



GRANT AGREEMENT

BETWEEN

NSW WILDLIFE INFORMATION RESCUE AND EDUCATION SERVICE INCORPORATED (WIRES)

ABN 30 768 872 928

AND

THE GRANTEE

ORGANISATION NAME: _____

ABN: _____

Background

- A WIRES, Wildlife Information Rescue and Education Service Incorporated (“The Grantor”), is Australia's largest wildlife rescue organisation. The Grantor has been rescuing and caring for wildlife for over 35 years and its mission is to actively rehabilitate and preserve Australian wildlife and inspire others to do the same. The Grantor’s objects include:
- I. rescuing and caring for sick, injured or orphaned native wildlife unable to fend for itself, with at all times the best interests of each individual animal placed first, with the object of returning the animal to the wild, and
 - II. undertaking and encouraging research pertinent to its objects with the best interest of the animal placed first; and
 - III. entering into any arrangements, with any government, government authority or private body, that is conducive to its objects.
- B “The Grantee” has applied for funding from the Grantor to support the program outlined in Annexure B.
- D The Grantor has agreed to provide support to the Grantee in the manner described in their approved application for the WIRES National Grant Program 2021, and on the terms and conditions set out in this Agreement.
- E In consideration for the Grantor’s support, the Grantee agrees to apply the funds provided by the Grantor on the terms and conditions set out in this Agreement.

1. Definitions

In this Agreement, the following terms have the meaning set out below, unless the context requires otherwise.

Grantor means the NSW Wildlife Information Rescue and Education Service Incorporated (WIRES) the details of which are set out in Schedule 2 and any successive corporation under the Australian Corporations Act, 2001 in the event that the Grantor becomes a Corporation.

The Grantee means the organisation, the details of which are set out in Schedule 2.

Commencement Date means the date specified in Schedule 2.

Expiry Date means the date specified in Schedule 2.

GST has the meaning given to that term in the GST Act.

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

IP means “intellectual property” and includes all registered and unregistered rights in relation to present and future copyright, trade marks, designs, know-how, patents, confidential information and all other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organisation 1967, and includes domain names, internet addresses and confidential information;

IP Rules means the rules described in clause 20.1 as amended by the parties from time to time provided that such amendment is by agreement and is recorded in writing.

Logo means the word and logo Trade Marks limited to those set out in Annexure A.

Parties mean the Grantor and the Grantee.

Program means the activities outlined in Annexure B.

Program Funding means the amount to be provided by the Grantor to the Grantee as stated in Schedule 2 and the budget set out in the Grantee’s approved application for the WIRES National Grant Program 2021, which is to be applied in accordance with the Program and with this Agreement.

Service Summary means services to be provided by the Grantee to the Grantor

Term means the period from the Commencement Date up to and including the Expiry Date unless this Agreement is terminated earlier in accordance with its terms.

2. Interpretation

In this Agreement, unless the context otherwise requires:

- 2.1. a reference to this Agreement includes the schedules and annexures and is a reference to this Agreement as amended or supplemented from time to time;
- 2.2. a reference to a person (including a party) includes a reference to the person's successors and permitted assigns;
- 2.3. an expression importing a natural person includes any company, partnership, joint venture, the grantor, corporation or other body corporate and any government agency;
- 2.4. words importing a gender include every other gender;
- 2.5. words in the singular number include the plural and words in the plural number include the singular;

- 2.6. headings and bold type are for convenience of reference only and do not affect the interpretation of this Agreement;
- 2.7. where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- 2.8. references to currency are to the lawful currency of the Commonwealth of Australia; and
- 2.9. where the day on or by which any thing is to be done is not a business day, that thing shall be done on or by the immediately succeeding business day.

3. Relationship

3.1. Relationship of Parties

This agreement does not create a relationship of employment, trust, agency or partnership between the parties, and nothing contained in this agreement shall be deemed to constitute a party to be the partner or legal representative of the other party or to create any fiduciary relationship for any purpose whatsoever.

3.2. Authority of Parties

A Party:

- 3.2.1. may not hold itself out as a partner of, or principal or agent or trustee of another Party; and
- 3.2.2. except where this agreement expressly states otherwise, does not have authority to act for, or to create or assume any responsibility or obligation on behalf of another Party.

4. The Grantor's Obligations

4.1 Provision of Program Funding

In consideration for undertaking the Program, the Grantor agrees to provide the Program Funding to the Grantee in accordance with Schedule 2.

5. The Grantee's Obligations

5.1. Program

In consideration for the Grantor providing the Program Funding to the Grantee, the Grantee agrees to conduct the Program and provide the Services in accordance with the terms of this Agreement.

