

# **Australian Antarctic Program Partnership Formal Collaborative Agreement**

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**This Agreement** is made the 29<sup>th</sup> day of March 2019

**Between** these Parties:

University of Tasmania (ABN 30 764 374 782, (**Collaboration Delegate**))

The Commonwealth of Australia represented by the Australian Antarctic Division, a Division of the Department of the Environment and Energy (ABN 34 190 894 983)

The Commonwealth of Australia represented by the Bureau of Meteorology (ABN 92 637 533 532)

Commonwealth Scientific and Industrial Research Organisation (ABN 41 687 119 230)

each a "**Principal Participant**", collectively the "**Parties**".

**Recitals:**

- A. The Parties wish to establish an unincorporated joint venture to be known as the Australian Antarctic Program Partnership (**AAPP**).
- B. AAPP is a multi-institutional Antarctic scientific collaboration, funded by the Antarctic Science Collaboration Initiative (**ASCI**).
- C. AAPP will be operated by the Parties through the Collaboration Delegate as agent appointed by all the Parties.
- D. The Collaboration Delegate will enter into a series of agreements with the Commonwealth and other parties under which AAPP is funded (**Funding Agreements**).

**It is Agreed:**

**1 Interpretation and Status**

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In this Agreement:

- 1.1 The words and phrases used in this Agreement have the meanings as set out at Schedule 1 to this Agreement.
- 1.2 In the interpretation of this Agreement, unless the context otherwise requires, the rules set out at Schedule 1 apply.
- 1.3 In clauses 1.4 to 1.6, the following terms have the meanings indicated:

- (a) "NCCE Parties" means the Commonwealth of Australia as represented by the Australian Antarctic Division and the Commonwealth of Australia as represented by the Bureau of Meteorology; and
  - (b) "Other Parties" means University of Tasmania and Commonwealth Scientific and Industrial Research Organisation.
- 1.4 Subject to clause 1.6, the Parties agree that this Agreement constitutes a legally binding agreement as between each of the Other Parties and between each of the Other Parties and the NCCE Parties.
- 1.5 Subject to clause 1.6, the Parties each agree that without limiting any provision in this Agreement:
  - (a) they will perform the obligations owed to each other Party as if the NCCE Parties were separate legal entities; and
  - (b) they will only pursue the relevant Party for any non-compliance by that Party of its obligations under this Agreement or any Project Agreement and will continue to perform the obligations owed to the non-defaulting Parties under this Agreement or a Project Agreement.
- 1.6 As between NCCE Parties, each NCCE Party acknowledges and agrees that:
  - (a) they are the same legal entity and all of the legal benefits and obligations of the NCCE Parties under this Agreement reside with the Commonwealth of Australia;
  - (b) the NCCE Parties are required to promote efficient, effective, economical and ethical management and use of Commonwealth resources; and
  - (c) the NCCE Parties will operate as if they were separate legal entities and this Agreement constituted a contract between them.
- 1.7

## **2 Term**

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### **2.1 Condition Precedent**

This Agreement (other than this clause 2.1 and clause 32) has no effect unless the Collaboration Delegate has entered into a Commonwealth Agreement for the grant of ASCI funding to the AAPP.

### **2.2 Term**

The term of this Agreement starts on the Commencement Date and will remain in force until the earlier of one of the following events:

- (a) 30 June 2029; or
  - (b) the Parties by unanimous written agreement terminate this Agreement; or
  - (c) following the retirement or expulsion of a Party under clause 24, only one Party remains as a party to this Agreement;
- and
- (d) subject to completion of all matters required to properly wind up AAPP.

## **2.3 Wind-Up**

On wind-up, the following matters must be agreed by the Parties:

- (a) responsibility for archiving of all AAPP data collected; and
- (b) how any Assets (whatever their value) or Intellectual Property which remain in a usable state will be owned and or made available for use by the Parties.

## **3 Relationship of this Agreement to other agreements**

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### **3.1 Relationship to the Commonwealth Agreement**

- (a) This Agreement does not reduce or affect the obligations of the Collaboration Delegate under the Commonwealth Agreement.
- (b) If there is any inconsistency between this Agreement and the Commonwealth Agreement:
  - (i) if the inconsistency means the Collaboration Delegate will breach its obligations under the Commonwealth Agreement, the Commonwealth Agreement prevails to the extent of the inconsistency, provided that the Commonwealth Agreement is ratified by a unanimous Management Committee Resolution; and
  - (ii) in any other case, this Agreement prevails.

### **3.2 Collaboration Delegate ability to enter into or vary the Funding Agreements**

The Collaboration Delegate must not:

- (a) waive any right or benefit under any Funding Agreement; or
- (b) enter into any new or agree to a material variation of any of the Funding Agreements,

without

- (c) a unanimous Management Committee Resolution; and
- (d) if the variation relates to the Contributions of a Principal Participant, the prior written consent of that Principal Participant;

with the exception that:

- (e) if the material variation, or entering into a new Funding Agreement is required in a timeframe for which it is not possible to gain unanimous Management Committee Resolution, all reasonable attempts have been made; or
- (f) if the Collaboration Delegate deems the variation is necessary in order to mitigate its risks

provided that the effect of any such variation under clauses 3.2(e) or 3.2(f) does not extend to the Parties until clauses 3.2 (c) and if it applies (d) have been satisfied.

### **3.3 All Parties to Act in Good Faith**

The Parties agree to act in good faith, to comply with all applicable laws and in a spirit of mutual trust at all times when discharging their respective obligations under the Agreement.

## **4 Australian Antarctic Program Partnership (AAPP)**

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### **4.1 Establishment of AAPP**

The Parties establish between them an unincorporated joint venture for the conduct of collaborative research and development activities, to be known as the Australian Antarctic Program Partnership (**AAPP**), for the purposes of carrying out the Activities in pursuit of the AAPP Objectives in accordance with this Agreement and the Funding Agreements.

### **4.2 Relationship of Parties**

The Parties agree that:

- (a) subject to the Agreement each Party will have an equal share in AAPP in accordance with this Agreement;
- (b) the rights, duties, obligations and liabilities of the Parties in relation to AAPP are, in every case, several and not joint or joint and several;
- (c) in relation to the Activities, the Parties do not carry on business in common with a view to joint profit and do not receive income jointly;
- (d) the relationship between the Parties is one of unincorporated joint venturers and is limited to carrying out the Activities so that nothing in this Agreement constitutes the Parties as agent, partner or trustee of any other of them, or creates any agency, partnership or trust for any purpose whatsoever;
- (e) except as otherwise specifically provided in this Agreement, or as may be specifically authorised for the purposes of clause 37.2 of this Agreement or unanimously by the Parties, an individual Party does not have any authority or power to act for, or to create or assume any responsibility or obligation on behalf of, either of another Party or of AAPP; and
- (f) except as otherwise specifically provided in this Agreement, liabilities of AAPP incurred by or at the direction of all the Parties for the purposes of the Activities are incurred severally and not jointly by the Parties.

### **4.3 Governance**

The Collaboration Delegate and the Management Committee must regulate, manage and govern AAPP, and ensure that the Activities are at all times carried out, in accordance with this Agreement and the Funding Agreements. Subject always to clause 12 and Schedule 4, this clause 4.3 is not intended to limit the ways in which the Collaboration Delegate may participate in AAPP.

### **4.4 AAPP Collaborative Partners**

AAPP Collaborative Partners are fundamental to the success of AAPP. They provide the capability for multi-institutional science collaboration in the Antarctic region, bringing together capability, capacity and resources that no single institution can provide.

AAPP is the most efficient way to meet the need for multi-institutional science collaboration. With an appropriate level of Australian Government investment, the AAPP will bring together government and non-government entities to

deliver and lead a significant part of the Australian Antarctic Science Program (AASP).

The major categories of AAPP Collaborative Partners are:

- (a) **Principal Participants**: are the Parties to this Agreement, including the Collaboration Delegate. They provide the core Antarctic science capability to deliver on the objectives of this agreement. They are directly involved in the AAPP governance including funding and resource allocation decisions to implement the collaborative Antarctic research partnership. Principal Participants are expected to collectively contribute significant cash and/or in-kind support for AAPP activities.
- (b) **Associate Participants**: are organisations that provide additional niche and specialist capability to implement the AAPP activities. Through contribution of their additional capability, they provide cash and/or in-kind support to the AAPP. In some instances they may receive AAPP funds. Where this is the case, they will be required to sign an Associate Participant Agreement including the Project Terms, the form of which will be endorsed by the Management Committee, prior to being entered into by the Associate Participant and Collaboration Delegate (at the direction of the Parties).
- (c) **National collaborators**: are organisations undertaking Antarctic and Southern Ocean research aligned with the APP objectives and acknowledged as relevant to the AAPP via project agreements. National collaborators do not receive any of the AAPP Funds, but may contribute cash and/or in-kind support for AAPP activities.
- (d) **International Collaborators** - are non-Australian organisations undertaking Antarctic and Southern Ocean research aligned with the APP objectives and acknowledged as relevant to the AAPP via project agreements. International collaborators do not receive any of the AAPP Funds, but may contribute cash and/or in-kind support for AAPP activities.
- (e) **Other Funding Parties** – are individuals who may from time to time provide funding to AAPP for any purpose related to the AAPP Objectives.

## **5 AAPP Objectives, Priorities and Outcomes**

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### **5.1 Objectives**

The core mission of AAPP is to:

- Support research that aims to understand the role of the Antarctic region in the global climate system and the implications on marine ecosystems;
- Enable the AAPP to undertake collaborative science, research and innovation activities under the Australian Antarctic Science Strategic Plan and Australian Antarctic Strategy and 20 Year Action Plan; and
- Secure Antarctic science jobs in Hobart.

The AAPP will make all of its data accessible to the marine and climate science community, other stakeholders and users, and national and international collaborators in accordance with the Australian Antarctic Program Data Policy ([https://data.aad.gov.au/aadc/about/data\\_policy.cfm?](https://data.aad.gov.au/aadc/about/data_policy.cfm?)).

### **5.2 Priorities**



The AAPP will follow the strategic priorities identified by the Australian Antarctic Strategy and 20 year Action Plan and the AASSP and subsequent Australian Antarctic Science Strategic Plans.

### **5.3 Outcomes**

The intended outcomes of AAPP are:

- continued scientific research activity in the Australian Antarctic Territory, aligned with the objectives of the Australian Antarctic Science Strategic Plan and the outcomes sought by the Australian Antarctic Strategy and 20 Year Action Plan
- employment and funding certainty for experts, students and early career researchers to strengthen Antarctic science capability in Australia.

## **6 Party responsibilities**

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### **6.1 Mutual Promises**

Each Party must:

- (a) diligently conduct its part of the Activities and observe and perform its respective obligations and commitments set out in this Agreement;
- (b) carry out its part of the Activities to a high standard, and in doing so, actively promote the AAPP Objectives;
- (c) provide its Contributions to AAPP in accordance with this Agreement and Project Agreements to which it is a party;
- (d) apply AAPP Funds and AAPP Resources only for the purpose of carrying out the Activities in accordance with this Agreement and Project Agreements to which it is a party;
- (e) not unreasonably delay any action, approval, direction, determination or decision required of it in relation to AAPP;
- (f) use reasonable efforts to ensure that its directors, officers, employees, agents, contractors, students and other representatives involved with AAPP give full force and effect to this Agreement;
- (g) act reasonably and in good faith in performing its obligations for AAPP under this Agreement.

### **6.2 Promises to Collaboration Delegate**

Without limiting the other terms of this Agreement, each Party must:

- (a) cooperate with and provide all reasonable assistance and information about its Contributions and Activities to the Collaboration Delegate to enable the Collaboration Delegate to meet its obligations under the Funding Agreements;
- (b) not knowingly or negligently do, or omit to do, anything that would cause the Collaboration Delegate to be in breach of its obligations under the Funding Agreements; and
- (c) to the extent it is reasonably able to do so, cooperate with the Collaboration Delegate in respect of the Collaboration Delegate's obligations under the Funding Agreements to commission and report on any review, audit, evaluation or survey.

## **7 Management Committee**

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- 7.1 AAPP will be managed through a committee known as the Management Committee.
- 7.2 The Parties must ensure that:
- (a) the Chairperson of the Management Committee is independent of each Participant and the management of AAPP and is free of any business or other relationship that could materially interfere, or could reasonably be perceived to materially interfere with, the exercise of their unfettered and independent judgement; and
  - (b) the Chairperson and the Program Leader are not the same individual.
- 7.3 The Parties agree to comply with Schedule 3 in relation to the governance of the Management Committee.

## **8 Program Leader**

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### **8.1 Appointment**

- (a) The Management Committee in consultation with the Collaboration Delegate must approve the appointment and the removal by the Collaboration Delegate of any person to the position of Program Leader.
- (b) The Management Committee in consultation with the Collaboration Delegate is responsible for the annual performance review of the Program Leader.

### **8.2 Delegation**

- (a) The Parties agree all matters listed as the responsibility of the Program Leader in this Agreement have been delegated to that person.
- (b) Without limiting the overall primary responsibility of the Program Leader, he or she may from time to time delegate his or her functions and roles to other officers and employees of the AAPP Office.

### **8.3 AAPP Office**

The Program Leader will lead the AAPP Office, with employment arranged by the Collaboration Delegate. The AAPP Office is responsible for coordination of AAPP, development of strategic and business plans, coordination of Management Committee meetings, communication, the management, governance and accounting of AAPP by the Collaboration Delegate pursuant to clauses 4.3, 13.2 and 14.1 and engagement with the wider AAPP community and planning, reporting and promotion of AAPP. The AAPP Office will work with the Collaboration Delegate to appoint the Management Committee and co-ordinate the entry by the Collaboration Delegate into Funding Agreements and other relevant agreements with the Commonwealth and the AAPP Collaborative Partners (including Project Plans and Associate Participant Agreements).

