indigenous heritage and knowledge.

Two key issues follow from this acknowledgement:

- Traditional Owners should have an active decision-making role in relation to any issues that have the potential to affect or impact their Indigenous heritage values
- Identification, recording, safeguarding and use of any Indigenous heritage and knowledge should only occur with the consent of the Traditional Owners who own that Indigenous heritage and knowledge.

The principal way in which partners will seek to achieve these outcomes is by the establishment of Indigenous Knowledge Sharing Agreements, setting out the terms and conditions negotiated and agreed to by the non-Indigenous partner and the Traditional Owners.

It is anticipated that each Agreement will:

- acknowledge the Traditional Owners as the owners and experts of their own Indigenous heritage and knowledge
- set out the processes that the Traditional Owner group and partner will undertake when identifying, recording, sharing, managing and using shared Indigenous Knowledge
- set out the commitments the partner has made to include the Traditional Owners in decision-making roles in relation to their Indigenous Knowledge and Indigenous heritage values.

By ensuring each agreement includes each of these elements, partners can be confident that it will achieve its aim of recognising Traditional Owners as the experts and owners of their Indigenous heritage and Indigenous Knowledge.



Star Tip! Remember it is the Traditional Owner group's Indigenous heritage and knowledge: they get to determine what is shared and how it is shared.

2.2 Recognition of Indigenous decision-making and self-determination

Checklist

1. *Discuss and agree to decision-making processes at the commencement of engagement.*
2. *Explore options to utilise existing Traditional Owner decision-making processes and organisational structures (e.g. existing TUMRA committees).*
3. *Ensure project timelines account for culturally appropriate decision-making processes, noting that these processes cannot be rushed.*
4. *Resource agreed decision-making processes to ensure effectiveness.*



Star Tip! When meeting with Traditional Owners you are being paid and remunerated for your expenses – are they?

Traditional Owner-led decision-making and self-determination is a cornerstone of any partner's approach to engagement with Traditional Owner groups. It is the basis upon which respect and equality is built. There is no substitute for time and authenticity when it comes to building relationships.

It will be very beneficial for partners to take the time to get to know and understand the Traditional Owner group they are engaging with and its preferred decision-making processes.

Making multiple lines of enquiry and undertaking background research will help the Agreement partner develop a good understanding of the Traditional Owner group, its aspirations and processes. It is important that the partner utilises Traditional Owner established and authorised governance and decision-making structures and processes. Key issues for the partner to understand and become familiar with include:

- What types of decision-making processes does the Traditional Owner group utilise?
- Do Elders have a particular role in the Traditional Owner group's decision-making?
- Are smaller family meetings preferred? Are larger community meetings used?
- What decision-making structures are present?
 - Is there a Native Title determination and therefore a Native Title corporation?
 - Is there a Native Title claim and therefore Native Title applicant?
 - Is there a *Registered Cultural Heritage Body* under State legislation?
- Does the group have a *Traditional Use of Marine Resources Agreement* and therefore a TUMRA implementation committee?
- Does the group have other corporations or trusts and therefore boards of directors?

The answers to these questions can inform the decision-making processes that are to be used for:

- negotiation and establishment of Indigenous Knowledge Sharing Agreements
- deciding which Indigenous Knowledge is to be shared, how it is to be shared, and how the partner may use the shared Indigenous Knowledge.

Partners should remember that decision-making processes and governance structures:

- may vary significantly between Traditional Owner group
- may become more or less effective over time
- may be fluid or change during the course of an engagement.

Partner personnel may need to be responsive to changes during engagement to ensure that Traditional Owners' decision-making and self-determination remains the cornerstone of engagement over time.

When decision-making processes have been agreed to within Agreements, partners should make every effort to ensure that they are followed, unless they are amended in accordance with the Traditional Owner group's decision-making processes. This is an important consideration as operating outside these approved channels will in most cases annoy Traditional Owners, which may lead to them losing confidence in you and the process / project.

Generally, Traditional Owner groups will probably consider formal, defined processes for making and recording decisions with partners preferable to informal, poorly defined processes.

Partners should also be aware of the risk that some members of Traditional Owner groups may seek to act outside of agreed decision-making processes. Partners should be alert to this possibility and ensure that their acquiescence does not result in the undermining of Traditional Owners' decision-making and self-determination.



Star Tip! Always try to ensure that decision-making processes remain transparent and accountable to the broader Traditional Owner group and are in accordance with agreed decision-making processes and communication protocols. 'Document', 'Agree' and 'Check' with Traditional Owners to ensure alignment.

2.3 Free, prior, and informed consent; at both an individual and community level

Checklist

1. *Familiarise yourself with the Free, Prior, and Informed Consent process.*
2. *Discuss informed consent requirements with Traditional Owner decision-makers and Indigenous Knowledge holders at the commencement of engagement.*
3. *Familiarise yourself with the Informed Consent Form.*
4. *Take the time to discuss each component of the Informed Consent Form with Traditional Owner decision-makers and Indigenous Knowledge holders.*
5. *Monitor the progress of engagement to ensure that you are, at all times, compliant with informed consent requirements.*



Star Tip! Remember FPIC is Indigenous peoples' right to 'consent' but equally their right to 'not consent'.

What is free, prior, and informed consent and why is it important?

The international and national gold standard for engagement with Indigenous communities is called free, prior, and informed consent (or FPIC). In summary, free, prior, and informed consent is universally acknowledged as the best-practice principle to empower Indigenous peoples engaging with state institutions and stakeholders in relation to matters that have the potential to affect their lands, territories, natural resources and their lifestyles.

It is a way in which government agencies and the private sector can monitor and review their behaviour to ensure that Indigenous communities truly agree with the decisions being made and the processes being proposed.

The partner should adopt free, prior, informed consent as a cornerstone of its Traditional Owners engagement approach. Partner personnel are required to ensure that, at all times, their engagement with Traditional Owners proceeds based on the Traditional Owner group's free, prior, and informed consent.

Many resources available describe free, prior and informed consent².

Ensuring consent to share Indigenous Knowledge is freely given

Partners must be sure that any consent by Indigenous Knowledge holders to share Indigenous Knowledge is given freely.

This does not mean information is given free of charge in a monetary sense, rather, it means that the decision is made free from **coercion, intimidation, or manipulation**.

Partners should always remain mindful of the power differential between themselves and Traditional Owner groups and be very careful that their behaviour cannot be perceived as overbearing or demanding. This can be done by ensuring:

² The Australian Institute of Aboriginal and Torres Strait Islander Studies Guidelines for Ethical Research in Australian Indigenous Studies; Food and Agriculture Organisation of the United Nations: Free, Prior and Informed Consent – An Indigenous right and good practice for local communities; Oxfam Guide to Free, Prior and Informed Consent.

- there are no negative implications should a Traditional Owner group decide not to share Indigenous Knowledge with partners
- there are no inducements
- any benefits provided in consideration of shared Indigenous Knowledge be transparently communicated and accountable to the Traditional Owner group.



Star Tip! Reflect on your own behaviour during engagement – the partner’s need to use shared Indigenous Knowledge is no justification for pushing a Traditional Owner too hard or rushing them through the processes.

Ensuring consent to share Indigenous Knowledge is given prior to sharing

Indigenous Knowledge should never be obtained from Indigenous Knowledge holders prior to the Traditional Owner group’s consent to sharing the Indigenous Knowledge; consent first, sharing second. You may find that on occasion Traditional Owners choose to share stories or information about a place, site, plant or animal. If this occurs, consider yourself fortunate that a Traditional Owner has chosen to share an important aspect of their heritage. But remember, this information cannot be used by you or the partner unless the Traditional Owner has given free, prior, informed consent.

Because Indigenous Knowledge is often communally held by a Traditional Owner group, the consent of 1). The Indigenous Knowledge Holder; and 2). The Traditional Owner group should be obtained prior to sharing.

Best practice is for the Traditional Owner group’s consent to be recorded in an Indigenous Knowledge Sharing Agreement, established in accordance with these Guidelines. Then, once the Agreement has been signed, Indigenous Knowledge may be shared in accordance with the terms and conditions of the Agreement and the Informed Consent Form signed by the Indigenous Knowledge holder at the time of sharing the Indigenous Knowledge.

Retrospective consent to share Indigenous Knowledge that a partner already holds may be given by a Traditional Owner group in circumstances where Indigenous Knowledge has been obtained by a partner prior to the adoption of these Guidelines. The terms and conditions of these arrangements can also be set out in the Traditional Owner group’s Indigenous Knowledge Sharing Agreement. Retrospective consent should be the exception, not the rule.



Star Tip! Before you obtain shared Indigenous Knowledge from an Indigenous Knowledge holder ask yourself these questions:

- * ***Has the Traditional Owner group consented to the sharing?***
- * ***Has a Safeguarding Indigenous Heritage and Knowledge Agreement been established?***
- * ***Is the Indigenous Knowledge being shared in accordance with the terms and conditions of the Agreement?***

Ensuring consent to share Indigenous Knowledge is informed

Sharing of Indigenous Knowledge contains inherent risks to Traditional Owners. The biggest risk is that the Indigenous Knowledge shared may be used to their disadvantage or detriment.

When the risks outweigh the benefits, a decision to refuse to share Indigenous Knowledge may be appropriate. All partners have a positive obligation to ensure that Indigenous Knowledge holders are aware of all of the risks and benefits of sharing Indigenous Knowledge so that they can make an informed decision:

- whether or not to share their Indigenous Knowledge
- which Indigenous Knowledge to share
- the terms upon which Indigenous Knowledge is shared.

Partners should take active steps to ensure that the Indigenous Knowledge holders are aware of the purpose, scope and effect of sharing their Indigenous Knowledge prior to their decision whether or not to agree to the request.

At a minimum, partners should make sure that Indigenous Knowledge holders are aware of:

- how the partners would like to use the shared Indigenous Knowledge:
 - These are uses that are set out in the Traditional Owner group’s Indigenous Knowledge Sharing Agreement as varied by the Associated Informed Consent Form (as appropriate)

- What will happen in the event that a partner wishes to change the previously agreed use of shared Indigenous Knowledge:
 - Adding permitted uses triggers the need for further consultation and consent
- What will happen to intellectual property rights from sharing Indigenous Knowledge:
 - No intellectual property rights will transfer to any partner and partners will not permit any Third Parties to assert intellectual property rights over any shared Indigenous Knowledge
 - All partners will require appropriate attribution of the Traditional Owner group and / or Indigenous Knowledge holder when using shared Indigenous Knowledge
- The risks of sharing Indigenous Knowledge and the processes partners have put in place to safeguard shared Indigenous Knowledge, which include:
 - Partner training arrangements for personnel accessing the shared Indigenous Knowledge etc.
 - The partner's accountability and consequences in the event that there is a breach.
 - Opportunities for making complaints in the event that a breach is alleged.
 - The benefits that will be shared with the Traditional Owner group:
 - These uses will be set out in the Traditional Owner group's Indigenous Knowledge Sharing Agreement.

This is a lot of information to provide, but it is necessary to ensure that any consent provided by Indigenous Knowledge holders is informed.



Star Tip! Take time to go over all of the risks and benefits. This is a lot of information to take in and will take some time to explain and understand.

Informed consent forms

The Safeguarding Indigenous Heritage and Knowledge Informed Consent Form, Tool 4 in the toolkit, is the principal mechanism by which partners can record that Indigenous Knowledge holders have consented to sharing their Indigenous Knowledge in accordance with the requirements of these Guidelines. The Informed Consent Form comprises a number of statements and questions aligned with these Guidelines.

It is the partner's responsibility to take an Indigenous Knowledge holder through the contents of the Informed Consent Form and record whether they have received sufficient information and have provided their consent to sharing their Indigenous Knowledge. The Informed Consent Form should be completed and signed by the Traditional Owner, the appropriate partner organisation personnel. A copy should be taken for the partner for their records and a copy of the completed Informed Consent Form with both signatures should be provided to the Indigenous Knowledge holder.

Indigenous Knowledge must not be shared unless and until the Indigenous Knowledge holder has explicitly acknowledged their consent, in writing, by completing and executing an Informed Consent Form.

The Informed Consent Form also complies with the Privacy Act and a declaration signed by the Traditional Owner agreeing to these consents.



