

DATA LICENCE DEED

DATED THE DAY OF 2010

BETWEEN:

REEF CHECK FOUNDATION LIMITED

("Supplier")

AND:

THE SIGNATORY ON PAGE 7

("User")



BOULTON CLEARY
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LAWYERS

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DEED dated this day of 2010

PARTIES: **REEF CHECK FOUNDATION LIMITED** of Ground Floor, Suite 5, 358-360 Flinders Street Mall, Townsville Queensland 4810

(“Supplier”)

AND: **THE SIGNATORY ON PAGE 7**

(“User”)

RECITALS

- A. The Supplier has access to and operates the Data.
- B. The User would like to access the Data.
- C. The Supplier and the User have agreed to enter into this Deed to allow the User use of the data.
- D. The parties wish to record the terms of their Deed in this Deed.

DEFINITIONS

‘**Commencement Date**’ means the date that this Deed is signed by the User.

‘**Copyright**’ has the same meaning as under common law, common usage and equity.

‘**Data**’ means any information, surveys, reports or any other thing or aspect about coral reefs or flora and fauna of the coral reefs and any other information made available by the Supplier to the User under this Deed including any derivative information obtained through use of the Data including any representation of the data, whether written or electronic and any source codes relating to the data or any software relating to the data.

‘**Deed**’ means this document.

‘**New Intellectual Property**’ includes all present and future rights conferred by statute, common law or equity in or in relation to any copyright, designs, business and domain names, inventions and other results of intellectual activity in the industrial, commercial or scientific, fields, in any way based on or arising out of, or from, or created through the use of or derived from the Data.

1. DURATION

1.1 This Deed will commence on the Commencement Date and will continue until terminated pursuant this Deed.

2. LICENCE

2.1 The Supplier grants to the User a personal, non-exclusive, non-transferable licence to access and use the Data for the duration of this Deed on the terms set out in this Deed.

2.2 The User has unlimited access to the Data at all times subject to the terms of this Deed.

2.3 On the Commencement Date the Supplier will provide to the User the information required to access the Data.

3. CHANGES/DELETION OF THE DATA

3.1 The Supplier may update, change, alter or delete the Data at any time without reference to the User and without liability against the Supplier.

4. SUPPLIER OBLIGATIONS AND ACKNOWLEDGMENTS

4.1 The Supplier:

- (a) will endeavour to keep the Data and the User's access to the Data operational at all times;
- (b) warrants that it has the authority to enter into this Deed and to licence use of the Data to the User;
- (c) makes no representations or warranties and the User acknowledges that the Supplier has not made any representations or warranties either before or during the term of this Deed, in respect to:
 - (i) the accuracy, usability or completeness of the Data;
 - (ii) the Data being free from errors;
 - (iii) the User's access to the Data (other than as expressly provided in this Deed);
 - (iv) the use of the Data to assess the validity or aesthetics of any dive site; or
 - (v) any other matter or thing arising out of the Data or this Deed.
- (d) may grant a licence to access the Data to any other person or entity; and
- (e) may remove, or cancel the User's access to the Data at any time without liability against the Supplier.

5. IMPLIED TERMS

5.1 All statutory implied terms are to the fullest extent permitted by law excluded.

6. USER OBLIGATIONS AND ACKNOWLEDGMENTS

6.1 The User:

- (a) will only use the Data for the purpose of information and research;
- (b) will not use or exploit (whether for itself or for any other person) any of the Data:
 - (i) for any reason other than for the purpose set out in clause 6.1 (a); or
 - (ii) for any commercial purpose.
- (c) will not, either for itself or any third party, appropriate, copy, memorise or in any manner reproduce or reverse engineer any of the Data other than as expressly provided for in this Deed;
- (d) will keep all passwords, account names, tokens or log in identifications required to access the Data secure and confidential;
- (e) subject to clause 6.1(c), will not on-sell or supply, the Data or information that is in any way related to the Data or this Deed, or information obtained through use of the Data to any third party other than with the express written consent of the Supplier;
- (f) is authorised to refer to or include the Data in a publication, advertisement, report, paper or other document, provided that:
 - (i) the User references and acknowledges the Supplier as the provider of the Data; and
 - (ii) the User includes the following text in the appropriate referencing section in the relevant document:

“This document contains information or data belonging to, and reproduced with the permission of Reef Check Foundation Limited “Reef Check Australia”). Reef Check Australia has not evaluated the data or information contained in this document. Reef Check Australia gives no warranties and makes no representations in respect to the data. The data belonging to Reef Check Australia, shall not be copied or in other way made use of by any person without the express written consent of Reef Check Australia.”

and

- (g) acknowledges that the Data may contain errors and may not be accurate or complete.

