

26 May 2023

Universidade Federal do Rio Grande-FURG  
Campus Carreiros  
Rio Grande RS  
Brasil

**Attention: Eduardo R. Secchi**  
*Deputy Vice-Chancellor*  
Email: [propesp.proreitor@furg.br](mailto:propesp.proreitor@furg.br)

**Daina Garklavs**  
*Deputy Director, Office for Research*

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Office for Research  
Nathan campus  
Griffith University QLD 4111  
Australia

Dear Professor Secchi

**Research Subcontract between Griffith University and Universidade Federal do Rio Grande (FURG)**

Griffith University (ABN 78 106 094 461) (**Griffith**) was recently granted a donation to conduct the research project titled “**Humpback Whales in a Changing Climate – Phase II**”, (*the Project*). The Project is being led by Professor Brendan Mackey of Griffith.

FURG (“**Partner Org**”) has agreed to collaborate with Griffith by providing the research services in the manner described in the Schedule to this letter of agreement (*this Agreement*). Griffith proposes the terms and conditions set out below as appropriate to govern “Partner Org’s” involvement in the Project. There will be a number of other research subcontractors involved in the Project and like terms and conditions will be proposed to those other subcontractors.

If the following arrangements are satisfactory to you, please arrange for the execution of this Agreement on behalf of your organisation. *Please note:* for referencing purposes, the Project Research Proposal (*the Proposal*) is attached as Annexure 1 to this Agreement.

1. **Term:** This Agreement will commence on execution by both parties and, subject to clause 10., will expire 36 months from Commencement Date, unless extended as agreed in writing and signed by both parties.
2. **FURG’s Obligations:** The details of the Project, including the role undertaken by Professor Secchi and the funding to be provided to ARCS in relation to the Project, are set out in the Schedule to this letter. FURG will:
  - a. provide the Deliverables in accordance with the milestones and time frames specified in the Schedule, and undertake its Project obligations diligently and competently, with all due care and skill and in accordance with generally accepted professional, scientific, ethical, business and financial principles and standards;
  - b. ensure the Project will be undertaken by FURG’s Personnel, unless otherwise agreed by Griffith in writing; and
  - c. In respect of the Funds received from Griffith:

- i. dedicate the Funds exclusively towards the Project; and
- ii. on the first anniversary of the Commencement Date, and every subsequent 12 months, provide Griffith with a financial statement, as certified by FURG's Chief Financial Officer, or a person with equivalent delegation within FURG, demonstrating proper expenditure of the Funds.

3. **Funding**

- a. In consideration of FURG providing the Deliverables and meeting the Milestones, Griffith will pay the Project Funds to "Partner Org" in accordance with the Schedule, provided that FURG has fulfilled all of its obligations under this Agreement to the reasonable satisfaction of Griffith.
- b. FURG acknowledges that Griffith's payment of the Project Funds to FURG is conditional upon Griffith receiving the corresponding funding from the donor.
- c. The parties agree that all references to monetary amounts, "\$" and "dollars" in the Agreement are references to Australian dollars and all amounts payable under or in connection with this agreement are payable in Australian dollars.
- d. If this Agreement or any supply under or in respect of this Agreement becomes subject to GST, and if the recipient of the consideration is liable to GST in relation to any supply under this Agreement, the Parties agree that the amount payable for any supply under or in respect of this Agreement by any Party shall be adjusted by the amount of the GST.
- e. Each Party agrees to do all things, including providing invoices or other documentation in such form and detail that may be necessary to enable or assist the other party to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under this Agreement or in respect of any supply under this Agreement.

4. **Background Intellectual Property:**

- a. Nothing in this Agreement affects any pre-existing or independently developed intellectual property owned by a party to this Agreement (**Background IP**).
- b. To the extent that a party provides the other party any Background IP during this Project, the recipient receives a non-exclusive, world-wide, royalty free licence to use such Background IP for the sole purpose of conducting the Project.
- c. Each Party must obtain all necessary copyright and other Intellectual Property rights and permissions before introducing into the Deliverables, any works, items, material or information, including Intellectual Property, produced, developed, owned or licensed by a third party, not being a Party to this Agreement.

5. **Project Intellectual Property:**

- a. The parties agree that all right, title and interest in the intellectual property generated pursuant to this Project (**Project IP**) will be owned jointly by the parties (as tenants in common – in equal proportions).
- b. Each party licences to the other a perpetual, non-exclusive, royalty-free, worldwide licence (including the right to sub-license to other parties on the same terms and conditions as set out in this agreement) to use the Project IP for the receiving party's

internal business purposes (which, in the context of a University, includes further research and teaching).

- c. No party is entitled to commercialise or exploit the Project IP without the prior written consent of the co-owner of the Project IP.
- d. Each party warrants it has the necessary documentation (including assignments, consents and approvals) from all persons working on the Project necessary for the Project IP to vest as required by this Agreement.