Star Tip! Whenever you obtain shared Indigenous Knowledge from an Indigenous Knowledge holder make sure you also obtain a signed Informed Consent Form – shared Indigenous Knowledge cannot be used by a partner without its associated Informed Consent Form!

2.4 Integrity, Inclusion, Deliberation, and Influence

Checklist

1. *Take the time to build and sustain appropriate, professional relationships, particularly prior to getting down to business – building trust takes time.*
2. *Seek open, transparent relationships that involve a variety of people and representatives, particularly Elders.*
3. *Actively encourage the inclusion of both Indigenous men and women in decision-making processes, as well as inclusion of the views and opinions of children and youth as appropriate (and with appropriate permissions).*
4. *Provide detailed advice and information about the purpose of your engagement, the outcomes sought, with consideration for the risks and mitigation strategies.*
5. *Assist Traditional Owner decision-makers to develop their own processes.*

The genuine and thoughtful application of the following core principles will assist partners to develop and maintain trust and rapport with the Traditional Owners with whom they engage. Engagement is complex and a continuous process that is built and sustained on mutual trust.

Integrity

Partners should actively ensure that they are open and honest about the scope of the Indigenous Knowledge they are seeking and their purposes for seeking it. Trust can only be established over time, through the demonstration of behaviours that build relationships and respect. Taking the time to get to know and understand the Traditional Owner groups that partners are engaging with is a critical investment in relationship building and will ultimately lead to greater trust and integrity. Some practical examples of building and sustaining trust include:

- acknowledging Traditional Owners, Elders, and knowledge holders in writing and verbally. The latter is particularly important when meeting face to face with Traditional Owners on their Country. It demonstrates an awareness and respect for Traditional Owners' ongoing cultures and connection to Country and senior custodians
- establishing appropriate personal connections with Traditional Owner group members before discussing business – getting to know the person and what their interests are. This establishes mutual respect and understanding premised on the principle of 'relationships first' and 'transactions second'.
-



Star Tip! Take time to build trust and understanding at the beginning – a solid basis will be of great assistance if difficult decisions have to be made later.

Inclusion

Discussions around whether to enter into an Indigenous Knowledge Sharing Agreement and whether to share Indigenous Knowledge under an Agreement should provide opportunities for a diverse range of values and perspectives to be freely and fairly expressed and exchanged with partners, e.g., through the facilitation of face-to-face meetings between partner personnel and Traditional Owner communities, exchanges of written materials etc.

Importantly, being inclusive does not always mean all clan groups, family members and individuals should or will be involved in all meetings / discussions, e.g.:

- In many Reef Traditional Owner groups, there are saltwater and freshwater clan groups within the single Traditional Owner (language) group. This may result in saltwater clan groups exclusively speaking for and discussing matters that effect their respective Country and similarly for freshwater clan groups
- Within specific clan groups there will be families and / or individuals that may hold particular knowledge and associated responsibilities for a place, story etc. In these circumstances, it may not be appropriate for other family members to be involved in discussions and decisions affecting that particular knowledge.



Star Tip! To ensure inclusion, inform yourself of formal and informal arrangements within Traditional Owner groups and be guided by the Elders and Indigenous Knowledge holders.

Deliberation

Partners should ensure they provide sufficient, credible information to enable meaningful dialogue about the purpose of sharing Indigenous Knowledge. This will enable Traditional Owners to make choices and decisions about how they wish to engage, and provide opportunities for Traditional Owners to weigh up their options and develop common understandings of how they wish to proceed.

Regularly testing, validating and reviewing whether Traditional Owners consider they have been afforded sufficient deliberation is a good way of continually improving engagement approaches to ensure alignment of agreed expectations and processes.



Star Tip! Real deliberation and decision-making requires the provision of all necessary information, so make sure you provide all the information required. It may also mean affording Traditional Owners the means to receive their own independent advice.

Influence

Partners should provide opportunities for Traditional Owners to have input in the scope of Indigenous Knowledge to be shared, the purpose of sharing and how shared Indigenous Knowledge will be used within the partner organisations.



Star Tip! Remember, there is a structural imbalance between the power of the partner organisations and institutions and the power of the Traditional Owner group. Allowing Traditional Owners to influence the engagement processes is key to redressing this imbalance

2.5 Full and effective participation

Checklist

1. *Genuinely consider Traditional Owners' perspectives and views. Make offers, consider counter offers, and engage in a respectful manner.*
2. *Actively seek to establish dialogue that facilitates the finding of appropriate solutions in an atmosphere of mutual respect and equitable participation.*
3. *Build consultation processes that ensure there is sufficient time for effective communication within Traditional Owner groups and between the Traditional Owner groups and the partner.*
4. *Ensure that Traditional Owner groups have opportunities to freely choose their own representatives in accordance with their traditional and / or contemporary decision-making processes.*
5. *Ensure flexibility with schedules, particularly regarding the need for face-to-face meetings, meetings on and off Country as appropriate, one on one meetings, gender specific needs, teleconferences or single phone calls, and emails to have their input into the processes.*
6. *Acknowledge that full and effective participation in decision-making processes may result in a decision to withhold consent for the sharing of Indigenous Knowledge.*

Engaging in good faith

Partners must be committed to ensuring that Traditional Owners are fully and effectively engaged in all programs that utilise or may affect their Indigenous Knowledge and Indigenous heritage, and that all engagement is undertaken in good faith.

Good faith is about how parties behave in an engagement – it is the commitment to:

- engage in a respectful and courteous manner
- not exploit power differentials
- provide information requested in a timely manner
- properly consider requests and provide counter-proposals.
-



Star Tip! Good faith does not require that one party agree with the other, but it does require the parties to listen to one another and consider how each other's positions may be accommodated.

Preparing for engagement

Prior to engaging with a Traditional Owner group and making a request that they share Indigenous Knowledge, partners should consider the nature and purpose of the Indigenous Knowledge they are seeking and develop an appropriate engagement approach accordingly. For example:

- In the event that a partner is requesting the Traditional Owner group share a significant amount of Indigenous Knowledge, a longer, more detailed engagement process may be required
- Requests to share some types of Indigenous Knowledge will require consideration of gender issues, e.g., it is not culturally appropriate / effective for a man to negotiate some concepts in a female dominated cultural area (it may even be against the lore), and vice versa.

These are just a couple of factors that partners should consider when preparing for engagement.



Star Tip! Preparation is the key to success. Take the time to think about all the issues – write them down – and prepare an engagement plan.

Designing an engagement process to maximise opportunities for full and effective participation

Once the engagement has commenced, partners should take an open approach to the design of the engagement process. Processes that may increase the chances of full and effective participation may include:

- meetings dedicated to designing and deciding on the engagement program
- carrying out work programs on Country, e.g., Indigenous heritage surveys
- one-on-one meetings with Indigenous Knowledge holders
- facilitating gender specific meetings
- including informal or ad hoc communications between meetings;
- providing opportunities for communications via teleconferences or single phone calls and emails
- resourcing Traditional Owners to engage with the partner and to seek their own independent advice and make their own decisions.

A flexible approach to the design and delivery of engagement arrangements may be required, e.g., local events, Sorry or Ceremony Business may affect program timeframes and processes.

Rather than creating new or parallel processes, partners should seek to optimise convenience for Traditional Owners by utilising existing and agreed upon Traditional Owner decision or adopted decision-making processes.



Star Tip! Be willing to respond to Traditional Owners' needs and aspirations as they emerge during an engagement. Remember that the goal is full and effective participation. Some flexibility may be required.

3. Active protection and benefit sharing – ‘a win-win for both parties’

3.1 Requirement for the delivery of tangible benefits

Checklist

1. ***Discuss Traditional Owner group aspirations early and throughout the engagement – engagement is an ongoing process not a single occurrence.***
2. ***Explore and define the scope and quantum of benefits to be provided by the partners before Indigenous Knowledge is shared.***
3. ***Seek to “match” the benefits to be provided by the partner with the types of Indigenous Knowledge to be shared.***
4. ***Be open and upfront about the partner’s capacity and appetite to provide benefits.***

Ensuring that Traditional Owners receive *tangible benefits* from sharing of their Indigenous Knowledge is a cornerstone of any partner’s approach to sharing Indigenous Knowledge.

While the partner may receive significant benefits from obtaining shared Indigenous Knowledge, this is only half of the story. The critical questions are *what is in it for the Traditional Owner group?* and *Why should they share their Indigenous Knowledge with the partner?*

International and national best practice recognises that it is inappropriate for government agencies or others to seek to obtain Indigenous Knowledge just for their own benefit. Benefits must be *shared* between the agency or partner receiving the Indigenous Knowledge and the Indigenous Knowledge holders providing it.

The benefits the partner agrees to provide to a Traditional Owner group in return for shared Indigenous Knowledge may vary significantly between groups. Additionally, many of the benefits that the partner receives from the shared Indigenous Knowledge may be beneficial to the Traditional Owner group.

There is no prescription as to the form or quantum of benefits that can be shared. The only mandatory requirement is that agreement must be determined and documented prior to Indigenous Knowledge holders sharing their Indigenous Knowledge.

Partners and Traditional Owners should seek to identify and agree to benefits to be provided, in accordance with the Traditional Owners’ aspirations and decision-making processes early in the engagement process. Engagement should occur at the time of establishing an Indigenous Knowledge Sharing Agreement, with benefits to be provided:

- at the time of establishment of the Agreement
- at the time of sharing of Indigenous Knowledge or
- a combination of both.



Star Tip! Best practice is for the form and quantum of benefits to be shared to be set out in an Indigenous Knowledge Sharing Agreement and for Indigenous Knowledge to only be shared once the Agreement has been established.

The types of benefits that may be provided to Traditional Owner groups

The benefits to be shared with Traditional Owner groups may vary significantly from group to group, based on their aspirations and needs. Partners should work with Traditional Owner groups to develop an understanding of their requirements so that tailored and impactful benefit programs can be developed. Partners should ensure that offers to provide benefits in exchange for access to shared Indigenous Knowledge are not unilateral, rigid or inflexible.

There is no prescription for the types of benefits that partners may consider providing to Traditional Owner groups in return for sharing Indigenous Knowledge. Recent engagement has indicated that partners should anticipate that Traditional Owner groups may seek some of the following benefits:

- Improved partner decision-making processes such as:
 - increased Traditional Owner participation in partner decision-making processes
 - improved incorporation of Indigenous heritage and knowledge into partner decision making processes.

- Improved Indigenous heritage protection such as:
 - improved Indigenous heritage protection outcomes, particularly protection of specific values and places within the region;
 - improved incorporation of Indigenous heritage information in permitting process outcomes
 - improved Indigenous heritage protection outcomes through the partner's recognition of values, education and public awareness.
- Improved management of Sea Country such as:
 - the establishment of Traditional Owner Sea Country plans
 - improved Sea Country planning and partnerships between Traditional Owners and partners
 - the establishment or enhancement of formal partnerships such as TUMRAs, Indigenous Protected Areas, Indigenous Land Use Agreements (ILUAs) or other similar agreements
- Increased involvement of Traditional Owners and the incorporation of Indigenous heritage and knowledge in environmental assessment processes
- Improved site management through planning arrangements;
- Improved public education through:
 - the increased public promotion of Traditional Owner connections and aspirations; and
 - the improved public awareness of Indigenous heritage values and protection requirements.
- Improved Indigenous heritage and knowledge management through:
 - improved Traditional Owner access to Indigenous heritage and knowledge management systems
 - improved Indigenous heritage and knowledge identification and information management processes
 - improved Indigenous heritage values and attributes, spatial mapping and recording outcomes
 - improved security and access to shared Indigenous heritage and knowledge.

Matching aspirations with Indigenous Knowledge to be shared

The matching of aspirations to the provision of benefits is a key task for partners.

Examples of the types of linkages partners may propose between Traditional Owner groups' aspirations and the Indigenous Knowledge to be shared include:

Traditional Owner group aspiration	Indigenous Knowledge that may requested to be shared
Protection of specific Indigenous heritage values and places	Locations of Indigenous heritage values for consideration in planning and permitting processes
Fee for service arrangements	Ongoing monitoring of condition of Indigenous heritage values
Acknowledgement and public awareness of Traditional Owner groups' values	Information for use in promotion, signage, and improved management of Indigenous heritage values
Co-management arrangements	Identification of biophysical areas that are most culturally important
Spatial mapping of Indigenous heritage values	Information which the partner can convert into spatial mapping
Access to a database for recording Indigenous Knowledge	Information for digitisation through the partner's secure systems
Indigenous heritage values included in planning arrangements	Spatial information of the location of those Indigenous heritage values
Protection of and recognition for species of plants and animals with medicinal, food or other cultural values	Incorporating Indigenous Knowledge into holistic management planning, policy design and implementation



Star Tip! Be responsive to Traditional Owner needs and accommodate requests and aspirations.