## **9 Annual Plan and Budget**

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### **9.1 Annual Plan and Budget**

Before the start of each Financial Year, the Program Leader must prepare, and submit for approval by the Management Committee, an Annual Plan and Budget for AAPP setting out the financial and other resource requirements for the carrying out of the Activities for that Financial Year, including:

- (a) the Activities and milestones for that Financial Year;
- (b) each Party's cash and non-cash Contributions to the Activities for the Financial Year;
- (c) cash and non-cash contributions to AAPP to be procured from Associate Participants, national collaborators, international collaborators, other funding parties and third parties;
- (d) the allocation of AAPP Funds and AAPP Resources to AAPP Projects and other Activities;
- (e) the allocation of AAPP Funds and AAPP Resources to heads of expenditure;
- (f) the Activity Payments and the AAPP Resources to be given, for the purposes of carrying out the Activities:
  - (i) to each Principal Participant; and
  - (ii) to other parties;
- (g) the portion of the AAPP Funds and the AAPP Resources to be used by the AAPP Office for the conduct of the Activities; and
- (h) the proposed allocation of AAPP Funds to be paid to the Parties for their operating expenses under approved AAPP Projects.

## **9.2 Circulation of Annual Plan and Budget**

The Program Leader must give a copy of each Annual Plan and Budget to each Party promptly after it is approved.

# **10 Specified Personnel**

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## **10.1 Make available**

A Party must supply its Specified Personnel for the Activities. Each Party must ensure that its Specified Personnel undertake the Activities in accordance with the terms of this Agreement and relevant Project Agreements.

## **10.2 Terms of employment**

The Specified Personnel of each Party will remain subject to the terms and conditions of employment of that Party.

## **10.3 AAPP IP**

Each Party must ensure that AAPP IP created by any of its Specified Personnel is owned and dealt with in accordance with this Agreement and the relevant Project Agreement.

## **10.4 Withdrawal**

- (a) A Party may withdraw any of its Specified Personnel from the Activities on written notice to the Program Leader subject to the Party providing a

suitable replacement for the withdrawn Specified Personnel, reasonably acceptable to the Program Leader.

- (b) The Program Leader may only on reasonable grounds related solely to unsatisfactory performance of the Activities give notice to a Party requiring that Party to remove personnel (including Specified Personnel) from work on AAPP. Subject only to clause 36, the Party must, at its own cost, promptly arrange for the removal of the personnel from work on AAPP and their replacement with suitable personnel reasonably acceptable to the Program Leader.
- (c) If the Party is unable to provide acceptable replacement personnel, the Program Leader may request the Management Committee to terminate, or reduce the scope of, that Party's Activity as it related to those personnel requested to be removed.

## **11 Assets**

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### **11.1 Application of clause**

Clause 11 applies to an Asset:

- (a) included as a Contribution by a Party;
- (b) acquired by a Party, either wholly or partially using an Activity Payment made to the Party;
- (c) acquired by the Collaboration Delegate using AAPP Funds;
- (d) forming part of the AAPP Resources provided to a Party after the Commencement Date.

### **11.2 Acquisition of Assets**

The Parties must not use the Commonwealth Funding for capital works or for the purchase, construction, renovation or extension of buildings and facilities, except as for the agreed Activities.

### **11.3 Ownership**

Unless otherwise agreed between the Parties, an Asset remains vested in the Party having title or otherwise vests in the Party entitled to ownership of the Asset ("**Asset Owner**").

### **11.4 Obligations of Asset Owner**

For the Term, the Asset Owner must:

- (a) use, and must allow another Party or entity participating in AAPP or its Activities to use, the Asset as necessary for the Activities and/or for the promotion of the AAPP Objectives;
- (b) not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 11, without the prior written approval of the Program Leader;
- (c) use reasonable endeavours to safeguard all Assets against theft, loss, damage, or unauthorised use;
- (d) use reasonable endeavours to keep the Asset in good working order and condition;

- (e) maintain all appropriate insurances for all Assets to their full replacement value, noting the Commonwealth's interest in the Asset under the Commonwealth Agreement, and provide satisfactory evidence of this on request from the Collaboration Delegate, or via an agreed form of 'self-insurance' (to be agreed with the Program Leader);
- (f) if required by law, maintain registration and licensing of all Assets;
- (g) be responsible for, maintenance and, if required, repair and replacement of the Asset, and any other costs and liabilities associated with the Asset; and
- (h) establish and maintain an Assets register enabling the Asset Owner to, when requested by the Collaboration Delegate, provide copies of the Assets register to the Collaboration Delegate, in particular to meet the requirements of any Funding Agreement.

### **11.5 Costs**

The Management Committee may, at its discretion, treat all or part of the expenses referred to in clause 11.4, which are not paid from the AAPP Funds to the Asset Owner, as an additional Contribution by the Asset Owner.

## **12 Collaboration Delegate**

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### **12.1 Appointment**

The Parties agree to severally appoint the Collaboration Delegate to perform the Management Functions for the Parties on the terms and for the purposes set out in Schedule 4 and this Agreement.

### **12.2 Acceptance**

The Collaboration Delegate accepts its appointment to perform the Management Functions at the direction of the Parties on the terms and conditions in Schedule 4 and this Agreement.

### **12.3 Removal or resignation**

The Parties agree that the Management Committee will if necessary remove or approve the resignation of the Collaboration Delegate from time to time and immediately:

- (a) appoint a new Collaboration Delegate; and
- (b) ensure all that is reasonably necessary is done to effectively transfer the responsibilities, Funding Agreements, AAPP Funds, records, and other matters from the old Collaboration Delegate to the new Collaboration Delegate; and
- (c) will ensure that any of the old Collaboration Delegate's or the new Collaboration Delegate's reasonable costs which arise from the removal or appointment (as the case may be) are met from the AAPP Funds, except where the removal is for unlawful conduct or unsatisfactory performance.

## **13 Accounting**

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### **13.1 Party accounts**

Each Party must keep financial accounts recording:

- (a) the cash component of its Contribution;
- (b) the Activity Payments made to it by the Collaboration Delegate;
- (c) all expenditure incurred by the Party from its Activity Payments;
- (d) any royalties or licence fees paid to it by the Collaboration Delegate.

### **13.2 AAPP Account**

The Collaboration Delegate must establish and keep a separate AAPP Account in its accounting system to record:

- (a) receipt of the AAPP Funds and interest earned on AAPP Funds;
- (b) other cash paid to AAPP for the Activities;
- (c) the payment of AAPP Funds to the Parties and other entities;
- (d) withdrawals from the AAPP Account under Item 12 of Schedule 3; and;
- (e) any other AAPP related income or expenditure by the Collaboration Delegate.

### **13.3 Provision of information by Parties**

- (a) Each Party must supply to the Collaboration Delegate, within 14 days of a written request from the Collaboration Delegate:
  - (i) all necessary information from the accounts referred to in clause 13.1 for the Collaboration Delegate to:
    - A. satisfy the financial reporting requirements in the Funding Agreements;
    - B. report to the Parties under this Agreement; and
    - C. conduct its operations in accordance with best practice principles of corporate governance (including Schedules 3 and 4); and
  - (ii) any other information reasonably requested by the Collaboration Delegate relating to the AAPP Projects and any other Activities involving the Party, including information required to satisfy the requirements of the Funding Agreements.
- (b) Each Party must supply the information under clause 13.3(a) in the Approved Form and in an expeditious manner.

### **13.4 Accounting for non-cash Contributions**

Each Party must:

- (a) keep separate records of its non-cash Contributions, including time spent by each of its Specified Personnel on the Activities; and
- (b) on receipt of a request of the Collaboration Delegate, promptly supply the records to the Collaboration Delegate, in the Approved Form.

## **14 Reporting by AAPP**

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- 14.1 Subject to the consent of the Commonwealth and any obligations of confidentiality or privacy owed by the Collaboration Delegate or any Management Committee Members, the AAPP Office must as soon as they are available provide to each Party a copy of:
- (a) all reports and plans provided to the Commonwealth other than normal correspondence between the Collaboration Delegate and the Commonwealth; and
  - (b) any notices, other than normal correspondence, the Collaboration Delegate receives from the Commonwealth.

## **15 Notification of Critical Events**

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### **15.1 Notification by Collaboration Delegate**

The Collaboration Delegate must give written notice to the Management Committee and each Party within 10 Business Days of becoming aware of any of the following:

- (a) litigation threatened or commenced against the Collaboration Delegate in its capacity as Collaboration Delegate;
- (b) a notification from the Commonwealth in relation to a breach of the Commonwealth Agreement;
- (c) a substantial dispute between the Collaboration Delegate and a Party;
- (d) a substantial dispute between the Collaboration Delegate, acting in its capacity as Collaboration Delegate and another entity;
- (e) a substantial dispute between the Collaboration Delegate, acting in its capacity as Collaboration Delegate and the Commonwealth; or
- (f) notice of circumstances that would or may reasonably warrant expulsion of a Party under clause 24.1(b).

### **15.2 Notification by Parties**

The Parties must notify the Management Committee and the Collaboration Delegate (as appropriate) within 10 Business Days of becoming aware of a breach or suspected breach of this Agreement that would or may reasonably prevent, hinder or otherwise adversely affect the Collaboration Delegate's ability to comply with its obligations of the Commonwealth Agreement and the Collaboration Delegate must:

- (a) provide notice to the Commonwealth of that breach or suspected breach;
- (b) provide all information reasonably required by the Commonwealth in relation to the breach or suspected breach;
- (c) identify to the Commonwealth the steps the Collaboration Delegate and the Management Committee intend to take to address the matter;
- (d) keep the Commonwealth informed of any action it takes, including action requiring remedy of the breach; and
- (e) provide notice to the Commonwealth once the breach is remedied, or if not remedied on the matter being resolved.

## **16 Background IP**

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### **16.1 Contribution of Background IP for AAPP Projects**

- (a) Each Party grants the other Parties the right to use its Background IP but only for the purpose of the undertaking AAPP Projects. Background IP will be recognised and respected and will only be used as authorised by the owner of the Background IP or as expressly permitted under law.
- (b) Each Party agrees to make its Background IP available for the Activities and may at its discretion make its Background IP available for purposes not directly related to the conduct of an AAPP Project, as specified in a written notice to and approved by the Program Leader.
- (c) Each Party warrants to the other Parties that:
  - (i) it is entitled; or
  - (ii) it will be entitled at the relevant time,to deal with the Intellectual Property in its Background IP in the manner provided for in this clause 16.1.

## **17 AAPP Projects**

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### **17.1 Activities through AAPP Projects**

The Activities will be carried out through discrete Project Agreements.

### **17.2 Approval of Projects**

- (a) All Project Plans will contain the information set out in, and be in a form based on, the Project Plan Template and will be signed by all Project Participants.
- (b) The Management Committee will decide on the Project Plans to be funded, taking into account recommendations of the Program Leader and/or any relevant subcommittee approved by the Management Committee (including assessment of projects by the Australian Antarctic Science Program where applicable). The Management Committee is not required to accept or act on the recommendations.
- (c) The Management Committee will only approve AAPP Projects submitted by the Parties or Associate Participants who have entered into an Associate Participant Agreement. Notwithstanding the preceding sentence, the Management Committee may approve for the Collaboration Delegate to enter into an Associate Participant Agreement under clause 17.4 in order to allow commencement of an AAPP Project.
- (d) The Parties must follow the selection and approval processes for Project Plans managed by the Management Committee.
- (e) The Project Participants must not start an AAPP Project unless:
  - (i) the Management Committee has approved the Project Plan for that AAPP Project;
  - (ii) all relevant ethics approvals, environmental authorisations and permits, have been obtained;



- (iii) all relevant logistics support has been approved by the Australian Antarctic Program; and
  - (iv) the Program Leader has issued a Document in Writing to the Principal Participant confirming the Management Committee has approved the AAPP Project.
- (f) If requested by a Party, the Management Committee will provide reasons in a document in writing for its rejection of a Project Plan.

### **17.3 Conduct of AAPP Projects**

On approval of an AAPP Project by the Management Committee, the Project Participants will carry out the AAPP Project in accordance with this Agreement and the Project Agreement.

### **17.4 Associate Participant Agreement**

- (a) The Collaboration Delegate may enter into agreements with the Associate Participants to secure their Contributions to AAPP, and/or to secure their agreement to the terms of this Agreement.
- (b) The Parties agree that Associate Participants may participate in the Activities on terms consistent with this Agreement via an Associate Participant Agreement with the Collaboration Delegate covering such participation as approved by the Management Committee.
- (c) Subject to the Management Committee imposing any contrary requirement, an Associate Participant Agreement with an Associate Participant must be consistent with this Agreement.

## **18 Data and Intellectual Property**

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- 18.1 Data and data products produced under the auspices of AAPP will be openly available, provided unencumbered, and access will be provided on a free, open and timely basis, unless the Management Committee unanimously agrees otherwise. Where AAPP data is to be made freely accessible, it will be licensed by a Creative Commons By Attribution (CC BY) licence (<https://creativecommons.org/licenses/by/4.0/>) and stored on appropriate institutional repositories and websites that are approved by the Parties in accordance with the Australian Antarctic Program Data Policy ([https://data.aad.gov.au/aadc/about/data\\_policy.cfm?](https://data.aad.gov.au/aadc/about/data_policy.cfm?)).

### **18.2 AAPP IP**

- (a) The Parties acknowledge and agree that it is intended that all data and data products produced under the auspices of AAPP be openly available.
- (b) Any IP rights associated with AAPP raw data lie with the Party that produced the AAPP raw data.
- (c) Any IP rights arising from AAPP Projects (other than Improvements) predominantly developed by an individual Party whether before or after the Commencement Date lie with that Party, unless set out otherwise in an AAPP Project Agreement.
- (d) Improvements will be owned by the Party that owns the Background IP to which the Improvements relate, unless set out otherwise in an AAPP Project Agreement.