7. MUTUAL OBLIGATIONS

- 7.1** The User and the Supplier will do all things reasonably necessary to ensure that they comply with their obligations under this Deed and to comply with the intention of the parties to this Deed as expressed in the recitals.

8. CONFIDENTIALITY

- 8.1** The User must keep confidential, the terms of this Deed and the Data, subject to the terms of this Deed.

9. TERMINATION

- 9.1** This Deed may be terminated by either party by notice in writing to the other with effect on the date specified in such notice.
- 9.2** The User must delete or destroy (as applicable) any copies of the Data or part of the Data or any information derived from the Data, immediately after termination of this Deed.

10. INTELLECTUAL PROPERTY

- 10.1** The User acknowledges that the Supplier owns the Data and all Copyright and other intellectual property rights to the Data and that this Deed does not grant, transfer or assign to the User any right or license in respect to any intellectual property or Copyright resulting from the Data.
- 10.2** The User and Supplier acknowledge that any New Intellectual Property created in respect of the Data remains the property of the Supplier.

11. ENTIRE DEED

- 11.1** This Deed supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire Deed between the parties relating to the Deed. No addition to or modification of any provision of this Deed shall be binding upon the parties unless made by written instrument signed by a duly authorised representative of each of the parties.

12. NOTICES

- 12.1** All notices which are required to be given under this Deed shall be:
- (a) in writing;
 - (b) addressed to the party; and
 - (c) sent by either, facsimile, email or prepaid post to the recipient party's address for service.

12.2 For the purposes of this Deed, the address for service for the Supplier is listed below.

Address: Ground Floor, Suite 5, 358-360 Flinders Street Mall,
Townsville Qld 4810

Email support@reefcheckaustralia.org

13. RELEASE INDEMNITY AND LIABILITY

13.1 The User hereby releases and indemnifies and holds harmless the Supplier and its employees, agents and related entities against any claim loss, damage, cost or expense incurred directly or indirectly, or consequently resulting from:

- (a) the User's breach of any obligation, term or warranty under this Deed;
- (b) the User's use of or reliance on the Data;
- (c) the User's access to the Data or inability to access the Data or failure of the Data;
- (d) the supply of the Data to any other entity whether in accordance with this Deed or in default of same;
- (e) the publication of the Data; and
- (f) any other matter arising from this Deed or the Data or the User's use of or access to the Data.

14. ASSIGNMENT

14.1 The User shall not assign, whether in whole or part, the benefit of this Deed or any rights or obligations hereunder.

15. LAW

15.1 This Deed shall be governed by and construed in accordance with the laws for the time being in force in the State of Queensland Australia and the parties agree to submit to the jurisdiction of the courts and tribunals of that State.

16. WAIVER

16.1 No forbearance, delay or indulgence by a party in enforcing the provisions of this Deed shall prejudice or restrict the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

17. SEVERABILITY

17.1 Should any part of this Deed be or become invalid, that part shall be severed from this Deed. Such invalidity shall not affect the validity of the remaining provisions of the Deed.

18. MERGER AND SURVIVAL OF TERMS

18.1 Despite the performance of the parties' respective obligations under this Deed, any general or special provision (or any part or parts thereof) in this Deed which is capable of taking effect after the completion of that performance shall not merge but shall remain in full force and effect.

18.2 Without limiting the generality of clause 18, the parties agree that clauses 4.1 (c), 8.1, 9.2 and 13.1 shall survive termination of this Deed.

19. COUNTERPARTS

19.1 This Deed may be executed in counterpart and all counterparts when executed and taken together will constitute this Deed.

20. BINDING ON SUCCESSORS

20.1 This Deed will be binding upon and inure to the benefit of the parties and their respective successors and permitted agents and assignees.

21. COSTS

21.1 Each party shall bear its own costs associated with the preparation, execution and carrying into effect of this Deed.

The parties have executed this Deed on the dates appearing below

Execution by the Supplier:

EXECUTED by **REEF CHECK**)
FOUNDATION LIMITED ACN 108 200)
933 in accordance with Section 127(1) of)
the *Corporations Act 2001*:) _____
Signature of Director / Sole Director)

Signature of Director / Secretary

Execution by the User:

If an individual:

SIGNED by)
in the presence of:)
_____)

Signature of Witness

Name of Witness

If a company:

EXECUTED by)
ACN)
in accordance with Section 127(1) of the)
Corporations Act 2001:) _____
Signature of Director / Sole Director)

Signature of Director / Secretary

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