3.2 Equitable sharing of benefits

Checklist

1. *Do not request the sharing of Indigenous Knowledge unless the partner is prepared to equitably share subsequent benefits. Remember, it is the partner who is requesting that Indigenous Knowledge be shared and so it is the responsibility of the partner to share benefits with the Traditional Owner group in return.*
2. *In collaboration with Traditional Owners, explore and define the scope and quantum of benefits to be shared prior to engagement.*

International and national best practice also recognises that the benefits of sharing of Indigenous Knowledge should be *equitably* shared between the partner receiving the Indigenous Knowledge and the Indigenous Knowledge holders providing it.

In other words, it is inappropriate for a partner to enter into an arrangement for sharing Indigenous Knowledge under which the partner receives a very large benefit and the Traditional Owner group only receives a very small benefit.

The requirement that benefits of sharing of Indigenous Knowledge must be equitably shared between the partner and Traditional Owner groups should inform the negotiation of benefit packages set out in Indigenous Knowledge Sharing Agreements.

Partner budgetary constraints may mean that particular Traditional Owner group aspirations in relation to shared benefits are not able to be delivered. In these circumstances, partners may wish to consider:

- drawing in opportunities from outside the partner organisation, e.g., working with Traditional Owners to secure other funds from government, non-government, or commercial organisations
- reassessing requests for provision of particular types of Indigenous Knowledge, e.g., scaling back Indigenous Knowledge requests so there is not an inequitable advantage or disadvantage to either the partner or the Traditional Owner group.



Star Tip! *Lack of funding is not a justification for establishing arrangements that unduly favour the partner. Traditional Owner groups must be able to equitably share in the benefits of sharing their Indigenous Knowledge.*

3.3 On-Country Protection of Indigenous Heritage and Transmission of Indigenous Knowledge

Checklist

1. *Prioritise benefit sharing that includes on Country active protection and transmission of Indigenous Knowledge between Indigenous Knowledge holders and other members of the Traditional Owner group.*
2. *Remember Indigenous Knowledge is shared amongst Traditional Owners in the course and pattern of their daily lives. Empowering Traditional Owners with opportunities for 'on Country' activities can have a profound impact by supporting Traditional Owners to share, record and safeguard their knowledge.*

Active protection

The identification, documentation, recording, transmitting (passing on to others), protecting, storing, managing and, where appropriate, promoting of Indigenous Knowledge on Country in accordance with traditional lores and customs are all important methods for the active protection of Indigenous heritage and knowledge.

These activities are often referred to as “active protection” – i.e. the act of transmitting Indigenous Knowledge actively protects it as it is practiced and shared between generations.

Assisting Traditional Owners to undertake on Country Indigenous heritage activities (e.g., surveys, monitoring and evaluation, culture camps) as part of the Indigenous Knowledge sharing process is a tangible way in which the partner can assist to actively protect Indigenous Knowledge.

Partners should ensure that, whenever possible, opportunities for on Country activities are explored as a part of Indigenous Knowledge sharing processes. It may be appropriate for benefit packages to include resourcing for such on Country activities.

Traditional Owners may seek beneficial outcomes through Indigenous Knowledge Sharing Agreements that include additional opportunities for them to participate in on Country active protection activities such as through programs of Indigenous heritage protection funded by the partner (or others).

The potential impact and significance of active protection of Indigenous heritage and knowledge should not be underestimated.



Star Tip! Assisting Traditional Owners to actively protect their Indigenous heritage and knowledge has the potential to be one of the most transformative and rewarding outcomes of the Safeguarding Indigenous heritage and knowledge process.

3.4 Ongoing consent

Checklist

1. ***Actively monitor and review the implementation of each Agreement.***
2. ***Engage in regular communication with Traditional Owners regarding the management and use of Indigenous Knowledge shared and the benefits being delivered in return.***
3. ***Undertake periodic, formal reviews of each Agreement.***
4. ***Remember the process is the outcome not the exchange(s) of Indigenous Knowledge.***

Informed consent is an ongoing commitment. Indigenous Knowledge Sharing Agreements are *process agreements*, not “one-off” arrangements, whereby Indigenous Knowledge is simply transferred to the partner. Rather, Indigenous Knowledge Sharing Agreements establish ongoing processes that require ongoing engagement with and beneficial outcomes for Traditional Owners.

A number of issues may arise over the term of an Agreement that mean that review of the Agreement and the consents provided by Indigenous Knowledge holders remains ongoing. Some of those triggers include but are not limited to the following:

- A proposed change in the use of shared Indigenous Knowledge: the Indigenous Knowledge holder’s consent must be obtained prior to a change in use that adds a use that was not agreed to at the time the Indigenous Knowledge was shared
- A potential commercial opportunity associated with use of shared Indigenous Knowledge arises: a review of the benefits provided must be undertaken prior to any commercial use of shared Indigenous Knowledge
- The Indigenous Knowledge holders change, e.g., in the case of the passing of the Indigenous Knowledge holder a review should be undertaken to ensure that the Traditional Owner group continues to provide its consent to the partner
- Changes occur in Indigenous Knowledge holding arrangements, or changes occur in the definition of Traditional Owner groups, native title claim boundaries etc.

In each case a review should also be undertaken to determine whether the benefits provided to the relevant Traditional Owner group remain equitable and if not, renegotiation of benefits provided may be required.

Agreements should be regularly reviewed to ensure that the benefits that were anticipated to be delivered to both parties continue to be delivered.

Agreements may have an initial period of operation, followed by review process and option to extend their term.



Star Tip! Remember that consent is an active concept, not static. Changes in circumstances may mean that consent is no longer provided or may need to be reviewed or renegotiated.

4. Storage, management, access, and use of shared Indigenous Knowledge – ‘safeguarding the sharing’

4.1 Safeguarding Indigenous Knowledge

Appropriate design of the processes and tools used for storage, management, access, and use of shared Indigenous Knowledge is critical to respecting Traditional Owners and safeguarding Indigenous Knowledge holders’ Indigenous Knowledge. Any partner wishing to enter an Indigenous Knowledge Sharing Agreement with Traditional Owners must have a knowledge management system that fulfils the requirements below.

The partner’s knowledge management system

A knowledge management system should include:

- an electronic database
- a physical and secure archive
- various equipment that can be used by partner personnel to record and document shared Indigenous Knowledge, e.g., digital cameras, field notebooks, video cameras, GPS units, etc.

A knowledge management system should provide an organised structure for storing shared Indigenous Knowledge in a variety of forms, including multimedia, materials, spatial information and details of undertakings and outcomes of the partner personnel’s engagement activities with Traditional Owners. Partner personnel are required to take such steps as are reasonable to protect personal information from misuse, interference, loss, unauthorised access, modification or disclosure when recording, documenting and storing Indigenous Knowledge.

The partner’s knowledge management system toolkit

A knowledge management system should be accompanied by a toolkit comprising a series of materials, tools and procedures that formalise the roles, responsibilities and practices of partner personnel who have access to the knowledge management system and who are involved in the sharing, management, access, and use of shared Indigenous Knowledge.

The knowledge management system toolkit should set out a number of checks and balances to ensure that the knowledge management system is managed and administered in a way that protects Traditional Owners’ shared Indigenous Knowledge whilst enabling partner personnel to access shared Indigenous Knowledge in accordance with the free, prior, and informed consent of the relevant Indigenous Knowledge holders.

4.2 System design

Checklist

1. *Discuss knowledge management system requirements with Traditional Owner group early in the engagement and prior to sharing of Indigenous Knowledge.*
2. *Tailor knowledge management system and use arrangements to meet Traditional Owner group access and use requirements.*
3. *Empowering Traditional Owners might also mean assisting them to access, understand, implement, and improve their own data management needs and associated systems. This can only further benefit the collaboration and sharing of information between Traditional Owners and the partner.*

The flexibility of the knowledge management system enables the partner to tailor processes for the storage, management, access, and use of Indigenous Knowledge in accordance with the requirements of individual Traditional Owner groups. For example, a knowledge management system should enable the partner to:

- establish arrangements that facilitate Traditional Owner groups' access to their own Indigenous Knowledge stored on the knowledge management system
- restrict access to culturally restricted Indigenous Knowledge.

Tailoring arrangements to reflect the requirements of individual Traditional Owner groups should take place prior to Indigenous Knowledge being shared onto the partner's knowledge management system, either at the time of documenting the shared Indigenous Knowledge or, preferably, at the time of establishing the Indigenous Knowledge Sharing Agreement.



Star Tip! Seek Traditional Owner input into Indigenous Knowledge management arrangements early in the engagement. The system should be flexible and powerful and tailored to meet the individual needs of the Traditional Owner group.

4.3 User training

Checklist

1. *Complete knowledge management system training prior to using the knowledge management system or accessing shared Indigenous Knowledge.*
2. *If you are an experienced knowledge management system user, assist new users to learn and use the system.*

Partner personnel must not access the partner's knowledge management system for Indigenous heritage knowledge if they have not first been inducted into its use and are familiar with and have agreed to abide by the requirements of the knowledge management system Toolkit.

To support effective use of the knowledge management system, appropriate training should be provided to all system users, including both Traditional Owners and partner personnel. The partner should ensure that partner personnel have had training before using the knowledge management system.

The partner should ensure that training covers each of the following elements:

- Operation of the knowledge management system in accordance with the requirements of the knowledge management system toolkit
- Procedures to transfer and save Indigenous Knowledge onto the knowledge management system

- Protocols for dealing with source materials after they have been digitised and saved onto the knowledge management system
- Processes to ensure that Indigenous Knowledge holder attribution and details remain linked with the Indigenous Knowledge once in the knowledge management system
- How Indigenous Knowledge is to be accessed by partner personnel for the purpose of assisting the partner to undertake its functions, consistent with the terms upon which the Indigenous Knowledge has been shared
- Access and sharing rules and processes for the restriction of access to culturally restricted Indigenous Knowledge in accordance with the instructions of the Indigenous Knowledge holders
- Backup procedures to mitigate the risk of any data loss (secure, offsite, access rules).



Star Tip! Caution! *Have you received knowledge management system training for Indigenous knowledge sharing? If not, you do not have permission to access the knowledge management system or the Indigenous Knowledge stored on it.*

4.4 Safeguarding Indigenous Heritage and Knowledge Informed Consent Form

Checklist

1. ***Do not enter any shared Indigenous Knowledge onto the knowledge management system unless it is accompanied by a properly executed Safeguarding Indigenous Heritage and Knowledge Informed Consent Form.***
2. ***Do not access or use any Indigenous Knowledge on the knowledge management system unless it is accompanied by a properly executed associated Informed Consent Form.***

Consistent with the requirements of free, prior, and informed consent, Indigenous Knowledge may only be shared once the Indigenous Knowledge holder has consented to sharing their Indigenous Knowledge.

The way in which the partner and the Indigenous Knowledge holder record their consent to share Indigenous Knowledge is by completing and signing a Safeguarding Indigenous Heritage and Knowledge Informed Consent Form.

Indigenous Knowledge may only be saved and stored on the knowledge management system if it is accompanied by a signed Informed Consent Form.

All Indigenous Knowledge stored on the knowledge management system must, at all times, be linked to its associated Informed Consent Form setting out the sharing details and use of the Indigenous Knowledge.

Where Indigenous Knowledge is shared between multiple Traditional Owner groups, consent for sharing should be sought from Indigenous Knowledge holders from each Traditional Owner group and necessitate more than one Informed Consent Form.

If an Indigenous Knowledge holder shares Indigenous Knowledge relating to another Indigenous Knowledge holder which amounts to the collection of unsolicited personal information, partner personnel must notify the other Indigenous Knowledge holder whose information has been collected and seek their consent to sue and disclose the information collected.

