



Integrated **Marine**
Observing System

Principal Participants Agreement

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This Agreement is made the 23rd day of November 2016

Between these Parties:

University of Tasmania (ABN 30 764 374 782, **Lead Agent**)

Australian Institute of Marine Science (ABN 78 961 616 230)

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)

Minister for Agriculture, Food and Fisheries acting through the South Australian Research and Development Institute (ABN 53 763 159 658)

Sydney Institute of Marine Science (ABN 84 117 222 063)

University of Western Australia (ABN 37 882 817 280)

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

Recitals:

- A. IMOS, as a national marine observing system has been funded by the National Collaborative Research Infrastructure Strategy (NCRIS), and in existence since 2007.
- B. The Parties wish to establish an unincorporated joint venture to be known as the Integrated Marine Observing System ("**IMOS**").
- C. The Lead Agent has entered into a series of agreements with the Commonwealth and other parties under which IMOS is funded (Funding Agreements) and pursuant to which a similar entity also known as IMOS informally operated prior to entry into this Agreement.
- D. IMOS will be operated by the Parties through the Lead Agent pursuant to this Agreement.
- E. With effect from the Commencement Date the former IMOS entity will be replaced by the IMOS entity established by this Agreement by which the Parties have agreed that the Activities of IMOS are to be governed by the terms and conditions set out in this Agreement.

It is Agreed:

1 Definitions and interpretation

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.

2 Term

- 2.1 This Agreement starts on the Commencement Date and will remain in force until one of the following events occurs:
 - (a) the Parties by unanimous written agreement terminate this Agreement; or
 - (b) following the retirement or expulsion of a Party under clause 25, only one Party remains as a party to this Agreement;and
 - (c) subject to completion of all matters required to properly wind up IMOS.
- 2.2 On wind-up, the following matters must be agreed by the Parties:
 - (a) responsibility for archiving of all IMOS 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

3.1 Relationship to the Commonwealth Agreement

- (a) This Agreement does not reduce or affect the obligations of the Lead Agent under the Commonwealth Agreement.
- (b) If there is any inconsistency between this Agreement and the Commonwealth Agreement:
 - (i) the Commonwealth Agreement prevails to the extent of the inconsistency if the inconsistency means the Lead Agent will breach its obligations under the Commonwealth Agreement; and
 - (ii) in any other case, this Agreement prevails.

3.2 Lead Agent authority to enter into or vary the Funding Agreements

The Lead Agent must not:

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

without

- (c) a unanimous Governing Board 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 in cases where the Lead Agent has or intends to execute a Funding Agreement or variation to a Funding Agreement in its own right and for the purposes of funding Activities:

- (e) if the variation, or entering into a new Funding Agreement is required in a timeframe for which it is not possible to gain unanimous Governing Board Resolution, all reasonable attempts have been made; or
- (f) if the Lead Agent 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 The Parties agree that Project Plans which cover part of the Activities and which were commenced but not completed prior to the Commencement Date will be managed and administered in accordance with the sub-contract relating to the particular Project Plan.

4 Integrated Marine Observing System (IMOS)

4.1 Establishment of IMOS

The Parties establish between them an unincorporated joint venture for the conduct of research and infrastructure development activities, to be known as the Integrated Marine Observing System (IMOS), for the purposes of carrying out the Activities in pursuit of the IMOS Objectives in accordance with this Agreement and the Funding Agreements. IMOS will in all material respects replace the entity which operated under the name "IMOS" prior to the Commencement Date.

4.2 Relationship of Parties

The Parties agree that:

- (a) Subject to the Agreement each Party will have an equal share in IMOS in accordance with this Agreement.
- (b) the rights, duties, obligations and liabilities of the Parties in relation to IMOS 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, except for the agency arrangements described in clauses 12 and 24, 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 38.2 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 IMOS; and

- (f) except as otherwise specifically provided in this Agreement, liabilities of IMOS incurred by or on behalf of all the Parties for the purposes of the Activities are incurred severally and not jointly by the Parties.

4.3 Governance

The Lead Agent and the Governing Board must regulate, manage and govern IMOS, 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 Lead Agent may participate in IMOS.

4.4 IMOS Collaborative Partners

IMOS Collaborative Partners are fundamental to the success of IMOS. They provide the observing capability. They implement the infrastructure and make the data available, invest in the IMOS program (both cash and in-kind), carry out the Activities, use the observations and data to undertake research, and apply the observations and data to deliver societal benefit.

No one jurisdiction or institution, public or private, has the capability, capacity, resources or mandate for the operation of national scale, integrated marine observing infrastructure on its own. IMOS in the guise of the entity through which it operated prior to the Commencement Date, demonstrated that the most efficient way to meet this need for multiple party and location involvement is through a national collaborative research infrastructure operated by key stakeholders. With an appropriate level of Australian Government investment and potentially external and internal investment and co-investment in place, the established partnerships which functioned under the former IMOS entity and which are required to address current and future needs can be maintained and grown.