- (e) For AAPP IP produced (other than AAPP data but including products that may use AAPP data, data products or services), the IP rights of that particular AAPP IP rests with the Party that produces that AAPP IP, with no restriction other than that set out in the following sub clauses below.
- (f) Any Party owning AAPP IP rights will grant a non-exclusive licence, including a right to sublicense, to any user of the data, data products or Improvements to use the AAPP IP for any non-commercial purposes.
- (g) Except where otherwise negotiated with the AAPP Office, any users (including re-packagers) of AAPP data, data products and services are required to clearly and prominently acknowledge the source of the material derived from the AAPP, together with (where relevant) a reference/link to the related metadata record.
- (h) Re-packagers of AAPP data should include a statement that information about data quality and lineage is available from the metadata record and a statement that data, data products and services from AAPP are provided “as is” without any warranty as to fitness for a particular purpose.

### **18.3 Parties’ right to use AAPP IP**

Subject to this Agreement, each Party grants:

- (a) to each other Party a non-exclusive, royalty-free licence to use, reproduce and adapt its AAPP IP for the Activities;
- (b) to each other Party an irrevocable, world-wide, non-exclusive, royalty-free licence to use, reproduce and adapt its AAPP IP for non-commercial research purposes which may include funded research carried out with other parties outside of this Agreement but does not include Commercialisation. This licence includes the right to sub-license use of the AAPP IP as is reasonably necessary to carry out, and to use the outcomes of, the non-commercial research provided that any such sub-licence does not extend to Commercialisation of the AAPP IP;
- (c) the Collaboration Delegate a non-exclusive, royalty-free licence (including the right to sub-licence) to use, reproduce and adapt its AAPP IP for the Activities in accordance with directions of the Management Committee.  
  
For the avoidance of doubt, where AAPP IP (including AAPP data) is made publically available on terms that enable broader use than that set out in this clause 18.3 (such as a CC BY licence), the broader terms shall apply to a Party’s use of that AAPP IP or data; and
- (d) a licence for the purposes, and on the terms, approved by the Management Committee under clause 18.4 to the relevant Party.

### **18.4 Licence to use AAPP IP outside this Agreement**

- (a) A Party wishing to use AAPP IP owned by another Party for any purpose not authorised under clause 18.3, must obtain the prior approval of the Management Committee, or following the expiry or other termination of this Agreement, that Party. The grant of any such approval, and any terms attaching to it, will be at the Management Committee’s or the IP owner’s absolute discretion.
- (b) Where the Management Committee or the AAPP IP owner has granted approval under clause 18.4(a), the respective Parties will enter into a

separate licence, the terms of which may require that the Party granted such a licence:

- (i) maintains the confidentiality of Confidential Information;
- (ii) does not prejudice the AAPP IP owner's ability to:
  - A. protect the AAPP IP;
  - B. use the AAPP IP to achieve the AAPP Objectives; or
  - C. maximise the return from any AAPP IP that has significant commercial potential.

#### **18.5 Use of AAPP IP at own risk**

Each Party agrees that it uses the AAPP IP licensed to it (whether under this Agreement or by separate licence) at its own risk and releases and indemnifies the other Parties in relation to such use of AAPP IP in accordance with clause 20.

#### **18.6 Improvements**

- (a) Intellectual Property in Improvements made by a Party under the licence granted under clause 18.3 or 18.4 vests in the Party.
- (b) The Party:
  - (i) must advise the Management Committee, or following the expiry or other termination of this Agreement, the owner of the AAPP IP to which the Improvement relates of the Improvements promptly after creation;
  - (ii) if requested by the Management Committee or the AAPP IP Owner, must grant to the AAPP IP Owner and the other AAPP Parties a perpetual, worldwide, irrevocable, royalty-free, non-exclusive licence to use the Improvements and the Intellectual Property in the Improvements for the Activities (other than Commercialisation) or for any other non-commercial research; and
  - (iii) unless the licence granted under clause 18.4 is a licence to Commercialise, must not Commercialise any Improvements without an appropriate licence of the AAPP IP on terms agreed by the AAPP IP Owner.

#### **18.7 IP Register**

- (a) The Parties must maintain an IP Register for the AAPP IP they own or have a licence to use (and for any Improvements or Background IP) as appropriate to the nature and extent of the IP rights and as approved by the Management Committee.

### **19 Moral Rights**

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If requested by the Program Leader, a Party will use reasonable efforts to get from its Specified Personnel, other employees, agents and sub-contractors, any Moral Rights consents reasonably necessary for the Activities.

## **20 Indemnities**

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20.1 Subject to clauses 20.2, 20.3 and 20.4, each Party ("Indemnifying Party") irrevocably and unconditionally releases and indemnifies and agrees to keep released and indemnified each of the other Parties and their respective directors, officers and employees ("those Indemnified") from and against any and all Loss however arising that those Indemnified may suffer, incur or sustain because of:

- (a) a breach of this Agreement (including material breach of a warranty given under clause 35.2) by the Indemnifying Party;
- (b) an unlawful or negligent act or omission by the Indemnifying Party or any of its directors, officers or employees arising in connection with AAPP; or
- (c) the exercise by those Indemnified of any rights granted to them in relation to the AAPP IP or Background IP by the Indemnifying Party.

### **20.2 Reduction of indemnity**

The release and indemnities given under clause 20.1 will be reduced proportionately to the extent that the Loss was caused or contributed by:

- (a) a breach of this Agreement (including material breach of a warranty given under clause 35.2) by those Indemnified;
- (b) any unlawful or negligent act or omission by those Indemnified or any of their directors, officers or employees; or
- (c) the exercise by those Indemnified of any rights in the AAPP IP or Background IP.

### **20.3 Commonwealth exception**

- (a) If the Commonwealth is a Party, it is excluded from the obligations under clauses 18.5 and 20.1 to the other Parties.
- (b) This clause 20.3 does not exclude or reduce the liability of, or benefit to, the Commonwealth that arises by operation of law or breach of statute.

### **20.4 Consequential losses**

A Party is not liable for loss of income or profits and loss of expectation of income or profits arising under this Agreement.

### **20.5 Notification of acts**

Those Indemnified must promptly notify the Indemnifying Party of any event or circumstance that may reasonably give rise to those Indemnified relying on the release and indemnities in clause 20.1.

### **20.6 Survival**

The release and indemnities in clause 20.1:

- (a) are a continuing obligation, separate and independent of each Party's other obligations;
- (b) survive the expiration or earlier termination of this Agreement; and
- (c) continue to apply (both as a right and as an obligation) to any Party who is expelled or retires from AAPP.

## 21 Insurance

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### 21.1 Obtain insurance

- (a) A Party must effect and keep current appropriate insurance that a prudent person participating in the Activities would maintain to cover its participation in the Activities including field work in the Southern Ocean and the Australian Antarctic Territory.
- (b) The insurance:
  - (i) must cover loss, damage and liability the Party may suffer or incur in conducting the Activities;
  - (ii) must be with an insurer authorised by the Australian Prudential Regulation Authority or approved by the Commonwealth;
  - (iii) must apply to all aspects of the Activities, including any components that may rely on support from outside the Australian Antarctic Program;
  - (iv) must include:
    - A. workers' compensation insurance for an amount required by the relevant State or Territory legislation;
    - B. public liability insurance for at least \$20,000,000 per claim; and
    - C. professional indemnity insurance for at least \$1,000,000 per claim; and
  - (v) must include adequate run-off cover after this Agreement has ended.

21.2 Clause 21.1(b) does not apply to a Project Participant which is an agency or instrumentality of the Commonwealth or a State or Territory which self-insures.

## 22 Work Health and Safety

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- (a) In this clause:
  - (i) **corresponding WHS law** has the meaning given in section 4 of the WHS Act;
  - (ii) **Regulator** means an authority referred to in a WHS Law as the relevant authority for occupational health and safety complaints, queries or investigations;
  - (iii) **WHS Act** means the Work Health and Safety Act 2011 (Cth);
  - (iv) **WHS Law** means the WHS Act and any corresponding WHS law;
  - (v) **WHS entry permit holder** has the meaning given in the WHS Act; and
  - (vi) **WHS Regulations** means the regulations made under the WHS Act.
- (b) Each Party must in carrying out its obligations under this Agreement, comply, and use reasonable endeavours to ensure that its subcontractors comply, with the provisions of all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local

authority including those arising under a WHS Law in respect of occupational health and safety.

- (c) Each Party must, in carrying out its obligations under this Agreement, comply, and use reasonable endeavours to ensure that its subcontractors comply, with any of the Collaboration Delegate's work, health and safety policies as notified, referred to, or made available, by the Collaboration Delegate or Management Committee to the Party in writing.
- (d) If a Party is required by a WHS Law to report to a Regulator an incident arising out of or in connection with this Agreement:
  - (i) at the same time, or as soon as is possible in the circumstances, the Party must give notice of such incident, and a copy of any written notice provided to a Regulator, to the Collaboration Delegate; and
  - (ii) the Party must provide to the Collaboration Delegate, within such time as is specified by the Collaboration Delegate, a report detailing the circumstances of the incident, the results of investigations into its cause, and any recommendations or strategies for prevention in the future.
- (e) Each Party must inform the Collaboration Delegate of the full details of:
  - (i) any suspected contravention of a WHS Law arising out of or in connection with this Agreement, within 24 hours of becoming aware of any such suspected contravention;
  - (ii) any cessation or direction to cease work arising out of or in connection with this Agreement, due to unsafe work, immediately upon the Party being informed of any such cessation or direction;
  - (iii) any workplace entry by a WHS entry permit holder, or an inspector, to any place where activities arising out of or in connection with this Agreement are being performed or undertaken, within 24 hours of becoming aware of any such workplace entry; and
  - (iv) any proceedings against the Party or its officers, or any decision or request by the Regulator given to the Party or its personnel, under a WHS Law, within 24 hours of becoming aware of any such proceedings, decision or request.

## **23 Amendments**

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### **23.1 Written variations**

No agreement or understanding varying this Agreement is legally binding unless in writing and signed by all Parties.

### **23.2 Commonwealth Approval**

Any changes to this Agreement that require the prior approval of the Commonwealth under the Commonwealth Agreement being changes which:

- (a) are or may be inconsistent with the Commonwealth Agreement; or

- (b) affects the Collaboration Delegate's ability to comply with the Commonwealth Agreement;

must not be made without such prior written approval of the Commonwealth.

## **24 Admission of New Parties**

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- 24.1 The Parties may by unanimous written agreement of the Parties or upon instruction by an ASCI Program Delegate:
  - (a) admit another organisation to this Agreement ("**Joining Party**"); and
  - (b) set the terms of the Joining Party's admission.
- 24.2 If the Parties agree to admit the Joining Party under clause 24.1, the Joining Party must execute a deed of accession (in a form unanimously agreed by the Management Committee) under which the Joining Party agrees to be bound as a Party to this Agreement, and which when executed by the Parties will bind the Parties to the terms of this Agreement in relation to the Joining Party.
- 24.3 The Collaboration Delegate will provide a copy of the executed deed of accession to all Parties.

## **25 Retirement and expulsion from AAPP**

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### **25.1 Retirement and expulsion from AAPP**

- (a) A Party may retire from AAPP by giving 6 months written notice to all other Parties; and
- (b) A Party ("**Defaulting Participant**") may be expelled from AAPP by a unanimous resolution of the other Parties if Due Cause has arisen in respect of the Defaulting Participant and:
  - (i) the Due Cause is incapable of being remedied; or
  - (ii) if the Due Cause is capable of being remedied, the Due Cause remains unremedied for 21 Business Days after written notice of the principal facts of the alleged Due Cause is given to the Defaulting Participant by the Collaboration Delegate.

### **25.2 Due Cause**

For the purpose of clause 24.1(b), Due Cause means:

- (a) not making Contributions;
- (b) unauthorised disclosure of Confidential Information;
- (c) unauthorised publication of information or material;
- (d) unauthorised use of Background IP;
- (e) unauthorised use of AAPP IP;
- (f) proposed changes to Specified Personnel that are contrary to the Funding Agreements and are likely to adversely affect the ability to achieve the AAPP Objectives;
- (g) any other material breach of this Agreement or a Project Agreement;
- (h) becoming insolvent, bankrupt or being subject to the appointment of a mortgagee, a receiver or manager or an investigator to investigate the

Party's affairs, or making an arrangement or composition for the benefit of creditors or being the subject of winding up proceedings;

- (i) assignment of its rights or obligations under this Agreement other than under clause 40.2;
- (j) another matter as the Management Committee may reasonably and properly unanimously declare to be a Due Cause.

### **25.3 Consequences**

- (a) If a Party is expelled or retires from AAPP, the Party:
  - (i) ceases to be a Party;
  - (ii) relinquishes all rights under this Agreement other than those specified to survive expiration or termination of this Agreement; and
  - (iii) subject to clause 24.3(b), is relieved of its obligation to make further Contributions.
- (b) A Party who is expelled or retires from AAPP remains bound by any extant Project Agreement unless the Party is expelled or retires from the AAPP Project, or is otherwise released from its obligations, in accordance with the relevant Project Agreement.
- (c) The retirement or expulsion of any Party from AAPP does not affect:
  - (i) the enforceability of other obligations of the Party;
  - (ii) rights against the Party accrued at that time or arising from the withdrawal or expulsion;
  - (iii) the obligation on the Party under clause 16 in relation to Background IP supplied before the date of expulsion or retirement;
  - (iv) the obligations on the Party under clauses 18.2(d) and 18.3 in relation to AAPP IP at the date of expulsion or retirement; or
  - (v) the licence granted to the Party under clause 18.3 for AAPP IP.
- (d) A Party who is expelled or retires from AAPP remains subject to the following obligations:
  - (i) clause 24 [Retirement and expulsion from AAPP]; and
  - (ii) clause 26 [Continuing obligations];
- (e) The retirement or expulsion of a Party from AAPP does not relieve the remaining Parties of their obligations under this Agreement or any extant Project Agreement. The remaining Parties must continue to conduct the Activities and perform the terms of this Agreement and any extant Project Agreement.

## **26 Effect of termination**

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### **26.1 Expiration**

Unless the Parties otherwise agree, this Agreement terminates on expiry of the Term under clause 2.