Any unprovenanced Indigenous Knowledge currently held on the knowledge management systems by any partner should not be used until it has been provenanced and consent has been provided by relevant Indigenous Knowledge holder(s).



Star Tip! Caution! *Does the Shared Indigenous Knowledge have an associated Informed Consent Form? If not, it should not be entered onto a knowledge management system and must not be used by the partner.*

4.5 Proper Attribution of Indigenous Knowledge holders

Checklist

1. *Always appropriately attribute an Indigenous Knowledge holder's shared Indigenous Knowledge.*
2. *If in doubt consult the knowledge management system toolkit or an experienced knowledge management system user for assistance.*

A key component of protecting the intellectual property rights of Traditional Owners is ensuring the accurate attribution of Indigenous Knowledge, i.e., ensuring Indigenous Knowledge is appropriately attributed to the Traditional Owner group and / or Indigenous Knowledge holder who shared it with the partner.

The Informed Consent Form records details of attribution, including the identity of the Indigenous Knowledge holder or holders who have shared their Indigenous Knowledge, as well as the details of the Traditional Owner group to which they belong.



Star Tip! Caution! *Have you attributed use of the shared Indigenous Knowledge to the Indigenous knowledge holder? If not, make sure that they and / or their Traditional Owner group are appropriately acknowledged.*

4.6 Accessing and using Indigenous Knowledge consistent with permissions

Checklist

1. *Always check that the proposed use of the shared Indigenous Knowledge is permitted by the associated Informed Consent Form prior to use.*
2. *Periodically check that shared Indigenous Knowledge used by the partner is being used in accordance with the permissions set out in the associated Informed Consent Form*

Indigenous Knowledge may only be stored, managed, accessed, and used by the partner in accordance with the consent of the relevant Indigenous Knowledge holder. The terms of that consent are recorded in the associated Informed Consent Form and may include conditions that restrict access and use of the shared Indigenous Knowledge. If the partner wishes to use Indigenous Knowledge for a purpose other than in accordance with the existing consent, a new consent must be obtained from the Indigenous Knowledge holder.

Additionally and critically, each Indigenous Knowledge Sharing Agreement records the partner's commitment to access and use shared Indigenous Knowledge only in accordance with consents provided.

Any access or use of shared Indigenous Knowledge other than in accordance with the Indigenous Knowledge holder's consent as recorded in the associated Informed Consent Form is a breach of that Traditional Owner group's Indigenous Knowledge Sharing Agreement.

A breach of an Agreement may give rise to a dispute resolution process. In the event that the breach cannot be remedied the Traditional Owner group may choose to terminate the Agreement and the partner may then lose access to the shared Indigenous Knowledge.



Star Tip! Caution! Are you accessing or using the shared Indigenous Knowledge in accordance with the associated Informed Consent Form? If not, the partner may be in breach of the Traditional Owner group's Indigenous Knowledge Sharing Agreement.

4.7 Internal safeguards against system failures and breaches

Checklist

1. *Be vigilant against possible breaches of the Knowledge Management System security features.*
2. *Act immediately if you believe that a breach of the security features has occurred.*

The knowledge management system must contain security features to facilitate structured and restricted accessibility arrangements for shared Indigenous Knowledge. The partner must commit to using these security features. The features must include:

- system training for any person wishing to access shared Indigenous Knowledge stored on the knowledge management system
- a knowledge management system conditions of use statement. Accredited users must be required to identify their ongoing consent to this statement when they log on
- different levels of security. Any person wishing to use the knowledge management system will be assigned a level of security appropriate to their standing within their Traditional Owner group at the time of the user profile setup. This access level should not be breached at any time.

The partner acknowledges the importance of taking all reasonable steps to ensure that partner personnel or third parties acting as agents of the partner act rigorously in line with the requirements of Indigenous Knowledge Sharing Agreements and the terms of consent associated with Indigenous Knowledge shared.

Compliance is not just a legal requirement of Agreements, but also a key principle of these Guidelines. The partner must commit to taking whatever steps are necessary to ensure that all partner personnel and third parties act in line with these requirements.



Star Tip! Caution! Do you think there may have been a breach of the terms of consent for access or use of any shared Indigenous Knowledge? If so, ensure that the relevant Indigenous Knowledge holder and Traditional Owner group is informed, and a review of the potential breach is undertaken.



Part 3: Indigenous Knowledge sharing
agreement template

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Parties

[Names] on their own behalf as the Traditional Owner group Representative and on behalf of the [Name of Traditional Owner group]

and

The [Name of Partner to the Agreement]

Date

This agreement is made [Insert].

Parties

[Names] on their own behalf as the Traditional Owner group Representative and on behalf of the [Name of Traditional Owner group]

and

The [Name of Partner to the Agreement]

Background

- A. The [Name of Traditional Owner group] has cultural obligations to care for their Sea Country, as set out in the [Name of Traditional Owner group] statement.
- B. This agreement has been prepared in consultation between the [Name of Traditional Owner group] and the [Name of Partner to the Agreement], and sets out:
 - (i) the [Name of Partner to the Agreement] recognition of the [Name of Traditional Owner group]'s cultural obligations to care for their Sea Country and ownership of their Indigenous Knowledge;
 - (ii) how the parties will engage with one another for the purposes of this Agreement;
 - (iii) the processes by which the parties will recognise, identify, collate and document Indigenous Knowledge;
 - (iv) the processes by which the parties will share and manage Indigenous Knowledge;
 - (v) the purposes for which shared Indigenous Knowledge will be used;
 - (vi) The measures the parties will take to ensure that to actively protect any shared Indigenous Knowledge; and
 - (vii) The benefits that each party will derive from [Name of Traditional Owner group] sharing their Indigenous Knowledge with the [Name of Partner to the Agreement].

Aspirational statement of the [name of Traditional Owner group]

[Insert Traditional Owner group statement]

A group may choose to use a previous statements, such as from a Sea Country plan, Indigenous Protected Area, Traditional Use of Marine Resource Agreement, etc.

If the Traditional Owner group does not have an aspirational statement, this will provide the Traditional Owner group the opportunity to include a statement that identifies issues of importance to them which may include (but need not be limited to):

- aspirations for management of Sea Country
- statements about Indigenous heritage values
- identification of cultural protocols
- identification of resourcing needs

benefits anticipated to arise from engagement with [Name of Partner to the Agreement]

Operative provisions

2. Definitions and interpretation

2.1 Definitions

In this Agreement, words or expressions have the meaning set out at item 1 of Schedule 6 unless a contrary intention appears.

2.2 Interpretation

This Agreement will be interpreted in accordance with the terms of item 2 of Schedule 6 unless a contrary intention appears

3. Term, review and continuation of rights

3.1 Term

This Agreement commences on Commencement Date and, unless this Agreement is terminated under clause 12 or the Parties agree in writing to:

- (a) terminate this Agreement; or
- (b) extend its term,

will terminate on the tenth anniversary of the Commencement Date.

3.2 Review

No less than three months before the tenth anniversary of the Commencement Date, the Parties will meet to negotiate, in good faith, whether to extend the term. Any such agreement will be on terms and conditions agreed between the Parties and recorded in writing.

3.3 Continuation of rights after termination

- (a) The rights and obligations of the Parties which have accrued at the date of termination of this Agreement will continue beyond such date of termination until the particular obligation is fulfilled, including any indemnity, any obligation of confidence and any other term by its nature intended to survive termination of this Agreement.
- (b) The provisions of this Agreement dealing with procedural matters will continue to apply until the fulfilment of such obligations.

4. Declarations and warranties

4.1 Traditional Owner group

The Traditional Owner group Representative represent and warrant that:

- (a) They are authorised to enter into and execute this Agreement on their own behalf as the Traditional Owner group Representative and on behalf of the Traditional Owner group;
- (b) They are authorised to perform all and any obligations required of the Traditional Owner group contemplated by this Agreement;
- (c) This Agreement is valid, binding and enforceable in accordance with its terms against both the Traditional Owner group Representative and the Traditional Owner group; and
- (d) Before entering into this Agreement, the Traditional Owner group Representative received independent legal and / or professional (technical, heritage or similar) advice on its own behalf and on behalf of the Traditional Owner group in respect of each term and condition of this Agreement.

[Name of Partner to the Agreement] The [Name of Partner to the Agreement] warrants that:

- (e) It has full power and [Name of Partner to the Agreement] to enter into and execute this Agreement on behalf of [Name of Partner to the Agreement]; and
- (f) can perform all and any of its obligations as contemplated by this Agreement.

5. Acknowledgements

5.1 [Name of Traditional Owner group] Aspirational Statement

In accordance with the [Name of Traditional Owner group] Aspirational Statement, the [Name of Partner to the Agreement] acknowledges:

- (a) the Traditional Owner group's traditional and historic connection and custodial obligation to the Agreement Area, as a living, cultural landscape;
- (b) the diversity of the Traditional Owner group, including that the Traditional Owner group community comprises Elders and young people, Knowledge Holders, women and men; and
- (c) its respect for Traditional Owner group's cultural rights and responsibilities to protect Country and practice their lores and customs.

5.2 [Name of Traditional Owner group] Acknowledgement

The [Name of Traditional Owner group] acknowledges that the [Name of Partner to the Agreement] has obligations in accordance with: [insert relevant statutory and policy obligations of partner]

5.3 Free, prior and informed consent

The Parties agree that the [Name of Partner to the Agreement] access to Shared Indigenous Knowledge will be on the basis of:

- (a) the Traditional Owner group's and Indigenous Knowledge Holders' free, prior, and informed consent to sharing Indigenous Knowledge
- (b) the [Name of Partner to the Agreement] providing fair and equitable Benefits
- (c) in accordance with the principles and practices set out in the:
 - (i) "Protocol for Sharing and Safeguarding Indigenous Heritage and Knowledge"
 - (ii) "Guideline for Sharing and Safeguarding Indigenous Heritage and Knowledge".

5.4 Laws and customs

The Parties acknowledge and agree that nothing in this Agreement is intended to, or will, affect:

- (a) the Traditional Owner group's exercise or enjoyment of their inalienable Traditional Owner rights (including their customary, Native Title and Indigenous heritage rights and interests);
- (b) The operation of:
 - (i) any other law of the Commonwealth or
 - (ii) any law of the State of Queensland,

that acknowledges, protects or preserves any customary, Native Title or Indigenous heritage rights and interests.

5.5 Use of Shared Indigenous Knowledge

The Parties agree that any Shared Indigenous Knowledge:

- (a) may only be used by the [Name of Partner to the Agreement] in accordance with items 4 and 8.2 of Schedule 2, and
- (b) must not be used for commercial advantage of [Name of Partner to the Agreement].

6. Purpose

The purpose of this Agreement is to set out the processes the Parties have established and agreed to implement with regards to:

- (a) engaging with one another to enable the effective and efficient implementation this Agreement
- (b) ensuring that their engagement and implementation of this Agreement accords with the Ethical Standards
- (c) the identification, documentation and sharing of Indigenous Knowledge
- (d) the management of Shared Indigenous Knowledge
- (e) the purposes for which Shared Indigenous Knowledge may be used
- (f) the mitigation of potential harm to and the active protection of Shared Indigenous Knowledge
- (g) the fair and equitable benefits both parties will derive from Traditional Owners sharing their Indigenous Knowledge with the [Name of Partner to the Agreement].

7. The Traditional Owner group

The Traditional Owner group Representative will, and will procure that the Traditional Owner group will:

- (a) at all times throughout the term of this Agreement act in good faith
- (b) comply with each of its obligations under this Agreement
- (c) make members of the Traditional Owner group available to participate in field work
- (d) ensure regular communication regarding the implementation of this Agreement with members of the Traditional Owner group
- (e) meet the schedules and timetables agreed for implementation of Schedule 2
- (f) facilitate the sharing of Indigenous Knowledge between the Traditional Owner group and the [Name of Partner to the Agreement] on the terms and conditions agreed to between the Parties, noting that nothing in this clause will operate to require the Traditional Owner group to disclose any Indigenous Knowledge information to the [Name of Partner to the Agreement]
- (g) assist the [Name of Partner to the Agreement] to implement this Agreement where the [Name of Partner to the Agreement] is acting in accordance with this Agreement
- (h) comply with any policies or rules established by the [Name of Partner to the Agreement] within the Agreement Area which are not inconsistent with this Agreement.