5.2. Program Funding for Grantor Objects

the Grantee agrees to:

5.2.1. use the Program Funding only for the purposes of delivering the Program; and

5.2.2. at the expiry or earlier termination of the Agreement, provide the Grantor with a written report setting out the manner of expenditure of the Program Funding, to the reasonable satisfaction of the Grantor.

5.3. Reporting

5.3.1 The Grantee agrees to report to the Grantor on the Grantee's application of Program Funding within the periods specified in Schedule 1.

5.3.2 The Report will include full details of activities and an evaluation of accomplishments/successes under the Program Funding and shall contain a statement of all expenditures of the grant funds in relation to each instalment. The Grantee will also provide to the Grantor photos and videos relating to work undertaken with the Program Funding for use by the Grantor in communicating the impact of the funds on social media and its website and to share with other media, all with appropriate credit.

5.3.3 The Grantee shall use a unique accounting code to identify receipts of Program Funding and to track expenses incurred separately from other sources of funding. The Grantee shall keep all relevant records, both financial and technical, relating to this Grant for a period of seven years following the termination or expiration of this Grant. The Grantor, its representatives, and assignees, reserve the right to inspect, review or audit any and all records relating to this Grant.

5.3.4 Desk Reviews and Site Visits. The Grantor regards monitoring of Program Funding as essential to effective grant making. The Grantor, its representatives, and assignees, may conduct desk reviews and/or site visits to review Program progress and results. To the extent possible, the Grantor shall give the Grantee reasonable notice of any site visit.

6. GST

6.1. Interpretation

In this clause 6, a word or expression defined in the GST Act which is not otherwise defined in this Agreement has the meaning given to it in that Act.

6.2. GST gross up

All consideration provided under this Agreement is exclusive of GST. If a party (Supplier) makes a taxable supply to another party (Recipient) under or in connection with this Agreement in respect of which GST is payable, the Recipient must pay the Supplier an additional amount equal to the GST payable on the supply (unless the consideration for the taxable supply was specified to include GST). The additional amount must be paid by the Recipient by the later of:

6.2.1. the date when any consideration for the taxable supply is first paid or provided; and

6.2.2. the date when the Supplier issues a tax invoice to the Recipient.

6.3. Reimbursements

Subject to an express provision in this Agreement to the contrary, any payment, reimbursement or indemnity required to be made to a party (the Payee) under this Agreement which is calculated by reference to an amount paid or payable by the Payee to a third party (Outgoing) will be calculated by reference to that Outgoing inclusive of GST, less the amount of any input tax credit which the Payee is entitled to claim on that Outgoing.

7. Warranty

- 7.1. Each party warrants and represents to the other that:
 - 7.1.1. It has the authority to enter into this Agreement;
 - 7.1.2. It is able to perform all of its obligations under this Agreement;
 - 7.1.3. The information it has provided to the other prior to the date of this Agreement for the purpose of inducing the other to enter into this document, is true and correct; and
 - 7.1.4. It will not directly or indirectly cause harm to the reputation and value of the other party and their IP.
- 7.2. The Grantee warrants to the Grantor that the Grantee will only apply the Program Funding in accordance with this Agreement and the Grantor's stated objects.

8. Indemnity

Subject to clause 9, the Grantee indemnifies the Grantor and holds it harmless from any liability or damage arising out of or connected with any breach of this Agreement.

9. Limitation of Liability

- 9.1. Each party will not be liable to the other party for any indirect or consequential loss or for any loss of profits, loss of income and loss of opportunity which may arise in connection with this Agreement.
- 9.2. Each party will not be liable to the other party for any loss arising out of a breach of this Agreement to the extent that the loss exceeds the total amount of the Program Funding given to the Grantee under this Agreement, unless the loss is as a result of fraud or wilful misconduct on the part of a party, in which case that party's liability will be unlimited.
- 9.3. Where conditions, warranties, or other rights for the Grantor's benefit are implied or otherwise conferred by the Competition and Consumer Act 2010 (Cth) or other applicable laws of any jurisdiction and it is not lawful or possible to exclude them, then those conditions, warranties and other rights will, but only to the extent required by law, apply. Other than as set out in this Agreement, all implied conditions, warranties and rights are excluded.
- 9.4. Each party's liability for breach of implied conditions or warranties is limited to the extent permitted by law to:

9.4.1. in relation to services, the supplying of the services again or the payment of the cost of having the services supplied again; or

9.4.2. in relation to goods:

9.4.2.1. the replacement of goods or the supply of equivalent goods; or

9.4.2.2. the payment of the cost of replacing the goods or of acquiring equivalent goods.