### **26.2 Accrued rights and obligations**



Termination of this Agreement is without prejudice to the continuing enforceability of any rights or obligations of the Parties which have accrued at the time to termination.

## **27 Continuing obligations**

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On retirement or expulsion under clause 24 and on termination of this Agreement, unless the Parties agree otherwise, the Parties and any former Parties remain subject to the following obligations:

- (a) clause 6.2 [Promises to Collaboration Delegate];
- (b) clause 18 [Intellectual Property];
- (c) clause 20 [Indemnities];
- (d) clause 21 [Insurance];
- (e) clause 24 [Retirement and expulsion from AAPP];
- (f) clause 25 [Effect of termination];
- (g) clause 28 [Safe and ethical research];
- (h) clause 29 [Privacy];
- (i) clause 30 [Records and access];
- (j) clause 32 [Confidential Information],

to the extent any such obligations are applicable.

## **28 Compliance with law and policy**

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### **28.1 Agreement to comply with law**

In carrying out this Agreement, a Party must comply with all relevant statutes, regulations, by-laws and requirements of the Commonwealth and any State, Territory or local authority, including but not limited to the Antarctic Treaty and its 4 international agreements, and State/Territory legislation about working with children and vulnerable people.

## **29 Safe and ethical research**

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### **29.1 Compliance with codes**

Each Party must ensure that research conducted by it under the auspices of AAPP complies with and observes all relevant ethics codes and guidelines adopted by the National Health and Medical Research Council, the Australian Research Council, Universities Australia, the Office of Gene Technology Regulator and all other relevant regulatory agencies operating in Australia, including obtaining approvals from a relevant ethics committee and any other approval needed before starting. In addition to usual approvals/ethics approvals:

- For all projects on Macquarie Island, the approval of the Tasmanian Government is also required;

- All projects within Antarctica and the Southern Ocean below 60S must comply with the requirements of the Australian Antarctic program for environmental and ethics approvals; and
- All projects on Australian sub Antarctic islands must comply with the relevant Government requirements. E.g. Macquarie Island Tasmanian Government and Heard and Macdonald Islands (Australian Government laws administered by AAD).

#### 29.2 Ionising radiation

If the Party is conducting research in Australia involving ionising radiation, the Party must ensure that persons performing procedures involving ionising radiation are appropriately trained and hold a relevant current licence from the appropriate State or Territory authority.

#### 29.3 Evidence of compliance

Whenever reasonably required by the Program Leader, a Party must promptly give written evidence of compliance with this clause 28.

### 30 Privacy

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#### 30.1 Compliance

A Party agrees to comply with its obligations, if any, under the *Privacy Act 1988* (Cth) and any privacy law of a State or Territory ("**Privacy Legislation**").

#### 30.2 Procedures

- If a Party has no obligations under the Privacy Legislation, the Party must ensure that it has procedures in place to deal with Personal Information received, created or held by the Party under this Agreement.
- The procedures must at least comply with the Australian Privacy Principles under the *Privacy Act 1988* (Cth).

#### 30.3 Obligations

A Party must:

- only use Personal Information received, created or held by the Party under this Agreement ("**Participant-held Personal Information**") to meet its obligations under this Agreement;
- ensure that any person, who accesses Participant-held Personal Information with the Party's approval, is aware of, and gives a written undertaking to comply with, clause 29;
- ensure that any subcontract made under this Agreement includes enforceable obligations requiring the subcontractor to comply with clause 29; and
- cooperate with reasonable requests or inquiries made by the Information Commissioner or the Commonwealth with respect to the management of Participant-held Personal Information.

## **31 Records and access**

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### **31.1 Maintenance of records**

A Party must:

- (a) keep its records and accounting books in relation to the Activities in accordance with applicable Australian accounting standards and controls; and
- (b) either:
  - (i) keep the records and accounting books for 7 years after termination of this Agreement; or
  - (ii) deliver them to the Collaboration Delegate or to another person directed by the Collaboration Delegate.

### **31.2 Access to premises and records**

A Party must:

- (a) at all reasonable times provide the Collaboration Delegate and the Commonwealth with:
  - (i) reasonable access to the Party's premises, records and employees;
  - (ii) reasonable assistance to:
    - A. inspect the performance of the Party;
    - B. locate and inspect records; and
    - C. make copies of records and remove those copies, relevant to the operations of AAPP as it applies to the Party;
- (b) at all reasonable times allow the Collaboration Delegate and its officers, employees, agents and contractors to:
  - (i) access the parts of the Party's premises where the Activities are being conducted and view the performance of the Activities (however access to field locations subject to the Australian Antarctic Division's control will be at the discretion of the Australian Antarctic Division and will be subject to its reasonable requirements including scientific, operational, medical, logistical and training requirements); and
  - (ii) access, inspect and copy material, records, accounts and other financial material relevant to the Activities, including for an audit; and
- (c) ensure that any subcontract signed by the Party related to this Agreement, contains an equivalent clause granting the rights set out in clause 30.

### **31.3 Limitation on access**

Despite clause 30.2(b), a Party granting access ("**Host**") to the Collaboration Delegate, or its officers, employees, agents or contractors ("**Invitee**"), may require that the Invitee sign an agreement in an acceptable form to the Host, which:

- (a) sets out reasonable terms of the visit, including compliance with the Host's reasonable policies and guidelines;
- (b) contains reasonable obligations of confidentiality and non-disclosure that protect the interests of the Host;
- (c) reasonably address the liability of the Parties if the Invitee is injured while visiting the Host's premises; and
- (d) require the Invitee to comply with relevant security, environmental and workplace health and safety legislation.

#### **31.4 Commonwealth right of access**

The Commonwealth's rights under clause 30.2(a) are subject to:

- (a) the provision of reasonable prior notice to the Party; and
- (b) reasonable security and safety procedures of the Party,

except that clause 30.4(a) does not apply if a matter is being investigated which, in the opinion of the Collaboration Delegate or a senior member of the Commonwealth, may involve an actual or apprehended serious breach of the law.

## **32 Publications**

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- 32.1 When any Activity results are published, the publishing party will acknowledge any technical input, or other significant contribution of any other Party and the Commonwealth Funding.
- 32.2 A Party must, in all of its signage, publications, promotional and advertising materials, statements and public announcements in relation to AAPP or any products, processes or inventions developed as a result of it, acknowledge:
  - (a) the financial and other support the Party has received from the Commonwealth Funding in a manner which complies with the requirements of clauses 34 and 35 or as directed by the Management Committee; and
  - (b) where any Activity results are published by a Party, the technical input or other significant contribution of any other Party (where applicable).
- 32.3 The Party must advise the Program Leader of any significant promotional event to be held relating to the Activities. This may include allowing the Program Leader, or any other person nominated by the Program Leader to speak at, or play any role (including an integral role) in the relevant promotional event.
- 32.4 The Management Committee may direct the Collaboration Delegate to publish information or material arising from the Activities if the Management Committee decides in its absolute discretion that the benefits of publication, taking into account the AAPP Objectives, outweigh any potential disadvantage for AAPP.
- 32.5 The Parties will use their best endeavours to ensure nothing is done, including publication of information or material, which might prejudice the subsistence, of AAPP IP. In particular, the Parties will not publish or disclose any Intellectual Property to any third person so as to preclude the obtaining of Intellectual Property protection or cause the loss of Intellectual Property in any Confidential Information.

- 32.6 Subject to clause 34, each Party must ensure that any publication made under this clause 32 acknowledges the contributions (if any) made by the AAPP Collaborative Partners and the support of the Commonwealth and AAPP unless directed otherwise by the Participant or the Commonwealth or the Management Committee (as the case may be).
- 32.7 The Parties must comply with the Australian Antarctic Program Media Communication and Attribution Policy available at:  
[http://www.antarctica.gov.au/data/assets/pdf\\_file/0007/225952/MediaAttribution.pdf](http://www.antarctica.gov.au/data/assets/pdf_file/0007/225952/MediaAttribution.pdf)
- 32.8 The Parties must use the AAP logo on all materials and publications associated with the AAPP.

### **33 Confidential Information**

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#### **33.1 Obligation**

Except as otherwise provided in this clause 32, each Party must keep confidential and not disclose any Confidential Information.

#### **33.2 Permitted use and disclosure**

Each Party may:

- (a) use Confidential Information only for the purposes of this Agreement and any Project Agreement;
- (b) if the Party is the Collaboration Delegate, use and disclose AAPP Confidential Information as directed by the Management Committee for the purposes of this Agreement or otherwise for the purposes the AAPP Objectives;
- (c) if the Party is the Collaboration Delegate, use and disclose Confidential Information as necessary for the purposes of complying with the Funding Agreements;
- (d) disclose Confidential Information to its:
  - (i) employees;
  - (ii) directors and officers;
  - (iii) legal, financial or other professional adviserswho have a need to know for the purposes of this Agreement (and only to the extent that each has a need to know), provided the disclosure is made subject to an obligation of confidentiality in accordance with clause 32.6;
- (e) use and disclose Confidential Information where authorised under a Project Agreement; and
- (f) disclose Confidential Information to the extent required by law.

#### **33.3 Exceptions**

- (a) The obligations imposed on a Party by this clause 32 will not apply to Confidential Information which:
  - (i) prior to disclosure is in the public domain or subsequent to disclosure to the Party becomes part of the public domain other

than as a result of an unauthorised act or failure to act by that Party;

- (ii) is received by a Party from a third party without any obligation to hold in confidence and which has not been obtained by that third party directly or indirectly from any Party;
  - (iii) is independently developed by an employee or officer of the Party owing the obligation of confidentiality while having no knowledge of the Confidential Information;
  - (iv) in the case of Party Confidential Information, the Party claiming confidentiality has consented to the disclosure; or
  - (v) in the case of AAPP Confidential Information, the Management Committee has consented to the disclosure; or
  - (vi) is disclosed by a Minister to Parliament, Cabinet or a Parliamentary or Cabinet committee or subcommittee; or
  - (vii) is disclosed by a Party to its responsible Minister or to a Parliamentary committee or subcommittee.
- (b) A Party is not obliged to maintain the confidentiality of its own Party Confidential Information.

#### **33.4 Onus**

The Party receiving Confidential Information has the onus of showing that any of the above exceptions apply.

#### **33.5 Combination of information**

A combination of information will not be taken to be in the public domain merely because it contains information in the public domain.

#### **33.6 Employees**

A Party must use reasonable efforts to ensure that:

- (a) its respective employees, directors, officers and advisers, who participate in the Activities or acquire access to Confidential Information, must comply with the obligation of confidentiality under this clause 32 as if Parties to this Agreement; and
- (b) any of the above-mentioned employees, directors, officers and advisers who cease to be employees, directors, officers or advisers must continue to be bound by such obligations of confidentiality.

#### **33.7 Survival**

The obligations of confidentiality imposed on a Party will survive termination of this Agreement or the Party's expulsion or retirement from AAPP.

### **34 Public Announcements**

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- 34.1 The Management Committee has delegated to the Program Leader responsibility for making public announcements about AAPP.
- 34.2 The Program Leader must notify all Parties of any public announcement at least 24 hours before making the announcement, unless complying with this

requirement is likely to cause loss, damage or injury to any natural person or the environment.

- 34.3 Subject to clause 33.3, a Party must not make any public announcement in relation to AAPP or this Agreement without the prior approval of the Program Leader.
- 34.4 If a Party is required by law or a regulatory body to make a public announcement about AAPP or this Agreement, then the Party must, to the extent practicable, first consult with Program Leader and take into account the reasonable requirements of the Management Committee.

## **35 Use of Party's name or logo**

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### **35.1 Use of Party's name**

A Party must not use the name or logo of another Party without the Party's prior written consent.

## **36 Conflicts**

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### **36.1 Definition of Conflict**

For the purposes of this clause 35, "**Conflict**" means any matter, circumstance, interest, or activity affecting a Party (including the officers, employees, agents and subcontractors of the Party) which may or may appear to impair the ability of the Party ("**Affected Party**") to carry out its part of the Activities diligently and independently in accordance with this Agreement.

### **36.2 Warranty**

- (a) Each Party warrants to the other Parties that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement no Conflict exists or is likely to arise in the performance of that Party's obligations under this Agreement.
- (b) For the avoidance of doubt, any Conflict declared by a Party is not material where researchers of the Party conduct research or activities in competition with AAPP if:
  - (i) those researchers are not part of AAPP; and
  - (ii) the researchers have not received Confidential Information related to AAPP.

### **36.3 Dealing with Conflict**

If a Conflict arises or appears likely to arise, the Affected Party agrees to:

- (a) notify the other Parties immediately;
- (b) subject to any obligations to maintain confidentiality, make full disclosure of all relevant information relating to the Conflict to the other Parties; and
- (c) take such steps as the Collaboration Delegate or Management Committee may reasonably require to resolve or otherwise deal with the Conflict.

## **37 Dispute resolution**

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### **37.1 No arbitration or court proceedings**

If a dispute arises under this Agreement, including any question regarding its existence, validity or termination ("**Dispute**"), a Party must comply with this clause 36 before starting arbitration or court proceedings (except proceedings for interlocutory relief).

### **37.2 Notification**

A Party claiming a Dispute has arisen must give the other Parties to the Dispute written notice setting out the details of the Dispute.

### **37.3 Parties to resolve Dispute**

- (a) For 14 days after notice is given under clause 36.2, each Party to the Dispute must use reasonable efforts to resolve the Dispute.
- (b) The Parties to the Dispute may agree to a longer period to resolve the Dispute under clause 36.3(a).
- (c) If the Parties cannot resolve the Dispute during the agreed period, they must either:
  - (i) if the Dispute relates to a valuation matter, refer the Dispute to a valuer under clause 36.4; or
  - (ii) refer the Dispute to a mediator if one of them requests.

### **37.4 Independent valuation**

If the Dispute relates to a valuation matter, the Dispute will be decided by a valuer agreed by the Parties to the Dispute or otherwise appointed by the President or acting President of the Institute of Chartered Accountants in Australia.