#### 6. **Publication rights**

- a. Each party may publish material relating to the Project (including Project IP), provided all material sought to be published is notified to the other party at least thirty (30) calendar days prior to the intended publication.
- b. All publications by a Party must acknowledge at a prominent place in the publication, the support of the Project.
- c. No Party will use the name of the other Party in any promotional material or advertising without the written permission of the other Party.

#### 7. **Confidentiality**

- a. Any information expressly marked as 'Confidential' which is disclosed between the parties during the Project must only be used for the purposes consistent with this Agreement. Any party receiving such confidential information must keep it confidential (except for disclosures permitted under this Agreement and disclosures required by law).
- b. Information shall not be considered 'Confidential' if it:
  - i. is or becomes generally available to the public through no fault of the receiving party;
  - ii. is obtained from a third party with a legal right to disclose such information;
  - iii. was already possessed by the receiving party as evidenced by the receiving party's written records; or
  - iv. is independently developed by the receiving party without the use or benefit of the Confidential information.

#### 8. **Indemnity and Insurance**

- a. Each party (the "**Indemnifying Party**") indemnifies the other party or parties and their officers and employees (together the "**Indemnified Parties**") from and against any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages and expenses, including those arising out of the terms of any settlement, howsoever arising that the Indemnified Party may suffer, incur or sustain as a result of any unlawful or negligent act or omission of the Indemnifying Party or any of its officers, employees, agents or representatives in connection with the performance of this Agreement.

- b. The liability of the Indemnifying Party under this clause shall be reduced proportionately to the extent to which the Indemnified Party caused or contributed to the claim in respect of which it seeks indemnity.
- c. Unless otherwise agreed in writing between the parties, the liability of a party arising under or in connection with this Agreement shall exclude any liability for loss of profit, revenue, goodwill or business opportunities, damage to reputation and any indirect or consequential loss.
- d. Each party must use all reasonable endeavours to mitigate its loss, damage and any expenses arising under or in connection with a breach of this Agreement, or in tort, or for any other common law or legislative cause of action arising under or in connection with this Agreement.
- e. “Partner Org” must effect and maintain professional indemnity insurance and public liability insurance in relation to its performance of its obligations for the duration of the Term and for a period of 12 months after this Agreement has expired or been terminated and provide evidence of currency of such insurance to Griffith upon request.

**9. Dispute resolution:**

Any dispute between the parties under this Agreement will, in the first instance, be referred to appropriately qualified representatives appointed by each party to resolve the dispute. In circumstances where those representatives are unable to resolve the dispute, the dispute will be referred to mediation (using a mediator agreed by the parties, who must facilitate mediation via teleconferencing and/or other electronic means).

**10. Termination rights:**

- a. Griffith may terminate this Agreement with immediate effect by giving notice to FURG at any time if:
  - i. the funder ceases funding the Project;
  - ii. FURG breaches any provision of these terms and conditions and fails to remedy the breach within 30 days after receiving notice requiring it to do so;
  - iii. FURG is in breach of a material term of this Agreement, and such breach is incapable of remedy; or
  - iv. FURG is unable or unwilling to undertake the Project in a manner acceptable to Griffith.
- b. Upon termination of this Agreement, for any reason, FURG will:
  - i. refund to Griffith any funds not expended or committed as at the effective date of termination; and
  - ii. deliver to Griffith, all relevant Deliverables, works, items, material or information, (in whatever form) which exists as at the date of termination.
- c. Clauses 4, 5, 6, 7, 8 and 9 survive the termination of this Agreement.
- d. Termination of these terms and conditions under this clause 10. does not affect any accrued rights or remedies of either party.

11. **Notices:** A notice by any party under this Agreement must be in writing and delivered by hand, sent by prepaid post or sent by email to the relevant addresses set out in Schedule 1, or such other addresses subsequently notified. A notice will be deemed to have been given and received:
- a. if hand delivered - on that day;
  - b. if posted – nine business days after posting on a day in which the mail would ordinarily be delivered; or
  - c. if sent by email - when the email becomes capable of being retrieved by the addressee during normal business hours, provided that no error message, bounce-back message or “out of office” message is received by the sender.
12. **Miscellaneous**
- a. This Agreement constitutes the entire agreement between the Parties and supersedes all previous written and oral agreements and understandings reached by the Parties regarding the Project.
  - b. This Agreement shall be governed and construed in accordance with the laws of the State of Queensland, Australia. The Parties submit unconditionally to the exclusive jurisdiction of the Courts of Queensland.
  - c. This Agreement may be signed in any number of counterparts (whether in original, scanned, electronic or facsimile form) and all those counterparts together make one instrument.

## Moving Forward

Griffith looks forward to collaborating with FURG on the Project. If you have any questions or comments, please do not hesitate to contact me.