[Name of Partner to the Agreement] The [Name of Partner to the Agreement] will:

- (i) at all times throughout the term of this Agreement act in good faith
- (j) meet all of its obligations under this Agreement
- (k) promptly provide all information that is reasonably required by the Traditional Owners to implement any element of this Agreement
- (l) provide reasonable assistance and resources to assist the Traditional Owner group comply with each of its obligations under this Agreement.

8. Intellectual property

8.1 Traditional Owners to retain intellectual property

The Parties agree that:

- (a) The Traditional Owner group and Indigenous Knowledge Holders have always held ownership of any intellectual property of their Indigenous Knowledge and that such rights are not affected by this Agreement
- (b) Any intellectual property rights in Shared Indigenous Knowledge are not assigned to the [Name of Partner to the Agreement] by virtue of:
 - (i) this Agreement
 - (ii) the sharing of Indigenous Knowledge
 - (iii) the production of any reports pursuant to this Agreement; and
- (c) The [Name of Partner to the Agreement] will not assert, or permit a Third Party to assert, that it owns any intellectual property right in Shared Indigenous Knowledge.

8.2 Licence to the [Name of Partner to the Agreement]

The Traditional Owner group grants to the [Name of Partner to the Agreement] a perpetual, non-exclusive, royalty-free licence to exercise the intellectual property rights in Shared Indigenous Knowledge, for the purposes permitted under this Agreement.

8.3 Moral rights

To the extent a person has Moral Rights in Shared Indigenous Knowledge (**Moral Rights Owner**), the [Name of Partner to the Agreement] will respect the Moral Rights of the Moral Rights Owner, including:

- (a) attributing the Shared Indigenous Knowledge to the Moral Rights Owner
- (b) not falsely attributing the Shared Indigenous Knowledge to another person; and
- (c) not subjecting the Shared Indigenous Knowledge to derogatory treatment.

8.4 Warranty and indemnity

The Traditional Owner group:

- (a) warrants that the exercise of rights under clause 8.2 will not infringe the intellectual property rights or moral rights of any Third Party; and
- (b) will indemnify and will defend the [Name of Partner to the Agreement] from any claim by a Third Party that the exercise of rights under clause 8.2 infringes the intellectual property rights or moral rights of a Third Party.

9. Confidentiality

- (a) Subject to clause 9(b), the [Name of Partner to the Agreement] will keep confidential and will not disclose to anyone without the Traditional Owner group's free, prior, and informed consent, any Shared Indigenous Knowledge.
- (b) Clause 9(a) will not apply in the following circumstances:
 - (i) to the extent that disclosure has been consented to by the Indigenous Knowledge Holder in accordance with the terms of the relevant Informed Consent Form
 - (ii) where disclosure is required by law or by government authorities
 - (iii) if the information is already in the public domain
 - (iv) where disclosure is to solicitors, barristers or other professional advisers or consultants under a duty of confidentiality
 - (v) where disclosure is to a related body corporate of the [Name of Partner to the Agreement] where such disclosure is required to enable the [Name of Partner to the Agreement] to properly perform its obligations under this Agreement

- (vi) where disclosure is to any relevant government authority to obtain approvals for [Name of Partner to the Agreement] functions or those activities.
- (c) Where disclosure of Shared Indigenous Knowledge is required under clause 9(b)(ii), the [Name of Partner to the Agreement] will notify the Traditional Owner group and Indigenous Knowledge Holders, if practicable prior to the disclosure, but in any event immediately following the disclosure.

10. Privacy

To the extent the Shared Indigenous Knowledge includes Personal Information or Sensitive Information, the [Name of Partner to the Agreement] will handle that Personal Information in accordance with the Privacy Act, the [Name of Partner to the Agreement] Privacy Policy and other applicable privacy laws.

11. Dispute resolution

11.1 General

The Parties agree that any dispute resolution process undertaken pursuant to this Agreement:

- (a) may only be undertaken in accordance with the principles of free, prior, and informed consent
- (b) will be undertaken in a manner that is culturally appropriate and consistent with the Lores and customs of the Traditional Owners
- (c) will include the identification of appropriate remedies in the event that it is determined that there has been a breach.

11.2 Dispute Notice

If the [Name of Partner to the Agreement] or the Traditional Owners claim that a dispute has arisen under this Agreement, other than a dispute under item 3.3 of Schedule 2, the Party claiming the dispute may give a notice to the other Party setting out the full details of an alleged dispute (**Dispute Notice**).

11.3 Referral to mediation

- (a) The content of a Dispute Notice does not limit the matters that can be raised in mediation or arbitration.
- (b) If a dispute remains unresolved for 15 Business Days after a Dispute Notice is given, either Party may request the President of the Queensland Law Society Inc to nominate a mediator, who is of recognised high reputation and who has acknowledged familiarity with the matter referred to mediation, to provide mediation services in respect of the Dispute (**Mediation**).
- (c) Mediation will be deemed to be concluded upon the issue by the mediator, at the request of either Party, of a certificate stating that Mediation has concluded and identifying the outcome of the Mediation, including whether or not the dispute has been resolved (**Mediation Certificate**).

11.4 Urgent injunctive relief

Nothing in this clause will prevent either party from seeking urgent injunctive or declaratory relief to protect its interests.

11.5 [Name of Partner to the Agreement] may continue with [Name of Partner to the Agreement] functions

Notwithstanding the existence of any dispute in respect of [Name of Partner to the Agreement] functions, the [Name of Partner to the Agreement] may continue with its other functions that are not relevant to the dispute.

12. Termination

- (a) If one of the parties to this Agreement alleges (the First Party) that the other party (the Second Party) has materially breached one or more terms of this Agreement, the First Party may, once each of the steps set out in this clause 12(a) have been completed, by notice to the Second Party, terminate the Agreement.
 - (i) Step 1 - The First Party must give the Second Party a Dispute Notice which sets out the details of the alleged and provide the Second Party with a reasonable opportunity to remedy the alleged breach
 - (ii) Step 2 – If the Second Party does not remedy the alleged breach, the First Party must make themselves available to participate in Mediation of the alleged breach and participate in the Mediation in accordance with the requirements of clause 11.1
 - (iii) Step 3 - If the Mediation is unsuccessful, the First Party must request that the mediator issue a Mediation Certificate confirming that the alleged material breach has not been remedied.
- (b) If the Traditional Owner group terminates this Agreement under clause 12(a), the [Name of Partner to the Agreement] will, upon demand, return to the Traditional Owner group or destroy all Shared Indigenous Knowledge and all copies of it, except to the extent it is not reasonably practical for the [Name of Partner to the Agreement] to do so or the [Name of Partner to the Agreement] is required by law to retain it.
- (c) Unless the Traditional Owner group terminates this Agreement under clause 12(a), the licence under clause 8.2 survives termination or expiry of this Agreement.

13. Notices

- (a) Unless otherwise stipulated in this Agreement or otherwise agreed between the Parties in writing, communications between the Parties may be by telephone, but must be confirmed in writing (including email).
- (b) Any notice under this Agreement must be given in writing and may only be:
 - (i) hand delivered
 - (ii) sent by prepaid ordinary mail
 - (iii) sent by facsimile transmission or
 - (iv) sent by email with delivery receipt notification
 - (v) to the address for service of notices in this clause.
- (c) The address for service of the Traditional Owner group is:
 - (i) [Name]
 - (ii) [Address]
 - (iii) [Email]
 - (iv) [Telephone]
- (d) The address for service for the [Name of Partner to the Agreement] is:
 - (i) [Name]
 - (ii) [Title]
 - (iii) [Address]
 - (iv) [Email]
 - (v) [Telephone]
- (e) The addresses for service of a Party may be varied by that Party by notice in writing given to the other Party.
- (f) Any notice will be deemed to have been received if:
 - (i) by hand delivery, when delivered, but if not delivered on a Business Day or if delivered after 5.00 pm on a Business Day, on the next Business Day
 - (ii) by post, at the expiration of three Business Days after the date of posting (and production of any official post office receipt showing the time and date of posting will be conclusive of the time and

- date of posting);
- (iii) sent by email, on the next Business Day unless the Party sending the e-mail knows or reasonably ought to suspect that the e-mail was not delivered to the addressee's domain specified in the e-mail address; and
 - (iv) by facsimile, on the date of dispatch, provided that:
 - A. The sending facsimile machine issues a written confirmation report that the message has been dispatched to the facsimile number of the recipient; and
 - B. If transmission is not completed by 5:00pm on a Business Day in the place of the recipient's address, then the notice will be deemed to be received at 9:00am on the next Business Day in that place after the transmission is completed.

14. General

14.1 Counterparts

This Agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute the same document.

14.2 Assignment and Novation

The obligations and liabilities imposed and the rights and benefits conferred on the Parties under this Agreement may not be assigned, novated, assumed or otherwise transferred (whether by way of transfer, sale, disposition of any legal or beneficial interest, lease, declaration, mortgage or charge or creation of a trust or otherwise, and whether in whole or in part) without the prior written approval of each of the Parties.

14.3 Entire Agreement

This Agreement:

- (a) expresses and incorporates the entire agreement between the Parties concerning its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the Parties concerning that subject matter or any term of that agreement.

14.4 Amendments

Any amendment to this Agreement has no force or effect, unless effected by a written document executed by the Parties.

14.5 Governing Law

This Agreement will be governed by the laws of the State of Queensland and the Commonwealth of Australia. The Parties submit to the non-exclusive jurisdiction of the courts of the State of Queensland.

14.6 Waiver

Any failure by a Party to exercise any right under this document does not operate as a waiver. The single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

14.7 Further assurances

Each Party must execute any document and perform any action necessary to give full effect to this Agreement, whether before or after performance of this document.

14.8 Severability

Any clause of this document which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining clauses of this document or the validity of that clause in any other jurisdiction.

Schedule 1. Agreement area

[Insert map and written description of agreement area]

Schedule 2. Sharing Indigenous Knowledge

1. Objectives

This schedule sets out the processes that the Parties agree will apply to facilitate the identification, documentation, sharing, storage, management, use and safeguarding of Indigenous Knowledge.

2. [Name of partner to the agreement] request for shared Indigenous Knowledge

2.1 Indigenous Knowledge request

The [Name of Partner to the Agreement] may, from time to time, notify the Traditional Owner group Representative that it seeks access to Requested Indigenous Knowledge (**Request Notice**). Any Request Notice must include the following information:

- (a) the type or types of Requested Indigenous Knowledge
- (b) which functions the [Name of Partner to the Agreement] considers will be assisted by access to the Requested Indigenous Knowledge and how it anticipates those functions will be assisted
- (c) the area or areas in relation to which the [Name of Partner to the Agreement] is seeking the Requested Indigenous Knowledge
- (d) whether or not the [Name of Partner to the Agreement] understands that the Requested Indigenous Knowledge has already been documented
- (e) the [Name of Partner to the Agreement] proposed Indigenous Knowledge Identification and Documentation Process (**Process**;
- (f) whether or not the [Name of Partner to the Agreement] proposes that the Process include a Field Inspection, Indigenous and/or Technical Adviser
- (g) the dates and timing of the proposed Process
- (h) the resources (if any) the [Name of Partner to the Agreement] proposes to provide to facilitate the proposed Process.

2.2 Traditional Owner group response

Within a reasonable time of receipt of the Request Notice, the Traditional Owner group Representative must respond to each of the matters set out at item 2.1 of this schedule identifying whether the Traditional Owner group:

- (a) agrees to assist the [Name of Partner to the Agreement] to access the Required Indigenous Knowledge
- (b) agrees to the [Name of Partner to the Agreement] proposed Process or wishes to propose an alternative Process
- (c) proposes that a meeting of the Parties be convened to discuss and agree the Process.

2.3 Agreed Process

- (a) The Parties will then discuss and seek to reach agreement on the matters referred to at items 2.1 and 2.2 of this schedule.
- (b) If, within a reasonable time, the Parties have been unable to reach agreement:
 - (i) the [Name of Partner to the Agreement] may withdraw its Request Notice or
 - (ii) the Parties may convene a meeting.

- (c) At the meeting, the Parties will use their best endeavours to agree upon each of the matters at referred to items 2.1 and 2.2 of this schedule.