10. Publicity and Confidentiality

10.1. The parties shall consult with one another concerning the form and substance of any media release regarding the Program , their relationship or other public disclosure of the matters covered by this Agreement, and shall mutually agree on the form and substance of any such disclosure before any such disclosure is made, provided however, that this obligation shall not be deemed to prohibit any party from making any disclosure to the extent necessary in order to fulfil such party's obligations under any applicable law, or to give effect to any term of this Agreement.

10.2. The parties agree that, except:

10.2.1. as required by law (including the Government Information (Public Access) Act 2009 (NSW);

10.2.2. for the purposes of audit or any applicable public authority's request;

10.2.3. to obtain professional advice;

10.2.4. to give effect to any term of this Agreement; or

10.2.5. with the prior consent of the other party,

they shall keep entirely secret and confidential the terms of this Agreement and all information of a secret, confidential or proprietary nature concerning the business or affairs (including the arrangements and/or the financial value of the Program or Program Funding) of the other party and which is not otherwise in the public domain that may come into their knowledge or possession as a result of communications between the parties or performance under this agreement.

11. Expiry of Term and termination

- 11.1. Either party to this Agreement may terminate this Agreement by written notice to the other if:
 - 11.1.1. the other party breaches a material provision of this Agreement and fails to remedy the breach within 30 days of receiving notice from the first mentioned party requiring it to do so; or
 - 11.1.2. the other party is wound up (other than for the purposes of a solvent reconstruction), or has a receiver (or similar functionary) appointed in respect of any of its assets, or ceases to carry on business.
- 11.2. Subject to anything to the contrary in this clause 11, expiry of the Term or earlier termination of this Agreement shall not relieve a party of liability to the other party in respect of the rights or remedies of the other party which have accrued prior to the relevant termination.
- 11.3. On expiry of the Term or earlier termination of this Agreement, the Grantee must:
 - 11.3.1. return to the Grantor all unexpended or uncommitted Program Funding.
- 11.4. On expiry of the Term or earlier termination of this Agreement the licence of the Grantee's logo granted by the Grantor under this Agreement terminates and the Grantor agrees to immediately cease all use and application of The Grantee's logo, provided that the Grantor is not required to recall any material previously distributed, sold or otherwise disposed of by the Grantor on which the Grantee's logo appears.
- 11.5. On expiry of the Term or earlier termination of this Agreement the licence of the Grantor's logo granted by the Grantor under this Agreement terminates and the Grantee agrees to immediately cease all use and application of Grantor's logo, provided that the Grantee is not required to recall any material previously distributed or otherwise disposed of by the Grantee on which the Grantor's logo appears.
- 11.6. The parties' obligations under clauses 7 (Warranty), 8 (Indemnity) and 11 (Expiry and Termination) shall survive any termination or expiration of the Agreement.

12. Conflict Resolution

- 12.1. A party claiming that a dispute has arisen in respect of this Agreement must notify the other party in writing specifying the nature of the dispute.
- 12.2. Within 14 days from the date of receipt of a notice of dispute the senior executives of the parties must confer at least once and use their best endeavours to attempt to resolve and finally settle the dispute.

- 12.3. If the parties are unable to resolve the dispute within 21 days after receipt of the notice, the dispute must be referred to mediation before any arbitration or litigation proceedings are instituted.
- 12.4. The mediator must be appointed by agreement between the parties. Where the parties are unable to agree on the appointment of a mediator, the mediator must be appointed by the Australian Commercial Disputes Centre (ACDC).
- 12.5. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation.
- 12.6. Where the dispute is not settled within 30 days after the appointment of the mediator, then either party may commence court proceedings to resolve the dispute.
- 12.7. This clause will not affect a party's rights to terminate this Agreement or to seek urgent interlocutory relief in a court of competent jurisdiction.
- 12.8. Notwithstanding the existence of a dispute, each party must continue to perform their obligations under this agreement.
- 12.9. Each party must pay their own costs required to participate in the mediation and share equally the costs of the independent mediator.

13. Assignment

A party may not assign the benefit of, or any of its rights under, this Agreement without the consent in writing of the other party, which consent may not be unreasonably refused or withheld.

14. Variation

A variation of any term of this Agreement must be in writing and signed by the parties.

15. Governing Law and Jurisdiction

- 15.1. This Agreement is governed by the laws of New South Wales.
- 15.2. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

16. Entire Agreement

This Agreement represents the entire understanding of the parties in respect of the Program Funding, the Services and the Program and there is no other understanding, agreement, warranty or representation (express or implied) extending, defining or otherwise relating to the provisions of this Agreement.