The major categories of IMOS Collaborative Partners are:

- (a) **Operating Institutions**: are the Principal Participants and Associate Participants which receive IMOS Funds to operate IMOS Facilities and IMOS Sub-facilities. These are the core organisations which implement the IMOS Objectives, carry out the Activities and make the data available.
- **Principal Participants**: are the Parties to this Agreement. They include the Lead Agent and receive IMOS Funds to lead the development and maintenance of the major components of the IMOS infrastructure, and thus need to be directly involved in IMOS governance.
 - **Associate Participants**: are organisations that receive IMOS Funds to undertake niche and specialist roles required to implement the IMOS Activities over a particular funding period and will be required to sign an Associate Participant Agreement including the Project Terms, the form of which will be endorsed by the Governing Board, prior to being entered into by the Associate Participant and Lead Agent (on behalf of the Parties).
- (b) **Other Participants**: other organisations which provide cash or IMOS Resources towards the development of the IMOS infrastructure but do not receive IMOS Funds directly. Legal arrangements, as appropriate

depending on the level of involvement, will be arranged to document these contributions. Categories of Other Participants are:

- **Operational Partners** - provide additional capability required to implement the IMOS program, including access to vessels, key people, and valuable data. Operational Partners do not receive any of the IMOS Funds directly from the Lead Agent, but may receive IMOS Funds indirectly from Principal Participants or Associate Participants as required.
- **International Collaborators** - are non-Australian organisations involved in IMOS. The ocean is a globally connected system, and international collaboration is essential to the marine observing enterprise. International collaboration enabled through IMOS provides both significant benefit to Australia, and a basis for Australian science to contribute to questions of global significance
- **Investing Partners** - are organisations which provide funding in addition to the core investment provided by the Commonwealth, so as to extend the capacity of IMOS to observe throughout Australia's vast marine environment. Co-investment enables IMOS to deliver more observations and data, and provides Investing Partners with a cost effective mechanism to meet their needs by leveraging an established program with a proven track record.
- **Research Partnerships** - are organisations which are leading major Australian research initiatives that require marine observations and data to provide a mechanism for prioritisation and focus. The societal benefits of investment in IMOS are realised through uptake and use of observations and data to undertake marine and climate science which has relevance and impact. This is implicit in the fact that IMOS is broadly engaged across the Australian marine and climate science community, and it is equally important that IMOS is explicitly responsive to current and emerging national priorities.
- **Other Funding Parties** – are individuals who may from time to time provide funding to IMOS for any purpose related to the IMOS Objectives.

5 IMOS Objectives

5.1 Objectives

The core mission of IMOS is to routinely operate a wide range of observing equipment throughout Australia's coastal and open oceans, making all of its data accessible to the marine and climate science community, other stakeholders and users, and international collaborators.

The vision of IMOS is that Australia will have in place a continuously growing time series of essential ocean observations enabling cutting edge research on contemporary problems, and providing an evidence base to support informed decision making about sustainable development of our vast and valuable marine estate.

Nine strategic priorities have been identified in developing the IMOS Strategy. As a package they are intended to ensure that IMOS is focused on Australia's grand challenges, provides distinctive scientific capability, and is positioned within the national innovation system so that its outputs have real influence on outcomes.

These nine strategic priorities are as follows:

1. Engage all national stakeholders with a need for systematic and sustained observing of Australia's marine environment in the ongoing design and implementation of the IMOS system.
2. Continue to focus on turning observations and data into time series of essential marine and coastal variables, providing timely support to a wide range of science and research, meeting current and future needs.
3. Collaborate as a strong partner in the global ocean observing enterprise, to generate synergies from international efforts and provide leadership within the Australasian region.
4. Sustain established IMOS capability so as to realise full value from investments to date, and avoid loss of value through discontinuity. Evolve established capability in response to scientific and technological developments, and performance and delivery.
5. Position IMOS capability so as to maximise benefits from related investments in remote sensing, vessel operation, marine data management, and ocean and coastal modelling.
6. Articulate major gaps, develop costed solutions, and work with partners and stakeholders to identify opportunities for addressing them.
7. Continue to evolve the observing system in response to national priority setting.
8. Sustain effort in areas where impact is high. Focus effort on increasing relevance and impact in sectors with unrealised potential.
9. Build partnerships with State Governments and marine industries around the core investment by Australian Government.