Yours sincerely

*Anthony Sheil*

**Mr Anthony Sheil**  
**Office for Research**

Executed as an Agreement by **Griffith University** by:

*Anthony Sheil*

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**Mr Anthony Sheil**  
**Director**  
**Office for Research**

Executed as an Agreement by **FURG**, by:



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Danilo Giroldo  
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.....  
**Prof. Danilo Giroldo**  
**Chancellor**

May 29, 2023  
on .....  
.....  
(insert date)

on .....  
.....  
(25<sup>TH</sup> MAY 2023)

who is authorised to execute this Agreement  
on behalf of Griffith University

who is authorised to execute this Agreement  
on behalf of FURG.

### SCHEDULE

1. Project:	Humpback Whales in a Changing Climate – Phase II		
2. Subcontractor	Research Subcontractor	FURG	
3. Key Personnel	Principal Investigator	Professor Brendan Mackey	
	Griffith Personnel:	Dr Olaf Meynecke	
	FURG Personnel	Professor Eduardo Secchi	
4. Griffith Contribution	Cash: <i>as set out below</i>  In Kind: Nil		
5. Subcontractor’s Contribution	Cash: Nil  In Kind: Nil		
6. Research Services	This second stage of the “Humpback whales under a changing climate” research project is aimed to enlarge the scope of the oceanographic and whale research to include South America and address additional research questions, contributing to the success of the main project.		
7. FURG Deliverables and/or Milestones	No	Deliverable/Milestone	Due Date
	Year 1	1. Data set Description: maps of oceanographic features from existing simulations for current and future climate conditions  2. Completed review of whale distribution and migration / movement data including catch, and sighting survey spatio-temporal data and migration links (photo-identification and genetic mark recapture links, Discovery mark returns and satellite track data)  3. Participation in annual project research symposium either physically or virtually.  4. Participation in quarterly project tele-meetings.	12 months from Commencement Date
	Year 2	1. Technical Report: relationships between whales and environmental conditions	24 months from Commencement Date

		<ol style="list-style-type: none"> <li>Annual collection of records on regional fine scale whale behaviour &amp; movement. Sighting records and climate data.</li> <li>Trophic structure in the Northern Antarctic Peninsula pelagic ecosystem under the effect of climate changes assessed by analysis of stable isotopes in individual amino acids</li> <li>Participation in annual project research symposium either physically or virtually.</li> <li>Participation in quarterly project tele-meetings.</li> </ol>	
	<b>Year 3</b>	<ol style="list-style-type: none"> <li>Journal publication submitted or presentation at conferences</li> <li>Annual collection of records on regional fine scale whale behaviour &amp; movement. Sighting records and climate data</li> <li>Participation in annual project research symposium either physically or virtually.</li> <li>Participation in quarterly project tele-meetings.</li> </ol>	36 months from Commencement Date
<b>8. Background IP</b>	<b>Griffith:</b> Nil  <b>FURG:</b> Nil		
<b>9. Payment Terms And Schedule</b>	<b>FURG</b> will provide Griffith with a valid tax invoice for the Fees following execution of these terms and conditions. Invoice will be payable by Griffith within 30 days of receipt of a valid tax invoice by the Finance Department.		
	<b>Instalment No.</b>	<b>Date On Which Instalment Is Due</b>	<b>Amount to be paid excluding GST (\$ AUD)</b>
	1	On Commencement Date	118,179
	2	12 months from Commencement Date	41,725
	3	24 months from Commencement Date	41,725
		<b>Total (AUD)</b>	<b>\$201,629</b>
	<p>Invoices to be issued to Griffith University, email <a href="mailto:fin-research@griffith.edu.au">fin-research@griffith.edu.au</a> in Australian Dollars and must include the GU Reference RIMS 54917, Project Title and Principal Investigator details, in the description.</p> <p>On project completion and on receipt of the final financial statement as per Clause 2 c ii of the Agreement, any unspent funds will be returned to Griffith. Griffith will issue a tax invoice to FURG within 1 month of the project completion date.</p>		

<b>11. Griffith's Address for notices</b>	The Director Office for Research Griffith University NATHAN QLD 4111 Tel: +61 7 3735 5234 Email: <a href="mailto:researchgrants@griffith.edu.au">researchgrants@griffith.edu.au</a>
<b>12. Subcontractor's Address for notices</b>	<b><i>Eduardo R. Secchi</i></b> <i>Deputy Vice-Chancellor for Research and Graduate Studies</i> Universidade Federal do Rio Grande-FURG Campus Carreiros Rio Grande RS Brasil Tel: +55 53 3233 6769 Email: <a href="mailto:proresp.proreitor@furg.br">proresp.proreitor@furg.br</a>
<b>13. Subcontractor's Bank Details</b>	Account Holder: Fundação de Apoio à Universidade do Rio Grande - FAURG Bank: Banco do Brasil Bank Address: Rua Benjamin Constant, 72 – 3o. andar – Rio Grande, RS, Brasil Branch Code: 2694-8 SWIFT/IBAN: BRASBRRJCTA / BR5000000000026940000728110C1 Account Number: 72.811-X



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## **ANNEXURE A – RESEARCH PROPOSAL**