17. Force Majeure

17.1. In the event that this Agreement cannot be performed or its obligations fulfilled for any reason beyond the reasonable control of the Grantee or the Grantor, including events such as war, industrial action not specific to a party, floods, fires, pandemics, and acts of god, then such non-performance or failure to fulfil its obligations shall be deemed not to be a breach of this Agreement. In the event that this Agreement cannot be performed or its obligations fulfilled for any reason beyond the reasonable control of either party for a continuous period of 90 days then either party may, at its discretion, terminate this Agreement by notice in writing at the end of that period.

17.2. Upon a termination pursuant to clause 17.1, the provisions of clauses 11.2, to 11.5 will apply, and each party fully and finally releases the other party from all claims arising out of or connected with this Agreement, the Program and the termination.

18. Further Assurances

Each party must do all things and execute all further documents necessary to give full effect to this Agreement.

19. Prohibition and Enforceability

19.1. Any provision of, or the application of any provision of, this Agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.

19.2. Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

20. Brand Authorisation

20.1. IP Rules

20.1.1. Other than as expressly permitted by this Agreement, the parties agree that they may not do any of the acts identified in section 26(1) of the Trade Marks Act 1995.

20.1.2. A party must, whenever it uses the other party's Logo, comply with the approval process specified in clause 20.2 to 20.4.

20.1.3. The parties agree not to:

20.1.3.1. alter or deface the other party's Logo in any manner;

20.1.3.2. use the other party's Logo in any manner likely to mislead, deceive or cause confusion;

20.1.3.3. use the other party's Logo in connection or association with any other trademarks, including its own Logo, names, trading styles, get up or source identifying element, without the other party's prior written consent;

20.1.3.4. use during the Term and at any time thereafter any other trade mark which is substantially identical or deceptively similar to the other party's Logo; or

20.1.3.5. do or cause to be done at any time any act or thing contesting, challenging, prejudicing, questioning or in any way impairing any right, title and interest which the other party has in its Logo, the validity of any registrations of the other party's Logo or the success of any application by the other party to register Logo.

20.2. The Grantee Logo

20.2.1. On and from the Commencement Date to the Expiry Date, the Grantee grants to the Grantor a non-exclusive, non-sub licensable licence to use the Grantee's Logo, but only:

20.2.1.1. in relation to the Program and in the manner described in Schedule 1; and

20.2.1.2. in accordance with the Grantee's Branding Guidelines; and

20.2.1.3. on the terms and conditions of this Agreement.

20.2.2. The Grantor is permitted to use the Grantee's Logo only in relation to advertising or promotional material relating to the Program or otherwise to the Services that have been previously approved by the Grantee in writing.

20.2.3. The Grantee grants to the Grantor shared rights to use any IP produced by the Grantee in relation to the Program and Grantor marketing programs.

20.2.4. The Grantee reserves to itself all rights not expressly granted under this Agreement.

20.3. The Grantor Logo

20.3.1. On and from the Commencement Date, the Grantor grants to the Grantee a non-exclusive, non-sub licensable licence to use the Grantor's Logo, but only:

20.3.1.1. in relation to the Program or otherwise to the Services being provided by the Grantee to the Grantor in the manner described in Schedule 2; and

20.3.1.2. on the terms and conditions of this Agreement.

20.3.2. Where the provision of the Services requires the use of the Grantor's Logo, the Grantee agrees that it will use the Grantor's Logo in accordance with the IP Rules.

20.3.3. The rights granted to the Grantee under this Agreement shall not prevent the Grantor from entering into any other agreement with any other person. The Grantee is permitted to use Grantor's Logo only in relation to advertising or promotional material relating to the Program or otherwise to the Services that has been previously approved by the Grantor in writing.

20.3.4. The Grantee must provide to the Grantor samples of any proposed advertising or promotional material, including labels and packaging, documents, and any other material relating to the Program or otherwise to the Services and containing the Grantor's Logo for approval before its proposed use.

20.3.5. The Grantor may not unreasonably withhold or delay its approval of the Grantee's proposed advertising or promotional material relating to the Program or the Services.

20.3.6. The Grantee agrees that it will, on request from time to time by the Grantor throughout the Term, submit to the Grantor samples of The Grantee's approved advertising and promotional material as actually supplied or used by the Grantee and all documents, labels, advertising, packaging and other matter on or in relation to which the Grantee is using or intends to use the Grantor IP in order to enable the Grantor to satisfy itself that The Grantee is observing its obligations under this Agreement.