### **37.5 Appointment of mediator**

If the Parties to the Dispute cannot agree on a mediator within 7 days after a request under clause 36.3(c)(ii), the chairperson of The Resolution Institute or the chairperson's nominee will appoint a mediator.

### **37.6 Role of mediator**

The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in writing.

### **37.7 Confidentiality**

Any information or documents disclosed by a Party under this clause 36:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

### **37.8 Costs**

- (a) A Party to a Dispute must pay its own costs of complying with this clause 36.
- (b) The Parties to the Dispute must share equally the costs of any mediator.



### **37.9 Termination of process**

- (a) A Party to a Dispute may terminate the dispute resolution process by giving written notice to each other Party to the Dispute after it has complied with clauses 36.1 to 36.3.
- (b) Clauses 36.7 and 36.8 survive termination of the dispute resolution process.

## **38 Goods and Services Tax and Tax Invoices**

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### **38.1 AAPP Funds payable under this Agreement**

The AAPP Funds payable under this Agreement and any approved Project Agreements are exclusive of GST. Payment will be made by the Collaboration Delegate (including any GST where applicable) on receipt of a valid Tax Invoice(s) from a Party or other entity.

### **38.2 Tax invoices may be issued by the Collaboration Delegate for Activities of AAPP**

- (a) The Parties agree and authorise the Collaboration Delegate to issue Tax Invoices in its own name as opposed to individually or in the collective name(s) of the Parties or an entity of AAPP, where to do so is expedient, will foster the efficient operation of AAPP and is in the specific knowledge of the management of the Collaboration Delegate compliant with the GST laws. Such authorisation is limited to Supplies ordinarily made in obtaining funding by the Collaboration Delegate for AAPP where the funding is utilised in Activities undertaken by the Collaboration Delegate for the Participants or for an entity established as part of AAPP.
- (b) The Parties acknowledge that this clause 37.2 constitutes a written agreement for the Collaboration Delegate to issue Tax Invoices in respect of the Supplies contemplated by this clause.

## **39 Force Majeure**

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### **39.1 Definition**

- (a) In clause 38, a “**Force Majeure Event**” affecting a Party means, subject to clause 38.1(b), anything outside that Party’s reasonable control including without limitation fire, storm, flood, earthquake, explosion, war, invasion, rebellion, sabotage, epidemic, labour dispute, labour shortage and failure or delay in transportation and acts or omissions (including non-compliance with laws or regulations, disapproval or failure to obtain approval) of another person (including subcontractors, customers, government or government agencies).
- (b) If a Party to this Agreement is a government agency, the event will not be within the reasonable control of that Party, merely because that Party is part of the government that has the legal capacity to perform an act or omission that may otherwise constitute a Force Majeure Event.

### **39.2 Suspension of obligation**

Where a Party is unable, wholly or in part, by reason of a Force Majeure Event, to carry out any obligation under this Agreement (other than an obligation to pay money), and that Party:

- (a) gives each other Party prompt notice of that Force Majeure Event including reasonable particulars, and, in so far as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
- (b) uses all possible diligence to remove that Force Majeure Event as quickly as possible,

that obligation is suspended so far as it is affected by the Force Majeure Event during the continuance of that Force Majeure Event and that Party will be allowed a reasonable extension of time to perform its obligations.

### **39.3 Parties to meet**

If, after 30 days, the Force Majeure Event has not ceased, the Parties will meet in good faith to discuss the situation and endeavour to achieve a mutually satisfactory resolution.

### **39.4 Exceptions**

Nothing in this clause 38:

- (a) affects any obligation to pay money; or
- (b) requires the settlement of strikes, lockouts or other labour disputes, or claims or demands on terms contrary to the Rules or policies of the Party affected.

## **40 Notices and other communications**

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### **40.1 Service of notices**

A notice, consent, approval, communication under this Agreement ("**Notice**") must be:

- (a) in writing by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile or email transmission to the recipient's address for Notices set out in Schedule 2, as varied by a Notice given by a Party to the other Parties.

### **40.2 Effective on receipt**

A Notice given under clause 39.1 takes effect when taken to be received (or at a later time set out in the Notice) and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the third Business Day after the date of posting (or on the seventh Business Day after posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice; or
- (d) in the case of email transmission, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth),

but if the delivery, receipt or transmission is not on a Business Day or is after 5pm on a Business Day, the Notice is taken to be received at 9am on the next Business Day.

## **41 General**

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### **41.1 Approvals and consents**

Except where this Agreement expressly states otherwise, a Party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.

### **41.2 Assignment**

No Party may assign or attempt to assign or otherwise transfer or encumber any right or obligation arising out of this Agreement except with the written consent of the other Parties.

### **41.3 Subcontracting**

A Party may not subcontract the performance of a substantial part of the Activities without the Management Committee's prior written consent.

### **41.4 Costs**

Each Party must pay its own costs of negotiating, preparing and executing this Agreement.

### **41.5 Survival**

- (a) The continuing obligations described in clause 26 are independent and survive termination of this Agreement.
- (b) Any term by its nature intended to survive termination of this Agreement also survives termination of this Agreement.

### **41.6 Counterparts**

This agreement may be signed in counterparts. All signed counterparts constitute one document.

### **41.7 No merger**

The rights and obligations of the Parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

### **41.8 Entire agreement**

Excluding the Project Plans, this Agreement constitutes the entire agreement between the Parties in respect of the subject matter and supersedes all earlier agreements, or understandings of the Parties on its subject matter.

### **41.9 Further action**

Each Party must do, at its own cost, everything reasonably necessary (including signing documents) to give full effect to this Agreement and any transaction contemplated by it.

### **41.10 Waiver**

- (a) A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy.
- (b) A single or partial exercise of a right, power or remedy does not stop another or further exercise of that or another right, power or remedy.
- (c) A waiver of a right, power or remedy must be in writing by the Party giving the waiver.

#### **41.11 Governing law and jurisdiction**

This agreement is governed by the law of the Applicable Jurisdiction and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Applicable Jurisdiction.

#### **40.12 Executive Privilege**

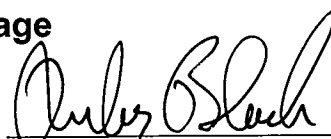
- (a) Nothing in this Agreement is intended to prevent, is to be taken to prevent, or prevents, the free exercise by the Governor, by any member of the Executive Council, or by any Minister of the Crown, of any duties or authorities of his or her office as that relates to a Commonwealth, State or Territory Government.
- (b) Any provision of this Agreement that is inconsistent with this clause is of no legal effect to the extent of the inconsistency.

## Signing Page

Signed **University of Tasmania** by an authorised officer in the presence of

  
Signature of witness

PADRAIG PEARCE  
Name of witness (print)

  
Signature of officer

← RUFUS BLACK  
Name of officer (print)

VICE-CHANCELLOR  
Office held

Signed **Commonwealth of Australia represented by the Australian Antarctic Division** by an authorised officer in the presence of

←  
Signature of witness

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Name of officer (print)

\_\_\_\_\_  
Office held

Signed **Commonwealth of Australia represented by the Bureau of Meteorology** by an authorised officer in the presence of

←  
Signature of witness

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Name of officer (print)

\_\_\_\_\_  
Office held

Signed **Commonwealth Scientific and Industrial Research Organisation** by an authorised officer in the presence of

←  
Signature of witness

\_\_\_\_\_  
Name of witness (print)

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Signature of officer

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Name of officer (print)

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Office held

## Signing Page

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Signature of officer

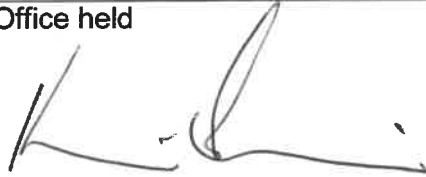
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Signature of witness

\_\_\_\_\_  
Name of officer (print)

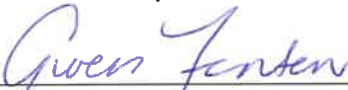
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Name of witness (print)

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Office held

Signed **Commonwealth of Australia represented by the Australian Antarctic Division** by an authorised officer in the presence of



\_\_\_\_\_  
Signature of officer

  
Signature of witness

  
Name of officer (print)

  
Name of witness (print)

  
Office held

Signed **Commonwealth of Australia represented by the Bureau of Meteorology** by an authorised officer in the presence of

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Signature of officer

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Signature of witness

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Name of officer (print)

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Name of witness (print)

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Office held

Signed **Commonwealth Scientific and Industrial Research Organisation** by an authorised officer in the presence of

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Signature of officer

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Signature of witness

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Name of officer (print)

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Name of witness (print)

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Office held

## Signing Page

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Signature of officer

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Signature of witness

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Name of officer (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Office held

Signed **Commonwealth of Australia represented by the Australian Antarctic Division** by an authorised officer in the presence of

\_\_\_\_\_  
Signature of officer

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\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of officer (print)

\_\_\_\_\_  
Name of witness (print)


\_\_\_\_\_  
Office held

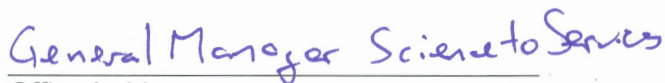
Signed **Commonwealth of Australia represented by the Bureau of Meteorology** by an authorised officer in the presence of

  
\_\_\_\_\_  
Signature of officer

  
←  
\_\_\_\_\_  
Signature of witness

  
\_\_\_\_\_  
Name of officer (print)

  
\_\_\_\_\_  
Name of witness (print)

  
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Office held

Signed **Commonwealth Scientific and Industrial Research Organisation** by an authorised officer in the presence of

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Signature of officer

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Signature of witness

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Name of officer (print)

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Name of witness (print)

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Office held

## Signing Page

Signed **University of Tasmania** by an authorised officer in the presence of

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Signature of officer

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\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of officer (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Office held

Signed **Commonwealth of Australia represented by the Australian Antarctic Division** by an authorised officer in the presence of

\_\_\_\_\_  
Signature of officer

←  
\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of officer (print)

\_\_\_\_\_  
Name of witness (print)

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Office held

Signed **Commonwealth of Australia represented by the Bureau of Meteorology** by an authorised officer in the presence of

\_\_\_\_\_  
Signature of officer

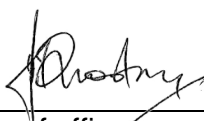
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Signature of witness

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Name of officer (print)

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Name of witness (print)

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Office held

Signed **Commonwealth Scientific and Industrial Research Organisation** by an authorised officer in the presence of

  
\_\_\_\_\_  
Signature of officer

  
\_\_\_\_\_  
Signature of witness

Anthony Worby  
\_\_\_\_\_  
Name of officer (print)

Sandra MacMillan  
\_\_\_\_\_  
Name of witness (print)

Director, CSIRO Oceans & Atmosphere  
\_\_\_\_\_  
Office held



## Schedule 1 – Definitions and interpretation

### Definitions

<b>AAP</b>	means the Australian Antarctic Program led by the Australian Antarctic Division on behalf of the Australian Government within the Department of the Environment and Energy.
<b>AAPP</b>	means the unincorporated joint venture formed by the Parties and known as the Australian Antarctic Program Partnership as referred to in the Recitals and clause 4.
<b>AAPP Account</b>	means a unique range of accounts in the Collaboration Delegate's financial system to record AAPP Funds and expenses, under the delegated control of the Program Leader.
<b>AAPP Confidential Information</b>	means Confidential Information generated from the Activities.
<b>AAPP Funds</b>	means the income comprised in the AAPP Account including the cash Contributions from Principal Participants, the Commonwealth Funding, cash contributions to AAPP received from third parties and interest on the AAPP Account.
<b>AAPP IP</b>	means the Intellectual Property that was developed in the course of the Activities of AAPP, including those developed using AAPP Funds or AAPP Resources prior to the Commencement Date.
<b>AAPP Objectives</b>	means the objectives of the AAPP as set out in clause 5.
<b>AAPP Office</b>	the facility established by the Collaboration Delegate to coordinate and manage the operation of AAPP as described in clause 8.3.
<b>AAPP Collaborative Partners</b>	means the organisations outlined at clause 4.4, and AAPP Collaborative Partner means any one of them.
<b>AAPP Project</b>	means a Project Plan approved by the Management Committee as a project to be carried out and funded by AAPP.
<b>AAPP Resources</b>	means the non-cash resources made available for use by the Parties in carrying out the Activities, including the non-cash Contributions and any non-cash resources received from third parties.
<b>AAPP Strategy</b>	means the strategic priorities set out in clause 5.1.
<b>AASP</b>	means the Australian Antarctic Science Program guided by the Australian Antarctic Science Strategic Plan 2011/12-2020/21 and all subsequent plans approved by the Minister for the Environment and Energy.
<b>AASSP</b>	means the Australian Antarctic Science Strategic Plans as updated and amended from time to time.
<b>ASCI Program Delegate</b>	means the person nominated by Australian Government to have delegated responsibility for making decisions in accordance with the ASCI funding guidelines.
<b>Activities</b>	means the activities described in the Annual Plan and Budget, and includes the AAPP Projects and any other activities that the Parties agree to carry out under this Agreement.
<b>Activity Payment</b>	means a payment made to a Principal Participant from AAPP Funds for the purpose of carrying out the Activities.
<b>Agreement</b>	means this Australian Antarctic Program Partnership Formal Collaborative Agreement between the Parties and includes its schedules and any attachments.