3. Identification and documentation of Indigenous Knowledge

3.1 Timing

The Parties will commence and complete each agreed Indigenous Knowledge Identification and Documentation Process within a reasonable time of reaching agreement in relation to the Process.

3.2 Review

- (a) At the conclusion of the Indigenous Knowledge Identification and Documentation Process, the Traditional Owner group Representative must have an opportunity to review the completed Informed Consent Form and any other materials generated during the Process.
- (b) If the Traditional Owner group Representative does not agree to the Indigenous Knowledge being shared with the [Name of Partner to the Agreement] the Parties will discuss and seek to reach agreement in relation to what changes (if any) may be made to the Informed Consent Form and materials so that it can be shared with the [Name of Partner to the Agreement].

3.3 Dispute

- (a) If, within a reasonable time of the Parties meeting, the Parties are unable to reach agreement in relation to what changes (if any) may be made to the Informed Consent Form and materials so that it can be shared with the [Name of Partner to the Agreement], the unresolved issues may, if both Parties agree, be referred to an independent expert with suitable qualifications and expertise in relation to the matters in dispute (**Independent Expert**) to make a joint recommendation to the Parties.
- (b) The Parties agree to provide all reasonable assistance to the Independent Expert they appoint for the purposes of enabling the Independent Expert to understand the nature and extent of the matters in dispute and the view of each Party in relation to those matters.
- (c) Within 20 Business Days of their appointment, the Independent Expert must provide a report to the Parties setting out their recommendation for resolving each of the matters in dispute.
- (d) The Parties agree to abide by the recommendations of the Independent Expert.

4. Sharing of Indigenous Knowledge

4.1 The Informed Consent Form

Except as permitted in accordance with item 4.4 of this schedule, no Indigenous Knowledge obtained from any Indigenous Knowledge Holder may be shared with the [Name of Partner to the Agreement] unless and until such time as they have explicitly acknowledged their consent, in writing, by completing and executing the Informed Consent Form set out at Schedule 3.

4.2 Jointly held Indigenous Knowledge

- (a) The Parties acknowledge that some Indigenous Knowledge may be jointly held by Indigenous Knowledge Holders from more than one Traditional Owner group (Jointly Held Indigenous Knowledge).
- (b) Jointly Held Indigenous Knowledge may only be shared with the [Name of Partner to the Agreement] with the consent of all relevant Indigenous Knowledge Holders.
- (c) If the consent of one or more Indigenous Knowledge Holders of the Jointly Held Indigenous Knowledge is withdrawn, the [Name of Partner to the Agreement] will:
 - (i) Inform each of the relevant Traditional Owner groups that consent has been withdrawn; and
 - (ii) Cease using the Jointly Held Indigenous Knowledge.

4.3 Already documented Indigenous Knowledge

- (a) The Parties acknowledge that the following Indigenous Knowledge may already have been documented at the date of this Agreement:

- (i) Indigenous heritage information (i.e. oral history recordings, heritage assessments and management plans)
- (ii) archaeological reports
- (iii) anthropological reports
- (iv) Native Title claim reports
- (v) Indigenous heritage reports
- (vi) reports in the possession of the [Name of Partner to the Agreement], not properly attributed to the Traditional Owner group
- (vii) any other reports in relation to the Traditional Owner group's Indigenous Knowledge,

(Already Documented Indigenous Knowledge).

- (b) The Parties agree that an appropriate Indigenous Knowledge Identification Process for Already Documented Indigenous Knowledge may include some or all of the following activities:
 - (i) verification as to whether or not the Already Documented Indigenous Knowledge is accurate
 - (ii) verification as to whether or not the recorded Indigenous heritage still exists in the same state as it was recorded
 - (iii) whether it is appropriate that the Already Documented Indigenous Knowledge was documented and the circumstances in which it came to be documented.

4.4 Authorisation of Indigenous Knowledge sharing

[Insert agreed process whereby the Traditional Owner group authorises the sharing of the Shared Indigenous Knowledge with the [Name of Partner to the Agreement]]

5. Storage of shared Indigenous Knowledge

5.1 Knowledge Management System

All Shared Indigenous Knowledge will be stored on the [Name of Partner to the Agreement] knowledge management system.

5.2 Informed consent

Shared Indigenous Knowledge may only be recorded onto the [Name of Partner to the Agreement] knowledge management system in accordance with the terms of its associated Informed Consent Form (the **Associated Informed Consent Form**).

5.3 Data handling and processing

- (a) The [Name of Partner to the Agreement] must record all Shared Indigenous Knowledge onto the knowledge management system in accordance with the terms of its Associated Informed Consent Form.
- (b) Shared Indigenous Knowledge may be processed or reformatted in a manner consistent with the terms of the Associated Informed Consent Form whilst being recorded onto the [Name of Partner to the Agreement] knowledge management system.
- (c) Original Shared Indigenous Knowledge materials must be managed in accordance with the requirements of the Archives Act 1983 (Cth) once they have been copied onto the [Name of Partner to the Agreement] knowledge management system.

6. Management of shared Indigenous Knowledge

- (a) At all times that it is stored on the [Name of Partner to the Agreement] knowledge management system, the Shared Indigenous Knowledge must remain referenced to:
 - (i) its Associated Informed Consent Form
 - (ii) the associated Indigenous Knowledge Holder (**Associated Indigenous Knowledge Holder**).
- (b) No Indigenous Knowledge stored on the [Name of Partner to the Agreement] knowledge management system may be modified from its original state without the agreement in writing of the Associated Indigenous Knowledge Holder.

7. Access to shared Indigenous Knowledge

7.1 Traditional Owner access

At all times that a particular item or set of Shared Indigenous Knowledge is stored on the [Name of Partner to the Agreement] knowledge management system, the [Name of Partner to the Agreement] must ensure that the Traditional Owner group and Associated Indigenous Knowledge Holders retain practical and cost-free access to their Shared Indigenous Knowledge.

7.2 Restrictions on access

- (a) Access permissions or restrictions for Shared Indigenous Knowledge may be specified in accordance with the terms and conditions of the Associated Informed Consent Form.
- (b) Access to Shared Indigenous Knowledge:
 - (i) may be provided directly through a web based portal or
 - (ii) restricted to a manual "Request for information" procedure whereby access may only be provided following consultation with the associated Indigenous Knowledge Holder on a case by case basis.

7.3 Indigenous Knowledge Management System conditions of use

- (a) Any person wishing to access Shared Indigenous Knowledge must first:
 - (i) complete knowledge management system training
 - (ii) agree to the the knowledge management system Conditions of Use Statement, as varied from time to time.
- (b) Any knowledge management system Conditions of Use Statement must require that the person seeking access to the Shared Indigenous Knowledge agrees that they may only access and use the Shared Indigenous Knowledge in accordance with the terms and conditions of the Associated Informed Consent Form.

7.4 Indigenous Knowledge shared between Traditional Owner groups

Access to Indigenous Knowledge that is held jointly by more than one Traditional Owner group may only be obtained in accordance with the access permissions set out in each Indigenous Knowledge Holder's associated Informed Consent Form.

8. Use of shared Indigenous Knowledge

8.1 Acknowledgement

No Shared Indigenous Knowledge may be used for any purpose unless the use includes an appropriate acknowledgment of the associated Indigenous Knowledge Holder.

8.2 Information use

Shared Indigenous Knowledge may be used:

- (a) for all [Name of Partner to the Agreement] functions, except to the extent the associated Informed Consent Form restricts such use
- (b) for such other purposes, as are agreed between the Parties and the Associated Indigenous Knowledge Holder from time to time.

8.3 Review

- (a) The [Name of Partner to the Agreement] agrees that, if it proposes to use any Shared Indigenous Knowledge for a purpose which is not set out in item 8.2 of this schedule,
 - (i) it must first obtain the Indigenous Knowledge Holder's written consent to the new use of the Indigenous Knowledge

- (ii) obtaining such consent may require review of the Benefits provided to the Traditional Owner group in consideration of the Traditional Owner group's agreement to share the Indigenous Knowledge.
- (b) The [Name of Partner to the Agreement] agrees that, if it becomes aware that the Associated Indigenous Knowledge Holder for a Shared Indigenous Knowledge has passed away, the [Name of Partner to the Agreement] must:
 - (i) cease use of that Shared Indigenous Knowledge
 - (ii) re-negotiate the terms of use of that Shared Indigenous Knowledge with the Traditional Owner group
 - (iii) not recommence using that Traditional Owner group until such time as the terms of use have been agreed with the Traditional Owner group.

9. Safeguarding of shared Indigenous Knowledge

9.1 Additional Safeguarding Measures

[Add any additional measures to safeguard Shared Indigenous Knowledge agreed between the parties]

Schedule 3. Informed consent form

Schedule 4. Partner functions

(1) The functions of the [Name of Partner to the Agreement] are:

Schedule 5. Benefits

In consideration of the Traditional Owner group agreeing to share their Indigenous Knowledge, the [Name of Partner to the Agreement] agrees to provide the following benefits, on the terms and conditions set out in this schedule:

[Note: this schedule to be developed during negotiations with Traditional Owner groups]

Schedule 5. Definitions

Executed as an agreement

EXECUTED by the [Name of Partner to the Agreement] by its duly authorised delegate:

Signature of witness

Signature of authorised delegate

Name of witness

Name of authorised delegate

Date

SIGNED by [Name] on [his/her] own behalf as the Traditional Owner group Representative and on behalf of the [Name of Traditional Owner group] in the presence of:

Signature of witness

Signature of [Name]

Name of witness

Date

SIGNED by [Name] on [his/her] own behalf as the Traditional Owner group Representative and on behalf of the [Name of Traditional Owner group] in the presence of:

Signature of witness

Signature of [Name]

Name of witness

Date

SIGNED by [Name] on [his/her] own behalf as the Traditional Owner group Representative and on behalf of the [Name of Traditional Owner group] in the presence of:

Signature of witness

Signature of [Name]

Name of witness

Date

SIGNED by [Name] on [his/her] own behalf as the Traditional Owner group Representative and on behalf of the [Name of Traditional Owner group] in the presence of:

Signature of witness

Signature of [Name]

Name of witness

Date

SIGNED by [Name] on [his/her] own behalf as the Traditional Owner group Representative and on behalf of the [Name of Traditional Owner group] in the presence of:

Signature of witness

Signature of [Name]

Name of witness

Date

SIGNED by [Name] on [his/her] own behalf as the Traditional Owner group Representative and on behalf of the [Name of Traditional Owner group] in the presence of:

Signature of witness

Signature of [Name]

Name of witness

Date



Part 4: Informed consent form

This Informed Consent Form sets out the conditions, rights and obligations of the Indigenous Knowledge holder whose name appears in Part 4 of this form in relation to the Indigenous Knowledge shared with the [Name of Partner to the Agreement] by the Indigenous Knowledge holder.



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Background

The [insert name of Traditional Owner group] has established an Indigenous Knowledge Sharing Agreement with [Name of partner to the Agreement] to facilitate the identification, documentation, sharing, storage, management and use of [insert name of Traditional Owner group] Indigenous Knowledge to:

- Improve the conservation and cultural use of the Great Barrier Reef Region biocultural diversity; and
- Increase [insert name of Traditional Owner group] participation in management of the conservation and ecologically sustainable use of cultural keystone species and biocultural resources within the Great Barrier Reef Region.

This form is designed to be read in conjunction with:

- “Protocol for Safeguarding Indigenous Heritage and Knowledge”; and
- The [Name of partner to the Agreement] and [insert name of Traditional Owner group] Indigenous Knowledge Sharing Agreement.



What is this informed consent form?

This Informed Consent Form sets out the conditions upon which you (the Indigenous Knowledge Holder) agree to share Indigenous Knowledge with [Name of partner to the Agreement]

Part 1. Free, prior, and informed consent

Part 1. is a series of statements designed to ensure that you are aware of the potential risks and benefits of sharing your Indigenous Knowledge with the [Name of partner to the Agreement] to ensure you have provided your free, prior and informed consent to share your Indigenous Knowledge with [Name of partner to the Agreement].

Part 2. Privacy

Part 2. provides information about how [Name of partner to the Agreement] will manage your Personal Information, including Sensitive Information under the Privacy Act privacy and records whether you have provided permission for [Name of partner to the Agreement] to use images, recordings, quotes and information in relation to your Shared Indigenous Knowledge.