20.3.7. The Grantor reserves to itself all rights not expressly granted under this Agreement.

21. Notices

21.1. A notice under this Agreement must be in legible writing and in English addressed as shown in Schedule 2 or at the address or facsimile number supplied by the other party by notice for the purpose of the giving of notice to it.

21.2. A notice is regarded as being given by the sender and received by the addressee if:

21.2.1. by delivery in person, when delivered to the addressee;

21.2.2. by post, three business days after the date of postage to the addressee;

21.2.3. by facsimile transmission, whether or not legibly received, when successfully transmitted to the addressee, but if the delivery or receipt is on a day which is not a business day or is after 5.00pm (addressee's time) it is regarded as received at 9.00am on the following business day.

21.3. A facsimile transmission is regarded as legible unless the addressee telephones the sender within two hours after transmission is received or regarded as received under clause 21.2.3 and informs the sender that it is not legible.

SCHEDULE 1 – SERVICES

1. Services to the Grantor from the Grantee

The Grantor will receive the Services from the Grantee

2. Use of the Grantee logo

The Grantor may use the Grantee's logo on the Grantor's website and in the Grantor's annual report with a description of the Program as outlined in this agreement.

3. The Program

The Grantee will deliver the Program as outlined in Annexure B.

4. Reporting (Clause 5.3)

- 4.1.1. During the Term, the Grantee agrees to submit a progress report by, 27/05/2022, to the Grantor on the progress of the program as detailed in the Grantee's approved application for the WIRES National Grant Program 2021. The Grantee agrees to submit a final report by, 2/12/2022, at the completion of the project.
- 4.1.2. The Grantee agrees to undertake reasonable additional reporting of Program Funding applied under the Program, upon written request by the Grantor. If the Grantee fails to complete report(s) or any information as agreed upon with WIRES for this Grant Agreement, the Grantee may be ineligible for any future funding from WIRES.

SCHEDULE 2 – PARTIES, PROGRAM FUNDING and TERM

Parties (Clause 1)

NSW Wildlife Information Rescue and Education Service Incorporated ABN 30 768 872 928 of Suite 1-5, 117 Old Pittwater Rd Brookvale NSW 2100

Australia

Attention: Leanne Taylor CEO

Phone: 02 8977 3396

Email: grants@wires.org.au

Organisation _____

ABN _____

of _____

Attention: _____ (Director, CEO)

Phone: _____

Email: _____

Program Funding (Clause 1)

The **Program Funding** is the amount agreed with WIRES as per the Grantee's approved application for the WIRES National Grant Program, and will be provided by the Grantor to the Grantee as follows:

- 2.1. the Grantee will submit a Tax Invoice to the Grantor for payment by the Grantor for 70% of approved funding.
- 2.2. on receipt of Progress Report and Tax Invoice by the Grantee, a further 20% will be paid by the Grantor.
- 2.3. the last 10% will be paid by the Grantor on receipt of a Final Report and Tax Invoice from the Grantee.
- 2.4. the Grantee shall use a unique accounting code to identify receipts of Program Funding and to track expenses incurred separately from other sources of funding. the Grantee shall keep all relevant records, both financial and technical, relating to this Grant for a period of seven years following the termination or expiration of this Grant. The Grantor, its representatives, and assignees, reserve the right to inspect, review or audit any and all records relating to this Grant.
- 2.5. Any interest earned on the Program Funding received from the Grantor must be applied to the Program.
- 2.6. Failure to report in the manner described may result in the Grantee becoming ineligible for future funding from the Grantor.

Term (Clause 1)

Commencement Date: 3/12/2021

Expiry Date: 2/12/2022

Annexure A – Logos (clause 20)

Grantor Logos:



Grantor Word trademark: WIRES

The Grantee Logos: (to be provided on request)

Annexure B – Program

Program Name: As per the Grantees's approved application to the WIRES National Grant Program 2021

Program Deliverables: As per the Grantees's approved application to the WIRES National Grant Program 2021.

Other:

the Grantee will provide the Grantor reports on the outcome of this program as outlined in *Schedule 1: 4.1.1*.

the Grantee will, upon request, provide the Grantor with images of the project for use in communicating the impact of the funds on social media and its website and to share with other media, all with proper credit.

Annexure C – Budget

As per the Grantee's approved application to the WIRES National Grant Program 2021.

EXECUTED by the parties as an Agreement:

Signed for NSW Wildlife Information Rescue and Education Service Inc by its duly authorised representative:

Signature of Representative

Position of Representative

Full Name (please print)

Date

Signed for The Grantee by its duly authorised representative:

Signature of Representative

Position of Representative

Full Name (please print)

Date