<b>Annual Plan and Budget</b>	means the annual plan and budget for AAPP prepared and approved under clause 9.1.
<b>Applicable Jurisdiction</b>	means the Australian Capital Territory.
<b>Approved Form</b>	means a form and manner specified or approved by the Program Leader.
<b>Asset</b>	means any item of tangible property purchased, leased, created or otherwise brought into existence either wholly or in part with use of the AAPP Funds which has a value of over \$20,000 exclusive of GST.
<b>Associate Participants</b>	are the organisations outlined at clause 4.4(b).
<b>Associate Participant Agreement</b>	means any agreement entered into under clause 17.5.
<b>Background IP</b>	means Intellectual Property rights existing prior to the date of this Agreement, or which are owned or controlled by a Party, independently of this Agreement, and made available by that Party to an AAPP Project or for the Activities but does not include AAPP IP.
<b>Business Day</b>	a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the act is to be performed or where the Notice is received.
<b>Business Hours</b>	means 9am to 5pm on a Business Day.
<b>Chairperson</b>	means the chairperson of the Management Committee.
<b>Collaboration Delegate</b>	means the University of Tasmania or as appointed from time to time by the Management Committee in accordance with clause 12.3(a).
<b>Commencement Date</b>	means: (a) 1 July 2019; (b) the date this Agreement is signed by the last party to do so; or (c) the date the condition set out in clause 2.1 is satisfied, whichever is the last to occur.
<b>Commercialise</b>	means, in relation to Intellectual Property: (d) to manufacture, sell, hire or otherwise exploit a product or process, that uses or incorporates part or all of that Intellectual Property; (e) to supply a service, incorporating that Intellectual Property; (f) to licence any other person to do any of those things; or (g) to otherwise licence or assign the Intellectual Property, for commercial purposes regardless of whether any revenue is generated or intended to be generated.
<b>Commonwealth</b>	means the Commonwealth of Australia as created by the <i>Commonwealth of Australia Constitution Act</i> and any agencies or entities subsequently established by the Commonwealth.
<b>Commonwealth Agreement</b>	means any agreement entered into by the Collaboration Delegate whether or before or after the Commencement Date and the Commonwealth to receive financial assistance for AAPP to support a multi-institutional Antarctic science collaboration.
<b>Commonwealth Funding</b>	means the funding to be given to AAPP under Commonwealth Agreements for the Activities.

<b>Confidential Information</b>	<p>means all information that is not in the public domain that is by its nature confidential or that has been designated as confidential by the disclosing party, and includes all trade secrets, know-how, financial information and other commercially or scientifically valuable information of whatever description and in whatever form (whether written, or oral, visible or invisible).</p> <p>To comply with public disclosure principles adopted by State and Territory Governments, the terms and conditions of the Agreement are excluded from this definition and any party may publish all or any part of the Agreement at any time and without reference to another party.</p>
<b>Conflict</b>	is defined at clause 35.1.
<b>Contribution</b>	means, in relation to a Party, all money, Assets, Specified Personnel, facilities and services to be contributed by the Party to the Activities, as set out in the Annual Plan and Budget and any additional contributions made by a Party under this Agreement, but does not include Intellectual Property.
<b>Deliverables</b>	means the required deliverables for an AAPP Project as described in the Project Plan.
<b>Document in Writing</b>	means a facsimile transmission, email or other document produced by mechanical or electronic means under the name of a person, with the person's authority, which is taken to be a document in writing signed by the person.
<b>Executive Council</b>	means the Premier and Ministers of the Crown constituting the Government of Tasmania as presided over by the Governor.
<b>Financial Year</b>	means a period of 12 months beginning on 1 July and ending on 30 June provided however, the first Financial Year will be the period commencing on the Commencement Date and ending on 30 June.
<b>Funding Agreements</b>	means the agreements referred to in Recital D.
<b>GST</b>	means a goods and services tax or any similar tax, levy or impost imposed by the Commonwealth of Australia.
<b>Governor</b>	means the current representative in the Australian state of <i>Tasmania</i> of Elizabeth II, Queen of Australia
<b>Improvements</b>	mean a modification, enhancement or improvement of AAPP IP or Background IP that cannot be used independently of that underlying IP, but does not include AAPP IP.
<b>Independent Management Committee Member</b>	means a Management Committee Member that is not employed by a Principal Participant.
<b>Intellectual Property or IP</b>	means all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know-how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, whether or not such rights are registered or capable of being registered.
<b>IP Register</b>	means a register of all IP created or used in connection with the AAPP which includes AAPP IP, Background IP and Improvements and any licences granted for the use of such IP.

<b>Loss</b>	means any liability, loss, harm, damage, cost or expense (including reasonable legal fees on a full indemnity basis) but excludes special, indirect or consequential loss or damages (including loss of income or profits and loss of expectation of income or profits).
<b>Management Committee</b>	means the committee established under clause 7.
<b>Management Committee Member</b>	means a member of the Management Committee appointed under clause 7.
<b>Management Functions</b>	means the activities to be performed by the Collaboration Delegate as set out in Schedule 4.
<b>Material</b>	includes property, information, software, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.
<b>Milestones</b>	means the milestones for an AAPP Project set out in the Project Plan or an Annual Plan and Budget.
<b>Minister of the Crown</b>	has the same meaning as in the <i>Constitution Act 1934</i> (Tas).
<b>Moral Rights</b>	has the same meaning as in the <i>Copyright Act 1968</i> (Cth).
<b>Other Funding Parties</b>	means any institution or organisation which from time to time provides funding for the purposes of meeting the AAPP Objectives
<b>Parties</b>	means the Principal Participants who sign this Agreement or become bound to this Agreement by signing a deed of accession under clause 23 but does not include any Principal Participant that has retired or been expelled from AAPP under clause 24 and <b>Party</b> means any one of them.
<b>Party Confidential Information</b>	means any information of a party, not including AAPP Confidential Information (a) treated by that party as confidential; and (b) disclosed by that party to another Party, or of which another Party becomes aware, whether before or after the date of this Agreement.
<b>Personal Information</b>	has the same meaning as in the <i>Privacy Act 1988</i> (Cth).
<b>Principal Participants</b>	means the Parties, and <b>Principal Participant</b> means any one of them.
<b>Project Agreement</b>	means the Project Plan and the Project Terms.
<b>Program Leader</b>	means the chief executive officer of AAPP and at the Commencement Date being the person specified in Schedule 3.
<b>Project Leader</b>	is the person responsible for leading each AAPP Project.
<b>Project Participants</b>	means the participants in an AAPP Project (excluding the Collaboration Delegate if only participating in its capacity as Collaboration Delegate).
<b>Project Plan</b>	means a proposal for a research or development activity or series of activities to be funded substantially from the AAPP Funds.
<b>Project Plan Template</b>	means the template set out in Schedule 5 as varied by the Management Committee.
<b>Project Terms</b>	means the project terms set out in Schedule 6.
<b>Representative Rules</b>	means the persons listed for each Party in Schedule 2.
	means the constitution, enacting legislation and its provisions, or any other form of provisions or policy statements governing the organisation and operation of a Party.

<b>Specified Personnel</b>	means the Representatives and Project Leaders appointed in accordance with this Agreement and any replacement or substitute appointed in accordance with this Agreement.
<b>Supply</b>	has the same meaning as given in the A New Tax System (Goods & Services Tax) Act 1999 (Cth).
<b>Tax Invoice</b>	means a tax invoice which complies with the A New Tax System (Goods & Services Tax) Act 1999 (Cth).
<b>Term</b>	means the term of this Agreement determined under clause 2.

## Interpretation

In this Agreement, unless the contrary intention appears:

- (a) words in the singular include the plural and vice versa;
- (b) words importing a gender include the other gender;
- (c) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (d) clause headings or words in bold format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
- (e) all references to dollars are to Australian dollars;
- (f) unless stated otherwise, a reference to legislation is to legislation of the Commonwealth, as amended from time to time;
- (g) an uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a party just because that party prepared the provision; and
- (h) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.

In the interpretation of a provision of this Agreement, a construction that promotes the AAPP Objectives is preferred to a construction that does not promote the AAPP Objectives.

## **Schedule 2 – Notice Details**

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### **University of Tasmania**

ABN: 30 764 374 782

Representative: Professor Anthony Koutoulis, Acting Deputy Vice-Chancellor Research

Postal address: PO Box 3, University of Tasmania, Hobart TAS 7005

Phone: +613 62262419

Email: [Anthony.Koutoulis@utas.edu.au](mailto:Anthony.Koutoulis@utas.edu.au)

**Program Leader:** Details to be provided upon appointment

Postal Address: See above

Phone: See above

Email: See above

### **Australian Antarctic Division**

ABN: 34 190 894 983

Representative: Dr. Gwen Fenton, Chief Scientist

Postal address: 203 Channel Highway, Kingston TAS 7050

Phone: +61 3 62323205

Email: [gwen.fenton@aad.gov.au](mailto:gwen.fenton@aad.gov.au)

### **Bureau of Meteorology**

ABN: 92 637 533 532

Representative: Mr Peter May – General Manager Science to Services

Postal address: GPO Box1289, Melbourne VIC 3001

Phone: +61 3 96694000

Email: GM [STS@bom.gov.au](mailto:STS@bom.gov.au)

### **Commonwealth Scientific and Industrial Research Organisation**

ABN: 41 687 119 230

Representative: Dr Anthony Worby

Postal address: GPO Box 1538, Hobart TAS 7001

Phone: +61 3 62325108

Email: [Tony.Worby@csiro.au](mailto:Tony.Worby@csiro.au)

## **Schedule 3 – Governance**

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### **1 Establishment**

- 1.1 (a) The Management Committee will be constituted by the following Management Committee Members each of whom will hold one vote (unless otherwise provided):
- (i) an Independent Management Committee Member to be chairperson appointed by the Management Committee (non-voting);
  - (ii) one representative from each Party appointed by the Party;
  - (iii) up to three Committee Members drawn from the Associate Participants, as determined by the Associate Participants including one which must be a representative of the Government of Tasmania (all non-voting);
  - (iv) the Program Leader as an *ex-officio* Management Committee Member (non-voting), appointed by the Management Committee.
- (b) A Party may remove or replace its appointed Management Committee Member by notice to the Management Committee.
- (c) The Management Committee may remove or replace any Management Committee Member or the Program Leader appointed under 1.1(a)(i) or 1.1(a)(iv).
- (d) A Management Committee Member will cease to be a Management Committee Member:
- (i) on the date the Party who appointed the Management Committee Member ceases to be a Party;
  - (ii) immediately if the Management Committee Member resigns by notice in writing to the Management Committee; and
  - (iii) immediately if the Management Committee Member is absent from two consecutive Management Committee meetings without a leave of absence from the Management Committee.
- (e) Each Party agrees to use all reasonable endeavours to ensure that a Management Committee Member employed by it does all that is reasonably necessary to ensure that the Management Committee carries out its functions under this Agreement.
- (f) The Collaboration Delegate will enter into an agreement with any Independent Management Committee Member that will oblige the Independent Management Committee Member to do all that is reasonably necessary to ensure that the Management Committee carries out its functions under this Agreement and indemnifies the Independent Management Committee Member for any Loss incurred by the Independent Management Committee Member in carrying out his or her role as a Management Committee Member in good faith. The terms of remuneration of Independent Management Committee Members will be agreed by the Management Committee.
- (g) The Collaboration Delegate will maintain insurance to cover any Loss incurred by the Collaboration Delegate in meeting the obligation to indemnify an Independent Management Committee Member in accordance with clause 21.2.

## **2 Chairperson**

- 2.1 The Chairperson will hold office for a term of three years and may be reappointed. The Chairperson does not have a vote.
- 2.2 Any casual vacancy occurring in the position of Chairperson will be filled at the next meeting of the Management Committee and the Chairperson so appointed will hold office for a term of three years and may be reappointed.
- 2.3 If at any meeting the Chairperson is not present at the time appointed for holding the meeting, the Management Committee Members present may choose one of their number to preside at that meeting.

## **3 Secretary**

- 3.1 The Management Committee will appoint a person, who may but need not be a Management Committee Member, to act as Secretary of the Management Committee.
- 3.2 The Secretary will attend all meetings of the Management Committee but is not, unless a Management Committee Member, entitled to vote.
- 3.3 The Management Committee Members may remove the Secretary from office and appoint another.

## **4 Quorum**

- 4.1 A quorum for meetings of the Management Committee will be at least 75% of the Management Committee Members entitled to vote.
- 4.2 If a quorum is not present within one hour after the arranged time for a meeting, the meeting stands adjourned for 72 hours at the same place, or via teleconference.
- 4.3 If a quorum is not present at the time fixed for the commencement of the adjourned meeting, the Chairperson will advise the Parties.

## **5 Powers**

- 5.1 Except for the duties and responsibilities delegated to the Collaboration Delegate under Schedule 4, the Management Committee has full and complete power and authority, and the Parties empower and direct the Management Committee to give all approvals and to make all decisions and determinations required or permitted to be given or made by the Parties under this Agreement to undertake the following functions:
  - (a) strategic planning, overall direction and control;
  - (b) determining policy;
  - (c) making of such appointments as are provided for specifically in this Agreement;
  - (d) receipt and consideration of reports and accounts;
  - (e) endorse entering into any new, any changes to, and monitoring of compliance with the Funding Agreements;



- (f) advise and assist the Collaboration Delegate in the management of AAPP business risks;
- (g) oversee the communication plan and activities of AAPP;
- (h) maintain oversight of any major reviews or publications on AAPP;
- (i) provide other advice and input as required.

## **6 Meetings**

- 6.1 The Management Committee will meet at least 2 times each year and:
- (a) as often as is necessary to carry out its functions under this Agreement; and
  - (b) when requested in writing signed by three Management Committee Members provided that no less than 14 days' notice has been given to each of the other Management Committee Members; and
  - (c) at least once in each financial year the Management Committee will meet to consider the proposed Annual Plan and Budget for the next financial year.
- 6.2 Meetings of the Management Committee may be held by the Management Committee Members communicating with each other by a technological means by which they are able simultaneously to hear each other and to participate in discussion (without the need to be physically present in the same place).
- 6.3 All Management Committee Members will be expected to advise any matters which could be perceived to be a conflict of interest in relation to Management Committee matters, and if applicable, to abstain from voting on individual matters where that conflict cannot be managed.
- 6.4 Subject to this Agreement, the Management Committee may regulate its own proceedings.
- 6.5 Each Management Committee Member entitled to vote has one vote.
- 6.6 Unless specified otherwise, all decisions of the Management Committee must be made by unanimous agreement of all Members present and entitled to vote and are binding on all Parties.