Part 3. Description of the shared Indigenous Knowledge

Part 3. identifies the materials used to record the Indigenous Knowledge you have agreed to share with [Name of partner to the Agreement].

Part 4. Declaration

Part 4. sets out your declaration that you have read the documents referred to in the background above or have had them all explained to you, and that you have agreed to share your Indigenous Knowledge with [Name of partner to the Agreement] on the terms set out in this form.

The partner's commitment

The [Name of partner to the Agreement] commits to only use Shared Indigenous Knowledge in accordance with best practice ethical standards applicable to undertaking consultations and research projects with Indigenous communities, including the Australian Institute of Aboriginal and Torres Strait Islander Studies' [Guidelines for Ethical Research in Australian Indigenous Studies](#).

The [Name of partner to the Agreement] will also ensure that, at all times, it will comply with its obligations under the Privacy Act.

The [Name of partner to the Agreement] recognises that Traditional Owners are the Indigenous Heritage experts and the owners of their Indigenous Knowledge and as such requires your free, prior, and informed consent to access and use your Indigenous Knowledge.

1. Free, prior, and informed consent

1.1 Background

The [Name of partner to the Agreement] wishes to undertake a series of actions to strengthen engagement with Traditional Owners in the Great Barrier Reef Marine Region and that to do this the [Name of partner to the Agreement] wishes to access and use Traditional Owners' Indigenous Knowledge. [Name of partner to the Agreement] is referred to as the "partner" for the remainder of this document.

Have you been provided with a copy of the "Protocol for Safeguarding Indigenous Heritage and Knowledge", which the partner has agreed to abide by?	YES / NO
Have you been provided with a copy of the [insert name of Traditional Owner group] Indigenous Knowledge Sharing Agreement?	YES / NO

1.2 Sharing of Indigenous Knowledge

You decide whether to share your Indigenous Knowledge and what to share. Deciding not to share any Indigenous Knowledge won't change your relationship with the partner. Any Indigenous Knowledge shared will be managed and used in accordance with the [insert name of Traditional Owner group] Indigenous Knowledge Sharing Agreement.

Do you know that you don't have to share any Indigenous Knowledge?	YES / NO
Do you know that the process for Identification, documentation, sharing, management and use of your Indigenous Knowledge your Indigenous Knowledge is set out in the [insert name of Traditional Owner group] Indigenous Knowledge Sharing Agreement?	YES / NO

1.3 Intellectual Property

The [insert name of Traditional Owner group] Indigenous Knowledge Sharing Agreement provides a licence for the partner to use your Shared Indigenous Knowledge. However, the partner has agreed that:

- Any intellectual property rights you hold in your Shared Indigenous Knowledge will not be transferred to the partner as a result of you sharing it with the partner
- The partner will not let any Third Party accessing your Shared Indigenous Knowledge, to assert that it owns any intellectual property rights in your Shared Indigenous Knowledge.

Do you know that the partner may use your Shared Indigenous Knowledge?	YES / NO
Do you know that the partner will not own the intellectual property rights you hold in your Shared Indigenous Knowledge?	YES / NO

1.4 The Potential Risks and Benefits of Sharing of Indigenous Knowledge

The [insert name of Traditional Owner group] Indigenous Knowledge Sharing Agreement sets out the benefits the [insert name of Traditional Owner group] Traditional Owner group will receive from you sharing your Indigenous Knowledge with the partner.

The [insert name of Traditional Owner group] Indigenous Knowledge Sharing Agreement contains dispute resolution arrangements in the event that you are concerned that the partner has breached any of its commitments to safeguard your Indigenous Knowledge or share benefits with the insert name of Traditional Owner group] Traditional Owner group.

If there is any misuse, interference, loss or unauthorised modification, disclosure or access of any Indigenous Knowledge you share, the partner will inform you, will undertake an investigation, will advise you of the outcome of the investigation and will take steps to prevent further breaches.

If the breach relates to personal information, including Sensitive Information please note it will need to be handled by the partner's Privacy Officer and in accordance with the partner's approved complaints procedure.

Are you aware of the benefits and risks of sharing your Indigenous Knowledge?	YES / NO
Are you aware that you can make a complaint if you believe the partner has not met its commitments in relation to safeguarding your Indigenous Knowledge?	YES / NO

If at any time you wish to make a complaint, you can contact a member of the [Name of partner to the Agreement] organisation.

Complaints can be sent to:

[insert title of person to contact,

phone number,

postal address and

email details for the partner to the agreement]

1.5 Culturally Restricted Indigenous Knowledge

The partner will treat all Indigenous Knowledge you share with absolute sensitivity and confidentiality and will not disclose it to anyone other than in accordance with the terms and conditions of the [insert name of Traditional Owner group] Indigenous Knowledge Sharing Agreement.

Prior to sharing your Indigenous Knowledge, you may require the partner to establish arrangements to accommodate cultural restrictions, gender sensitivities or secret or sacred Indigenous Knowledge. Any arrangements you do require should be set out at Part 3.8 of this Informed Consent Form.

Are you aware that you can impose restrictions on the use of culturally sensitive Indigenous Knowledge?	YES / NO
---	----------

1.6 Management of Shared Indigenous Knowledge

The [Name of partner to the Agreement] stores Shared Indigenous Knowledge in an agreed Knowledge Management System, a database developed by the partner for this purpose and which has a number of protections and controls to reduce the risk of unauthorised access.

Only personnel who have undergone training in the Knowledge Management System and have agreed to protect all Shared Indigenous Knowledge may access the Knowledge Management System.

Are you aware that your Shared Indigenous Knowledge will be stored on the partner's Knowledge Management System?	YES / NO
--	----------

1.7 Use of Shared Indigenous Knowledge

The partner (and Third Parties authorised by the partner) will only use Shared Indigenous Knowledge to protect and enhance Indigenous heritage and knowledge, across the [insert name of Traditional Owner group]'s traditional lands and Sea Country and to improve management of the Marine Park. The partner will not seek any commercial advantage from the Indigenous Knowledge you share without agreement with the [insert name of Traditional Owner group] Traditional Owner group.

In accordance with the [insert name of Traditional Owner group] Indigenous Knowledge Sharing Agreement, the partner wishes to use the Indigenous Knowledge you share to achieve some or all of the following:

- Improve [Name of partner to the Agreement] practices in relation to the protection and management of [insert name of Traditional Owner group]'s Indigenous heritage, traditional lands and Sea country
- Increase inclusion of [insert name of Traditional Owner group] views in [Name of partner to the Agreement] decision making
- Improve promotion and public education about issues of importance to [insert name of Traditional Owner group].

Shared Indigenous Knowledge, which forms the basis for a statutory decision for which a statement of reasons is required may, pursuant to legal processes, be required to be made publicly available and/or provided to the Administrative Appeal Tribunal.

Are you aware of how the partner proposes to use your Shared Indigenous Knowledge?

YES / NO

1.8 Consent to Share Indigenous Knowledge

Details of the Indigenous Knowledge you share with the partner must be included in Part 3 of this Informed Consent Form.

Do you agree to share the Indigenous Knowledge referred to in Part 3 of this Informed Consent Form with the partner?

YES / NO

2. Privacy

2.1 Scope

Personal Information may be collected by the [Name of partner to the Agreement] as part of the process of sharing Indigenous Knowledge. The partner may also collect Sensitive Information from you, such as racial or ethnic origin, if you agree to provide that information. If the partner collects any of your Personal Information from a source other than yourself, you will be notified as soon as practicable afterwards.

2.2 Why Does the [Name of partner to the Agreement] Collect Your Personal Information?

Personal Information (including Sensitive Information) provided to the partner is protected by the Privacy Act. The Privacy Act contains 13 *Australian Privacy Principles* that regulate how the partner must handle my Personal Information. More information on privacy and the Privacy Act is available from the Office of the Australian Information Commissioner's website www.oaic.gov.au.

2.3 Who May the [Name of partner to the Agreement] Give My Personal Information to?

Your Personal Information will not be disclosed by the partner to any Third Party without your consent unless permitted by the Privacy Act or required by law. If you consent, the partner may disclose Personal Information you provide to the partner as part of the process of sharing Indigenous Knowledge in the form of direct quotes in publicly available documents.

The partner is not likely to disclose your Personal Information to a recipient outside Australia.

2.4 The [Name of partner to the Agreement] Privacy Policy

The [Name of partner to the Agreement] privacy policy can be found at [insert url or appropriate resource]. You can review the partner's privacy policy if you wish to make a complaint about the partner's handling of your Personal Information, if you want to seek access to Personal Information that is held by the partner, or if you want to seek to correct / amend your Personal Information held by the partner.

If you are concerned about my privacy in any way, you may contact a member of the [insert name of partner, person title to contact, phone number, postal address, email address]. If you think there has been a breach of your privacy you can write to the Office of the Australian Information Commissioner, GPO Box 5218 Sydney NSW 2001 or call 1300 363 992, however, you are encouraged to contact the partner first to resolve your complaint and prevent any further breach of your privacy.

2.5 Consent to Collect Personal Information and Sensitive Information

I consent to [Name of partner to the Agreement] collecting the following Personal Information and Sensitive Information:

Name	YES / NO
Contact Details	YES / NO
Language group	YES / NO
Image	YES / NO
Voice and transcription of my voice	YES / NO
Racial or ethnic origin	YES / NO
Details of my Traditional Owner group	YES / NO

2.6 Consent to Use and Disclosure of Personal Information and Sensitive Information

Use and disclosure of your Personal Information may result in your identification. If your Personal Information is made publicly available, the partner may have no control over its subsequent use and / or disclosure.

I consent to the [Name of partner to the Agreement] using Personal Information and Sensitive Information collected from me and disclosing that information to Third Parties, on the terms and conditions set out in [insert name of Traditional Owner group] Indigenous Knowledge Sharing Agreement. My Personal Information may be included in the following products:

Reports	YES / NO	PowerPoint Presentations	YES / NO
Books	YES / NO	Advertising	YES / NO
Brochures	YES / NO	Public Displays	YES / NO
Research Publications	YES / NO	Television or Radio Advertisements / Programs	YES / NO
Zoning Maps	YES / NO	Promotional Products	YES / NO
Newsletters	YES / NO	Posters	YES / NO
Fact Sheets	YES / NO	Billboards	YES / NO
E-Promotions	YES / NO	Website Media (including social Media)	YES / NO
Calendars	YES / NO		

I release and discharge the [Name of partner to the Agreement] from any claims or demands that could be made in connection with the use of my Personal Information and Sensitive Information for the above-mentioned purposes.	YES / NO
--	----------

3. Description of the shared Indigenous Knowledge

3.1 Background

Provide a general description of why the Indigenous Knowledge was shared and the process of identification and documentation of the Indigenous Knowledge.

3.2 Description of Indigenous Knowledge

Provide a general description of the subject matter. Describe the Indigenous Knowledge materials and include details of photo numbers, video file names, cameras used, number of items.

3.3 Statement of significance of Indigenous Knowledge

Provide a statement identifying the significant of the Indigenous Knowledge shared and any recommendation for protecting the identified significance.

3.4 Content Type	3.5 Storage Media
<input type="checkbox"/> Map data <input type="checkbox"/> Photo <input type="checkbox"/> Sound <input type="checkbox"/> Video <input type="checkbox"/> Document <input type="checkbox"/> Other	<input type="checkbox"/> Audio recorder <input type="checkbox"/> Camera <input type="checkbox"/> Computer <input type="checkbox"/> DVD <input type="checkbox"/> External hard drive <input type="checkbox"/> Hardcopy or print <input type="checkbox"/> SD Card <input type="checkbox"/> Word <input type="checkbox"/> Email <input type="checkbox"/> PDF
3.6 GPS boundary coordinates	
<p>Include GPS coordinates of the location of the Indigenous Knowledge or any particular area it is relevant to as well as the preferred projection (e.g., GDA94, DGPS)</p>	
3.7 Processing Instructions	
<p>Provide details of what will need to occur to the Indigenous Knowledge to enter it onto the knowledge management system before it is archived (e.g., sites drawn onto a hardcopy topographic map may need to be digitised, etc.).</p>	

3.8 Is the Indigenous Knowledge culturally restricted?

Provide details of the restrictions (if any) that should be placed on the sharing of the Indigenous Knowledge. Provide details of any special arrangements that should be made to protect the Indigenous Knowledge. Include details here if the Indigenous Knowledge can be shared by more than one Traditional Owner group.