## **7 Alternates and observers**

- 7.1 Each Party may appoint alternates for meetings of the Management Committee in which its Management Committee Member is unable to attend, with notice to the Chairperson, and to all Management Committee Members prior to that meeting.
- 7.2 An alternate appointed under clause 7.1 may act only if the Management Committee Member for whom the alternate is appointed is not present at a meeting of the Management Committee, in which event the alternate will be deemed to be that Management Committee Member and may exercise all powers of that Management Committee Member to the extent that the Management Committee Member has not exercised them.

- 7.3 The Management Committee may invite any person to attend and observe at meetings of the Management Committee as it sees fit. Persons invited to attend Management Committee meetings as observers may participate in the discussions of the meeting but will not have any voting rights.

## **8 Notices**

- 8.1 Each notice convening a meeting must outline the purpose for that meeting and must be sent by email by the Secretary to each Management Committee Member not less than 14 Business Days before the meeting.
- 8.2 Agenda and papers for each meeting will be sent by email by the Secretary to each Management Committee Member not less than five Business Days ahead of each meeting.
- 8.3 Any matter not included in the agenda must not be dealt with at the meeting unless all Management Committee Members present agree.

## **9 Written records of meetings**

- 9.1 The Secretary of the Management Committee must keep a written record of decisions made at each meeting of the Management Committee and distribute copies of the record to each Management Committee Member, within fourteen days following the meeting.
- 9.2 If a Management Committee Member has not commented on the written record within fourteen Business Days after receipt, it will be taken to have accepted the written record as an accurate recording of the decisions noted in that record.
- 9.3 On the written record being accepted by the Management Committee under 9.2, it will be prima facie evidence of the decisions and proceedings of the meeting to which it relates.

## **10 Written resolution of Management Committee**

- 10.1 Subject to:
- (a) each Management Committee Member being given written notice of the matter;
  - (b) each Management Committee Member having a period of at least five Business Days after receiving notice of the matter (or such other agreed period) to vote on the matter; and
  - (c) within that period, no Management Committee Member requesting that the matter be considered at a meeting of the Management Committee,
- any determination which the Management Committee is competent to give or make may be submitted to the Management Committee Members for consideration and vote, without holding a meeting, and the vote will be treated as a vote made at a meeting of the Management Committee.
- 10.2 Whenever a matter is submitted, each Management Committee Member will vote by giving written notice of the Management Committee Member's vote to the Secretary of the Management Committee and any matter which receives unanimous approval of the votes cast is binding on each Party in the same

manner as if the resolution had been passed at a meeting of the Management Committee.

- 10.3 The written record of each decision made under this clause 10 will be kept by the Secretary and a copy of the record will be distributed to each Management Committee Member as soon as practicable after the vote is taken.

**11 Subcommittees**

The Management Committee may establish subcommittees and determine their functions (which must be advisory only).

**12 Costs and expenses**

Costs and expenses incurred by the Program Leader, Secretary and Management Committee Members relating to attendance at Management Committee meetings will be paid from the AAPP Account.

## **Schedule 4 – Collaboration Delegate Appointment Terms**

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### **1 Conditions of Appointment and Authority of the Collaboration Delegate**

- a. The Collaboration Delegate has been appointed by the Parties for performance of the Management Functions at the direction of the Parties on the terms and conditions of this Agreement.
- b. The Parties acknowledge and agree that the Collaboration Delegate executed and executes the Funding Agreements for the purposes of this Agreement and in accordance with the authority granted under this Agreement.
- c. The Parties acknowledge that the Collaboration Delegate has established an AAPP Office, led by the Program Leader, to oversee the management of AAPP. The Program Leader is responsible to the Management Committee. As far as practicable the matters referred to in this schedule have been delegated by the Collaboration Delegate to the Program Leader.
- d. Each Party will co-operate and do all things necessary and execute all documents required to ensure that the Collaboration Delegate has the authority to carry out the Management Functions.
- e. The Parties agree that the Collaboration Delegate's authority is to carry out the Management Functions and not otherwise to affect the rights or obligations of the Parties.
- f. The Collaboration Delegate must carry out the Management Functions in accordance with any reasonable directions given to it from time to time by the Management Committee.
- g. The Collaboration Delegate may carry out the Management Functions even if any of its officers or employees has or may have a direct or indirect or personal interest in the mode or result of carrying out the Management Functions, provided that the interest:
  - i. has first been disclosed to and approved by the Management Committee; and
  - ii. does not give rise to a breach of fiduciary duty.
- h. Despite anything to the contrary in this Agreement:
  - i. the Collaboration Delegate will not be required, and the Management Committee may not direct the Collaboration Delegate, to act in any manner which is contrary to its Rules; and
  - ii. all of the obligations of the Collaboration Delegate under this schedule are to be interpreted as being subject to the requirement that in performing such obligations neither the Collaboration Delegate nor any of its employees or officers will be required to act in such a manner as would place the Collaboration Delegate or any of its employees or officers in breach of its Rules.
- i. Any action taken by the Collaboration Delegate in accordance with this Agreement with the approval of the Management Committee is deemed to be authorised by the Parties.

- j. This schedule does not create a relationship of agency or trust between any of the Parties (including between the Collaboration Delegate and other Parties) unless expressly stated.

## **2 Financial Management**

The Collaboration Delegate agrees, under advice of the Program Leader, to undertake as service provider to, not agent of, the Parties, the following functions and responsibilities:

- a. establish and oversee the operation of the AAPP Account;
- b. pay the AAPP Funds into the AAPP Account;
- c. liaise with, report to and meet any accounting, reporting and financial requirements of the Funding Agreements, in order to secure instalments of the AAPP Funds in a timely manner;
- d. establish and maintain proper accounting standards and controls in relation to the financial transactions required to carry out the Activities, including recording the income and expenditure for the Activities separately from other transactions of the Collaboration Delegate;
- e. seek and accept any money to be procured from other persons contributing to the Activities;
- f. pay the amounts received under paragraphs (d) and (e) into the AAPP Account;
- g. draw on the AAPP Account to make Activity Payments;
- h. draw on the AAPP Account for the costs of remuneration of the Management Committee, the Program Leader and staff of AAPP employed by the Collaboration Delegate; and related operating costs of AAPP;
- i. do all things necessary, including the timely and accurate filing of returns, to ensure that AAPP complies with its obligations under all relevant tax laws;
- j. report to the Management Committee at intervals and in such format as determined by the Management Committee.

## **3 Priority of Payment**

If there are not sufficient available funds in the AAPP Account to satisfy payments under 2, priority will be given to making payments as directed by the Management Committee.

## **4 Contract Management and Reporting**

The Collaboration Delegate will, subject to the reasonable directions and approval of the Management Committee or a delegate of the Management Committee:

- a. engage staff, including through temporary or contract employment, under agreements acceptable to the Management Committee and Collaboration

Delegate. Such agreements must contain appropriate provisions concerning access to, use and disclosure of the Confidential Information;

- b. enter contracts for the supply of goods or services for use by the Collaboration Delegate or AAPP in carrying out the Activities;
- c. enter other contracts or arrangements with any of the Parties or other entities for AAPP purposes, as the Management Committee may consider appropriate from time to time;
- d. receive and sign notices and written communications for the Parties as required under the Funding Agreements and this Agreement;
- e. enter into other contracts and legal arrangements in its own right, and not as agent of the Parties, for the purposes of AAPP as the Management Committee may deem necessary from time to time on terms approved by the Management Committee;
- f. perform any functions or activities required of it under this Agreement;
- g. through the AAPP Office, and subject to the approval of the Management Committee, ensure the reporting and planning requirements of the Funding Agreements are complied with; and
- h. perform such other administrative and operational functions to facilitate the effective operation of AAPP as may be agreed by the Management Committee and the Collaboration Delegate.
- i. For the avoidance of doubt, any contracts or arrangements entered into by the Collaboration Delegate under this paragraph 4 is entered into by the Collaboration Delegate in its own right and independent legal capacity, and not as agent for the other Parties and any act or omission by the Collaboration Delegate in the performance of such contracts or arrangements do not bind the other Parties unless as specifically agreed between the Parties in writing.

## **5 Provision of Facilities**

The Collaboration Delegate agrees that it will provide the following facilities:

- a. appropriate offices and workspaces for all AAPP Office staff, both employed and in-kind positions, based at the Collaboration Delegate including relevant overheads; and
- b. administrative services including services related to human resources, financial, contract and legal, research, records management, governance, audit and risk, communications and marketing, and information and technology support; and
- c. access to meeting spaces and other areas as are standard for an office-based working environment; and
- d. the costs for these facilities will be funded on an in-kind basis unless the Collaboration Delegate reaches agreement with the Management Committee for specific costs from time-to-time which should more appropriately be part of the Activities and if so will be paid from the AAPP Account.

## **6 Payment of Expenses**

- a. The Collaboration Delegate may draw on the AAPP Account to meet its reasonable expenses in carrying out the Management Functions as agreed by the Management Committee, including the costs of remuneration of the Management Committee, the Program Leader and other AAPP employees in accordance with the Annual Plan and Budget.
- b. The Collaboration Delegate is not entitled to any fee in addition to agreed expenses under 6a or clause 9.

## **Schedule 5 – Project Plan Template**

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1. Name and details of the Principal Participant:
2. Names of the other Project Participants:
3. Project Commencement Date:
4. Project Completion Date:
5. Project Leader's name and contact details:
6. Project Funds required:
7. Other Contributions required:

*(Note: in relation to Items 8 and 9 and based on the circumstances of calling for Project Plans, the Program Leader will provide a template for these to record the detailed budget {salaries, capital, deployment costs and other operating on an annual basis}, and only the totals need to be included here)*

8. Justification for the Project Funds requested:
9. How the proposed work aligns to the scientific plans of AAPP:
10. Project Objectives and Outcomes:
11. Brief review of the science and intellectual property background, including Background IP and any relevant third party IP:
12. Proposed methodology:
13. Milestones, tasks, any proposed stop/go milestones in relation to deployment and (as applicable) recovery / maintenance of equipment:
14. Deliverables, in relation to availability of near-real-time and delayed mode data (as applicable); plus quality controlled data delivery:
15. Risk analysis and how identified risks will be managed:
16. Relevance and benefits, including alignment to the Antarctic Science Strategic Plan and Antarctic Strategy and 20 Year Action plan explaining what will be provided to end-users and how they will benefit from the outcomes derived from the AAPP Project:
17. Special Conditions:  
*[insert variations to the Project Terms (if any)].*

### **ACKNOWLEDGEMENT**

The Project Participants acknowledge and agree that, subject to the approval of the project as an AAPP Project, they will participate in and contribute to the AAPP Project under the leadership of the Principal Participant in accordance with this Project Plan and the Project Terms.

*[Add signature blocks of Project Participants]*

The Program Leader acknowledges and agrees that this project has been approved as an AAPP Project by the Management Committee.

*[Add signature of Program Leader at the direction of the Management Committee]*



*[Add signature of Collaboration Delegate's delegate]*

## **Schedule 6 – Project Terms**

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### **1 INTERPRETATION AND DEFINITIONS**

- 1.1 Unless otherwise defined in this Agreement, the words and expressions in this Agreement have the same meaning as those in the Australian Antarctic Program Partnership (**AAPP**) Formal Collaborative Agreement.
- 1.2 The interpretation rules set out in Schedule 1 of the Formal Collaborative Agreement apply to this Agreement.
- 1.3 In this Agreement:
- (a) **Agreement** means these Project Terms and the approved Project Plan and includes the schedules and annexures to this Agreement;
  - (b) **Budget** means the budget for the AAPP Project as set out in the Project Plan;
  - (c) **Financial Statement** means a statement of all receipts, income, outgoings and expenditure received, derived or incurred in carrying out the AAPP Project in an Approved Form;
  - (d) **Final Report** means the final report required under clause 9.4 and as specified in clause 9.5;
  - (e) **Formal Collaborative Agreement** means the Australian Antarctic Program Partnership Formal Collaborative Agreement for the establishment and operation of AAPP;
  - (f) **Milestones** means the milestones set out in the Project Plan;
  - (g) **Principal Participant** means the Party leading the AAPP Project and named as the Principal Participant as specified in the Project Plan
  - (h) **Project Background IP** means the Background IP which Project Participants make available for the conduct of the AAPP Project;
  - (i) **Project Funds** means that part of the AAPP Funds that the Management Committee has determined will be made available to the Principal Participant for the conduct of the AAPP Project;
  - (j) **Project Commencement Date** means the commencement date for the AAPP Project as set out in the Project Plan or such other date as the Project Participants agree to in writing;
  - (k) **Project Completion Date** means the completion date for the AAPP Project as set out in the Project Plan or such other date as the Project Participants agree to in writing;
  - (l) **Project Contributions** means the money, assets, personnel, facilities and services to be contributed to the AAPP Project by a Project Participant as detailed in the Project Plan;
  - (m) **Project IP** means Intellectual Property arising from the conduct of the AAPP Project;

- (n) **Project Leader** means the person who will lead the AAPP Project and identified as such in the Project Plan;
- (o) **Project Objectives** means the objectives of the AAPP Project as detailed in the Project Plan;
- (p) **Project Participants** means the Parties involved in the AAPP Project and identified as the Project Participants in the Project Plan (and for the purposes of this Agreement, includes the Principal Participant as the context requires);
- (q) **Project Plan** means the Project Plan approved by the Management Committee and any variation subsequently agreed to it;
- (r) **Progress Report** means a progress report as required under the Commonwealth Agreements;
- (s) **Project Term** means the period referred to in clause 15.
- (t) **Special Conditions** means any special or additional terms or conditions agreed by the Project Participants and set out in the Project Plan;

## **2 APPLICATION OF FORMAL COLLABORATIVE AGREEMENT**

- 2.1 The Project Participants acknowledge that the approved AAPP Project forms part of the Activities under the Formal Collaborative Agreement and that it must be carried out in a manner that conforms to the Formal Collaborative Agreement.
- 2.2 The provisions of the Formal Collaborative Agreement that expressly or by necessary implication apply to the conduct of the Activities will apply to the conduct of the approved AAPP Project and to the Associate Participants, national collaborators, international collaborators and other funding parties as if they were Principal Participants under the Formal Collaborative Agreement.

## **3 SPECIAL CONDITIONS**

- 3.1 In the event of any inconsistency between the provisions of this Agreement and the Special Conditions, the Special Conditions will prevail to the extent of the inconsistency.

## **4 TERM**

- 4.1 The AAPP Project will commence on the Project Commencement Date and, subject to the terms of this Agreement, will terminate on the Project Completion Date.

## **5 PROJECT FUNDS AND CONTRIBUTIONS**

- 5.1 Subject to clauses 5 and 20, the Collaboration Delegate must pay the Project Funds to the Principal Participant from the AAPP Funds in the manner set out in the Project Plan.
- 5.2 Each Project Participant must make its Contribution to the AAPP Project for the purpose of pursuing the AAPP Project in the manner set out in the Project Plan

or as otherwise reasonably required to ensure the Milestones and Project Objectives are met.

- 5.3 The Principal Participant will enter into any agreements it deems necessary to secure contributions from third parties.
- 5.4 The Collaboration Delegate may, on direction of the Management Committee, withhold a payment to the Principal Participant under clause 5.1 if the Principal Participant is primarily responsible for a Milestone that has not been met or a Deliverable that has not been delivered until such time as the Milestone is met or the Deliverable is delivered to the reasonable satisfaction of the Management Committee.
- 5.5 If AAPP Funds are identified in the Financial Statement provided at the Project Completion Date as unexpended, those funds must be repaid to the Collaboration Delegate.

## **6 BACKGROUND INTELLECTUAL PROPERTY**

- 6.1 Project Background IP remains in the ownership of the Project Participant making it available.
- 6.2 Each Project Participant agrees to make its Project Background IP available to the AAPP Project in accordance with clause 16 of the Formal Collaborative Agreement.

## **7 CONDUCT OF THE AAPP PROJECT**

- 7.1 Each Project Participant will carry out its part of the AAPP Project diligently and in accordance with generally accepted professional, scientific and ethical principles and standards in the conduct of the AAPP Project.
- 7.2 The Project Participants will:
  - (a) cooperate with each other and the Project Leader; and
  - (b) use all reasonable endeavours to ensure;the AAPP Project meets the Project Objectives, Milestones and Deliverables as specified in the Project Plan.
- 7.3 The Project Participants acknowledge that the AAPP Project forms part of the Activities and that the AAPP Project will be managed by the Project Leader through the Principal Participant, the Program Leader and the Management Committee.

## **8 COMPLIANCE**

- 8.1 Each Project Participant will ensure that all applicable codes of conduct and guidelines in carrying out the AAPP Project including any codes and guidelines with respect to research involving humans or animals adopted by the National Health and Medical Research Council (including without limitation the National Statement on Ethical Conduct in Research involving humans and the Australian Code of Practice for the care and use of animals for scientific purposes) and by the Office of the Gene Technology Regulator, are observed at all times.
- 8.2 Each Project Participant will, where necessary or appropriate, undertake research using a relevant ethics committee or committees constituted in

accordance with the codes and guidelines referred to in clause 8.1, to oversee all ethical clearances which may be required under those codes and guidelines. In addition to usual approvals/ethics approvals:

- For all projects on Macquarie Island, the approval of the Tasmanian Government is also required;
- All projects within Antarctica and the Southern Ocean below 60S must comply with the requirements of the Australian Antarctic program for environmental and ethics approvals; and
- All projects on Australian sub Antarctic islands must comply with the relevant Government requirements. E.g. Macquarie Island Tasmanian Government and Heard and Macdonald Islands (Australian Government laws administered by AAD).

8.3 Each Project Participant must comply with all applicable acts, ordinances, rules, regulations and by-laws applicable to the conduct of the AAPP Project in its state or territory including but not limited to State/Territory legislation about working with children and vulnerable people, and will also comply with the Antarctic Treaty and its 4 international agreements including all Commonwealth legislation relating to Antarctica.

8.4 When requested by the Program Leader or Collaboration Delegate, each Project Participant must provide evidence of the matters referred to in this clause 8 to the Program Leader or Collaboration Delegate as requested.

## **9 REPORTING**

9.1 The Principal Participant will ensure that the Project Leader prepares and provides to the Program Leader the Progress Reports annually or otherwise upon the dates required to enable the Collaboration Delegate to comply with the reporting requirements under the Commonwealth Agreement(s) on the conduct of the AAPP Project and the Milestones and Deliverables set out in the Project Plan.

9.2 Each Progress Report will be in writing and in an Approved Form with a level of detail reasonably acceptable to the Management Committee and will include:

- (a) the name of the AAPP Project and the Project Leader;
- (b) a description of each Milestone and the date on which it was reached or the reasons why it was not reached;
- (c) a report on the activities conducted by the Project Participants to achieve the Milestones and Deliverables;
- (d) details of expenditure incurred to date;
- (e) any knowledge or discoveries and contributions to end users, including Project IP, made since the last Quarterly Progress Report;
- (f) any variation which the Project Participants would like to make to the AAPP Project's methodology or Milestones; and
- (g) any further information reasonably requested by the Program Leader.

- 9.3 The Program Leader may reasonably require the Project Leader to provide interim reports. Such interim reports will be in an Approved Form and address matters specified by the Program Leader from time to time. Interim reports must be provided to the Program Leader within 30 Business Days of the Project Leader receiving a request from the Program Leader to provide such a report.
- 9.4 The Project Leader must within 30 Business Days of the Project Completion Date prepare and provide to the Program Leader a Final Report.
- 9.5 The Final Report will be in writing in a format and content to be agreed unanimously by the Management Committee and subject to requirements of the Commonwealth Agreement.
- 9.6 The Final Report will be the final Milestone of the AAPP Project.
- 9.7 The Final Report must be in an Approved Form and in a level of detail reasonably acceptable to the Management Committee.
- 9.8 A Project Participant must promptly give any information it holds in relation to the AAPP Project in the form reasonably requested:
- (a) to the Project Leader as reasonably necessary to enable the Project Leader to meet the reporting obligations under this Agreement; and
  - (b) to the Program Leader as reasonably necessary to enable the obligations under the Formal Collaborative Agreement and the Funding Agreements to be met.

## **10 RECORDS AND ACCOUNTS**

- 10.1 Each Project Participant will keep full and accurate accounting records of its expenditure of Project Funds and its Contributions to the AAPP Project and will provide copies of those records to the Program Leader on request.
- 10.2 The Management Committee or the Collaboration Delegate may appoint a qualified person to audit the records referred to in clause 10.1 and each Project Participant will give the person undertaking the audit access at all reasonable times to the records and will provide such information and explanations as the person desires for the purposes of the audit.
- 10.3 The Principal Participant will provide to the Program Leader, at the times Progress Reports are required to be provided under clause 9.1, a Financial Statement covering the period since the last Progress Report.
- 10.4 A final Financial Statement must be provided to the Program Leader at the same time as the Final Report.

## **11 VARIATION OF PROJECT**

- 11.1 An AAPP Project may, following a request to vary the AAPP Project from the Management Committee or from the Principal Participant to the Program Leader, be varied by the Program Leader issuing a Document in Writing to the Project Participants confirming the requested variation or a variation substantially in compliance with the requested variation.

## **12 OWNERSHIP OF PROJECT IP**

12.1 The Project Participants acknowledge and agree that all Project IP forms part of AAPP IP and will be owned and licensed in accordance with the Formal Collaborative Agreement.

12.2 Not Used

12.3 Each Project Participant must ensure that all Project IP is disclosed to the Project Leader as soon as practicable after its creation.

### **13 INDEMNITY AND INSURANCE**

13.1 The Project Participants must maintain adequate product liability, third party liability and other reasonable insurance cover, including professional indemnity insurance, for the conduct of the AAPP Project for the Term and for a reasonable run-off period after expiry of the Term.

13.2 Each Project Participant (the Indemnifier) hereby releases and indemnifies and agrees to keep released and indemnified the other Project Participants and their respective officers and employees agents and representatives (the Indemnified) from and against any Loss howsoever arising that the Indemnified may directly suffer, incur or sustain as a result of any breach of this Agreement by the Indemnifier or any unlawful or negligent act or omission of the Indemnifier or any of its officers employees agents or representatives arising out of the conduct of the AAPP Project.

13.3 The liability of the Indemnifier under clause 13.2 will be reduced having regard to the extent to which the Indemnified contributed to the Loss in respect of which it seeks indemnity.

13.4 The obligations under this clause 13 will survive expiration or earlier termination of this Agreement.

13.5 Clause 13.1 does not apply to a Project Participant which is an agency or instrumentality of the Commonwealth or a State or Territory which self-insures.

### **14 CONFIDENTIALITY**

14.1 A Project Participant's Confidential Information may only be:

- (a) disclosed to another Project Participant's officers, employees and students who need access to the Confidential Information for the conduct of the AAPP Project and to another Project Participant's financial or legal advisers provided that they are subject to a legal obligation to maintain the confidentiality of the Confidential Information; and

- (b) must only be used for the purposes of the AAPP Project.

14.2 The obligations under this clause 14 will survive expiration or earlier termination of this Agreement.

14.3 Despite clause 14.1, a Party or a Minister may disclose a Project Participant's Confidential Information to Parliament, Cabinet or a Parliamentary or Cabinet committee or subcommittee.

### **15 TERM AND TERMINATION**

- 15.1 This Agreement will commence on the Project Commencement Date and, subject to this clause 15, terminate on the earlier of:
- (a) the Project Completion Date; or
  - (b) the termination of the Principal Participants Agreement.
- 15.2 The Management Committee may terminate the AAPP Project on 20 Business Days written notice to the Principal Participant if:
- (a) a Milestone has not been met by the due date and is not met within 20 Business Days after the Program Leader gives written notice to the Principal Participant;
  - (b) a Deliverable has not been supplied by the due date and is not supplied within 20 Business Days after the Program Leader gives written notice to the Principal Participant; or
  - (c) in the reasonable opinion of the Management Committee, the Project Objectives are unlikely to be met.
- 15.3 If the AAPP Project is terminated under clause 15.2 and there are sufficient Project Funds, the Collaboration Delegate will reimburse each Project Participant from the Project Funds for its reasonable expenses, as agreed by the Management Committee, necessarily incurred because of the early termination of the AAPP Project.
- 15.4 A Project Participant who is reimbursed under clause 15.3 must take reasonable steps to mitigate the expenses it incurs.
- 15.5 The total amount paid to each Project Participant must be no more than the balance of the Project Funds payable to the Project Participant if the AAPP Project had not terminated.
- 15.6 If there are insufficient Project Funds to reimburse all expenses, each Project Participant will be reimbursed on a pro rata basis.
- 15.7 Termination of the AAPP Project for any reason is without prejudice to the continuing enforceability of any rights and obligations of the Project Participants existing at the termination date.
- 15.8 The obligations in relation to confidentiality, indemnities, Project IP and any other obligations that expressly or by implication are intended to survive the operation of this Agreement will continue beyond termination of this Agreement.

## **16 EXPULSION OF A PROJECT PARTICIPANT**

- 16.1 The Management Committee may expel a Project Participant from an AAPP Project if Due Cause exists and is not remedied within 20 Business Days after the Program Leader gives written notice to the Project Participant.
- 16.2 In clause 16.1, 'Due Cause' means:
- (a) not making Project Contributions;
  - (b) unauthorised use of Project IP, Project Background IP or Confidential Information;



- (c) any other material breach of the Principal Participants Agreement or this Agreement in conducting the AAPP Project, including not meeting Milestones;
  - (d) a change or proposed change of personnel that is likely to adversely affect the Project Participant's participation in the AAPP Project; or
  - (e) not resolving to the Management Committee's reasonable satisfaction, a conflict of interest in relation to the AAPP Project.
- 16.3 A Project Participant who is expelled from an AAPP Project ceases to be a Project Participant from the date on which the expulsion takes effect under clause 16.1.
- 16.4 The expulsion of a Project Participant from an AAPP Project does not affect:
- (a) the enforceability of other obligations of the Project Participant under the Formal Collaborative Agreement or other AAPP Projects;
  - (b) rights against the Project Participant accrued at that time or arising from the withdrawal or expulsion;
  - (c) the obligation on the Project Participant to supply its Project Background IP for the AAPP Project; or
  - (d) the obligations on the Project Participant in relation to confidentiality, indemnities, Project IP and any other obligations that expressly or by implication are intended to survive the operation of this Agreement.
- 16.5 The withdrawal or expulsion of a Project Participant from the AAPP Project does not relieve the other Project Participants of their obligations under this Agreement.

## **17 NOTICES**

- 17.1 The addresses for service of Notices to the Project Participants are those set out in the Project Plan.

## **18 FURTHER ASSURANCES**

- 18.1 Each Project Participant must do all things and execute all documents necessary to give effect to the provisions and intent of this Agreement.

## **19 NO AGENCY OR PARTNERSHIP**

- 19.1 The Project Participants enter into this Agreement as independent contractors and nothing in this Agreement will result in a Project Participant being constituted as an agent or partner of another Project Participant.

## **20 GST**

- 20.1 Unless otherwise expressly stated, all amounts payable under this Agreement are expressed to be exclusive of GST.
- 20.2 If GST is payable on a Taxable Supply, the amount payable for that Taxable Supply will be the amount expressed in this Agreement plus GST.

- 20.3 If GST is payable on a Taxable Supply made by one party to another party, then that other party will not be required to pay any amount to the first party in respect of that Taxable Supply unless it has first received a Tax Invoice.
- 20.4 For the purposes of this clause 20, the terms GST, Taxable Supply and Tax Invoice have the meaning given to those terms in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).