Classifications:

- Unclassified (Public)
- For Official Use only (internal)
- Sensitive (Internal)
- Sensitive Personal (restricted)
- Protected Man's Business
- Protected Women's Business

3.9 What function/s would you most like to see your Indigenous Knowledge used for?

Identify which functions you believe are most relevant to the Shared Indigenous Knowledge and any recommendations in relation to how you wish the shared Indigenous Knowledge be used to improve those functions.

4. Declaration

4.1 Indigenous Knowledge Holder to Complete

I have read:

- The “Protocol for Safeguarding Indigenous Heritage and Knowledge”
 - The [insert name of Traditional Owner group] Indigenous Knowledge Sharing Agreement
 - Each part of this Informed Consent Form,
- (or someone has read them to me in language I understand) and hereby agree to share the Indigenous Knowledge referred to in Part 3. on the terms and conditions set out in this Informed Consent Form and the [insert name of Traditional Owner group] Indigenous Knowledge Sharing Agreement.

Name _____
Signature _____
Date _____
Address _____
Traditional Owner group _____
Email _____
Phone No. _____

4.2 Person Identifying and Documenting the Indigenous Knowledge to Complete

I have explained the contents of this Informed Consent Form to them. I believe that he / she understands and has agreed to share the Indigenous Knowledge referred to in Part 3 on the terms and conditions set out in this Informed Consent Form and the [insert name of Traditional Owner group] Indigenous Knowledge Sharing Agreement.

Name _____
Signature _____
Date _____

Office use only

Name
Signature
Date
Address



Part 5: Definitions and interpretation

A document that sets out the definitions used in the *Toolkit for Safeguarding Indigenous Heritage and Knowledge*:

- Part 1: Protocol;
- Part 2: Guidelines;
- Part 3: Indigenous Knowledge Sharing Agreement template;
- Part 4: Informed Consent Form,

and provides a guide to each of those document's interpretation.



1. DEFINITIONS

The following words and expressions used in the *Toolkit for Safeguarding Indigenous Heritage and Knowledge*:

- (a) Protocol;
- (b) Guidelines;
- (c) Agreements; and
- (d) Informed Consent Forms,

have the meaning set out below.

Agreement means Safeguarding Indigenous Heritage and Knowledge Agreement.

Agreement Area means all the lands and waters to which an Agreement applies.

Aspirational Statement means the statement made by a Traditional Owner group in relation to its Indigenous Knowledge and Indigenous heritage set out in an Agreement.

Benefits means the benefits that the partner has agreed to share with the Traditional Owner group in consideration of them Sharing Indigenous Knowledge in accordance with an Agreement.

Business Day means a weekday that is not a public holiday and on which banks are open for business in Townsville.

Commencement Date means the date the last Party signs the Agreement.

Convention means the United Nations Educational, Scientific, and Cultural Organisation's 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage.

Ethical Standards means the application of each of the principles set out in the Australian Institute of Aboriginal and Torres Strait Islander Studies *Guidelines for Ethical Research in Australian Indigenous Studies 2012*, including, but not limited to:

- (a) Obtaining the free, prior, and informed consent of the Traditional Owner group and Indigenous Knowledge Holders to the sharing of Indigenous Knowledge with the Partner;
- (b) Protecting the Traditional Owner group and Indigenous Knowledge Holders' intellectual property rights to Indigenous heritage and Indigenous Knowledge, whether or not those rights are protected in Australian law; and
- (c) Meeting the requirements of the Privacy Act.

Field Inspection means a visual assessment of a part of an Agreement Area for establishing the extent (or likely extent) of any Indigenous heritage in the inspection area.

FPIC means free, prior, and informed consent, an internationally and domestically recognised essential component of best practice engagement with Traditional Owners in relation to the sharing of their Indigenous Knowledge.

GPS means global positioning system.

Guidelines means Guidelines for Safeguarding Indigenous Heritage and Knowledge.

ILUA means Indigenous Land Use Agreement, established under the Native Title Act 1993 (Cth).

Inalienable and inherent rights means the communal right of Traditional Owners to their territories and resources, Indigenous Knowledge and Indigenous heritage, held under and in accordance with their traditional customs and lores and which cannot be transferred, either as a gift or through a commercial transaction.

Indigenous heritage means physical (tangible) and non-physical (intangible) expressions of Traditional Owners' relationships with country, people, beliefs, knowledge, law, language, symbols, ways of living, sea, land and objects all of which arise from Indigenous spirituality, including heritage places (sites) and / or values.

Indigenous Knowledge means knowledge systems embedded in the cultural lores, history, traditions of Traditional Owner groups and includes, without limitation, knowledge of:

- (a) creation stories (Indigenous lores) and contemporary stories;
- (b) historical connections to places and stories;
- (c) rituals, ceremonies, songs and dance;
- (d) traditional technologies (e.g., tools and techniques for hunting, fishing and subsistence);
- (e) ethnobotany and ethnozoology;
- (f) ecological knowledge, including knowledge of plants, animals and ecological systems and knowledge of sea currents and marine ecosystem dynamics;
- (g) marine and terrestrial genetic resources;

- (h) traditional medicine;
- (i) ethnoastronomy;
- (j) the climate; and
- (k) Indigenous heritage,

as well as the rights that Indigenous Knowledge Holders hold to such knowledge.

Indigenous Knowledge Holder is a Traditional Owner who holds specific Indigenous Knowledge and authority regarding their Traditional Owner group's lores, customs and Indigenous heritage values, who is recognised within their Traditional Owner group for this Indigenous Knowledge and authority, has the cultural authority to pass on, withhold and speak about Indigenous Knowledge to others and may or may not be an Elder.

Indigenous Knowledge Identification and Documentation Process means any process the Parties agree to implement to facilitate the identification and documentation of Requested Indigenous Knowledge, and:

- (a) must include:
 - (i) one or more Traditional Owners;
 - (ii) one more Indigenous Knowledge Holders; and
- (b) may include:
 - (i) a Field Inspection; and
 - (ii) the assistance of a Technical Adviser.

Indigenous Knowledge Management System means a non-Traditional Owner party's infrastructure for housing and managing Shared Indigenous Knowledge.

Indigenous Knowledge Sharing Agreement means an agreement established between a party and a Traditional Owner group to facilitate the identification, documentation, sharing, storage, management and use of Indigenous Knowledge to:

- (a) improve the conservation and cultural use of the Great Barrier Reef Region biocultural diversity; and
- (b) increase Traditional Owner groups' participation in management of the conservation and ecologically sustainable use of cultural keystone species and biocultural resources within the Great Barrier Reef Region.

Indigenous person means a person who is:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

Informed Consent Form means Safeguarding Indigenous Heritage and Knowledge Informed Consent Form.

Lores means the Indigenous stories, customs, beliefs, and observances specific to Traditional Owners which are derived from and instructed by their ancestral creation beings.

Marine Park means the Great Barrier Reef Marine Park established by the *Great Barrier Reef Marine Park Act 1975*.

Marine Park Authority means the Great Barrier Reef Marine Park Authority.

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

NTA means the *Native Title Act 1993* (Cth).

Parties means a non-Traditional Owner party and the Traditional Owner group Representative parties to an Agreement.

Partner means a non-Traditional Owner partner to an Agreement.

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 a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Principles means the overarching principles set out in the Protocol.

Privacy Act means the *Privacy Act 1988*.

Privacy Policy means a non-Traditional Owner party's privacy policies, as amended from time to time.

Protocol means Protocol for Safeguarding Indigenous Heritage and Knowledge.

Reef 2050 Plan means Australian Government's and Queensland government's *Reef 2050 Long-Term Sustainability Plan*.

Requested Indigenous Knowledge means Indigenous Knowledge that a party identifies that it wishes to access in order to improve the manner in which it carries out its functions.

Safeguarding means measures aimed at ensuring the viability of the heritage value, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalisation of the various aspects of such heritage.

Safeguarding Indigenous Heritage and Knowledge Guidelines mean guidelines to provide practical direction and assistance to enable a non-Traditional Owner party to meet best practice standards when:

- (a) implementing the Protocol;
- (b) developing and implementing Agreements;
- (c) obtaining the free, prior, and informed consent of Indigenous Knowledge Holders to the sharing of Indigenous Knowledge; and
- (d) storing, managing, and using Shared Indigenous Knowledge.

Safeguarding Indigenous Heritage and Knowledge Informed Consent Form means a form signed by at least one Indigenous Knowledge Holder, at least one Traditional Owner group Representative and the non-Traditional Owner party that:

- (a) records the relevant Indigenous Knowledge Holder's consent to sharing their Indigenous Knowledge;
- (b) records the relevant Indigenous Knowledge Holder's consent to sharing their Personal Information;
- (c) identifies the nature and content of the Indigenous Knowledge shared; and
- (d) sets out the agreed conditions, restriction and use of the Shared Indigenous Knowledge.

Safeguarding Indigenous Heritage and Knowledge Protocol means the protocol that establishes the standards and principles by which a non-Traditional Owner party will safeguard Indigenous heritage and Indigenous Knowledge.

Sensitive Information is defined in section 6 of the Privacy Act and includes information about an individual's racial or ethnic origin, political opinions, religious beliefs or affiliations, philosophical beliefs, etc that is also personal information as well as health information about an individual and genetic information about an individual that is not otherwise health information, etc.

Shared Indigenous Knowledge means Indigenous Knowledge (in any form and including any document or record embodying it) that has been shared with a non-Traditional Owner partner to the agreement.

Technical Adviser means a person, having expertise in Indigenous heritage and / or Indigenous Knowledge assessment and management, appointed by the Parties from time to time.

Third Party means any person (other than the Parties), including any contractor of a Partner to an Agreement, or any other person acting with the express or implied authority of the non-Traditional Owner partner to the agreement, that (whether separately to or jointly with the non-Traditional Owner partner to the agreement) participates at any time in the undertaking of non-Traditional Owner partner to the agreement functions.

Traditional Owner means an Indigenous person:

- (a) who is recognised in the Indigenous community or by a relevant representative Aboriginal or Torres Strait Islander body:
 - (i) as having spiritual or cultural affiliations with a site or area in the Great Barrier Reef Region; or
 - (ii) as holding native title in relation to that site or area; and
- (b) who is entitled to undertake activities under Aboriginal or Torres Strait Islander custom or tradition in that site or area.

Traditional Owner group means a community of Traditional Owners as defined in accordance with their own traditional laws and customs whose traditional lands and waters include part of the Great Barrier Reef Region.

Traditional Owner group Representative means the person or persons who have been authorised by their Traditional Owner group to establish and implement an Agreement on behalf of their Traditional Owner group.

2. INTERPRETATION

In each of the Protocol, Guidelines, Agreement, and Informed Consent Form, unless the contrary intention appears:

- (a) Headings are for ease of reference only and do not affect the meaning of this Agreement;
- (b) The singular includes the plural and vice versa and words importing a gender include other genders;
- (c) Other grammatical forms of defined words or expressions have corresponding meanings;

- (d) A reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of the relevant document or Agreement and a reference to a document or Agreement includes any schedules;
- (e) A reference to a document or Agreement, includes a reference to that document or Agreement as novated, altered or replaced;
- (f) A reference to 'A\$', '\$A', 'dollar' or '\$' is a reference to Australian currency;
- (g) A reference to a specific time for the performance of an obligation is a reference to that time in the State of Queensland;
- (h) A reference to a Party includes the party's heirs, executors, successors permitted assigns and nominees;
- (i) Words and expressions importing natural persons include partnerships, bodies corporate, associations and government agencies and departments;
- (j) Unless the contrary intention appears, any capitalised term that is not defined has the meaning provided in the Act;
- (k) A reference to any legislation or regulations is construed the same way as a reference to an Act or a provision of an Act is construed in s 10 of the *Acts Interpretation Act 1901* (Cth) or the same way as a reference to a law is construed in s 14H of the *Acts Interpretation Act 1954* (Qld), as applicable;
- (l) An agreement, acknowledgement, representation, or warranty on the part of two or more persons binds them jointly and severally; and
- (m) An agreement, acknowledgement, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally.



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