6 Party responsibilities

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 IMOS Objectives;
- (c) provide its Contributions to IMOS in accordance with this Agreement and Project Agreements to which it is a party;
- (d) apply IMOS Funds and IMOS 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 IMOS;
- (f) use reasonable efforts to ensure that its directors, officers, employees, agents, contractors, students and other representatives involved with IMOS give full force and effect to this Agreement;
- (g) act reasonably and in good faith in performing its obligations for IMOS under this Agreement.

6.2 Promises to Lead Agent

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 Lead Agent to enable the Lead Agent to meet its obligations under the Funding Agreements;
- (b) not knowingly or negligently do, or omit to do, anything that would cause the Lead Agent 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 Lead Agent in respect of the Lead Agent's obligations under the Funding Agreements to commission and report on any review, audit, evaluation or survey.

7 Governing Board

7.1 IMOS will be managed through a board known as the Governing Board.

7.2 The Parties must ensure that:

- (a) the Chairperson of the Governing Board is independent of each Participant and the management of IMOS 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 IMOS Director are not the same individual.

7.3 The Parties agree to comply with Schedule 3 in relation to the constitution and governance of the Governing Board.

8 IMOS Director

8.1 Appointment

- (a) The Governing Board in consultation with the Lead Agent must approve the appointment and the removal by the Lead Agent of any person to the position of IMOS Director.
- (b) The Governing Board in consultation with the Lead Agent is responsible for the annual performance review of the IMOS Director.

8.2 Delegation

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

8.3 IMOS Office

The IMOS Director will lead the IMOS Office, with employment arranged by the Lead Agent. The IMOS Office is responsible for coordination of IMOS, development of strategic and business plans, coordination of Governing Board meetings, communication, the management, governance and accounting of IMOS by the Lead Agent pursuant to clauses 4.3, 13.2 and 14.1 and

engagement with the wider IMOS community and planning, reporting and promotion of IMOS. The IMOS Office will work with the Lead Agent to appoint the Governing Board and co-ordinate the entry by the Lead Agent into Funding Agreements and other relevant agreements with the Commonwealth and the IMOS Collaborative Partners (including Project Plans and Associate Participant Agreements).

9 Annual Plan and Budget

9.1 Annual Plan and Budget

Before the start of each Financial Year the IMOS Director must prepare, and submit for approval by the Governing Board, an Annual Plan and Budget for IMOS 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 IMOS to be procured from Associate Participants, Other Participants and third parties;
- (d) the allocation of IMOS Funds and IMOS Resources to IMOS Projects and other Activities;
- (e) the allocation of IMOS Funds and IMOS Resources to heads of expenditure;
- (f) the Activity Payments and the IMOS Resources to be given, for the purposes of carrying out the Activities:
 - (i) to each Operating Institution; and
 - (ii) to other parties;
- (g) the portion of the IMOS Funds and the IMOS Resources to be used by the IMOS Office for the conduct of the Activities; and
- (h) the proposed allocation of IMOS Funds to be paid to the Parties for their operating expenses under approved IMOS Projects.

9.2 Circulation of Annual Plan and Budget

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

10 Specified Personnel

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 IMOS IP

Each Party must ensure that IMOS 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 IMOS Director subject to the Party providing a suitable replacement for the withdrawn Specified Personnel, reasonably acceptable to the IMOS Director.
- (b) The IMOS Director 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 IMOS. Subject only to clause 37, the Party must, at its own cost, promptly arrange for the removal of the personnel from work on IMOS and their replacement with suitable personnel reasonably acceptable to the IMOS Director.
- (c) If the Party is unable to provide acceptable replacement personnel, the IMOS Director may request the Governing Board to terminate, or reduce the scope of, that Party's Activity as it related to those personnel requested to be removed.

11 Assets

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 Lead Agent using IMOS Funds;
- (d) forming part of the IMOS Resources provided to a Party after the Commencement Date; or
- (e) acquired using IMOS Funds prior to the Commencement Date provided it is in use as at 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:

- (a) use and must allow another Party or entity participating in IMOS or its Activities to use the Asset as necessary for the Activities and/or for the promotion of the IMOS 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 IMOS Director;
- (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 Lead Agent, or via an agreed form of 'self-insurance' (to be agreed with the IMOS Director);
- (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 Lead Agent, provide copies of the Assets register to the Lead Agent, in particular to meet the requirements of any Funding Agreement.

11.5 Costs

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

12 Lead Agent

12.1 Appointment

The Parties agree to severally appoint the Lead Agent as its exclusive agent 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 Lead Agent accepts its appointment as exclusive agent for performance of the Management Functions on behalf of the Parties on the terms and conditions in Schedule 4 and this Agreement.

12.3 Removal or resignation

The Parties agree that the Governing Board will if necessary remove or approve the resignation of the Lead Agent from time to time and immediately:

- (a) appoint a new Lead Agent; and
- (b) ensure all that is reasonably necessary is done to effectively transfer the responsibilities, Funding Agreements, IMOS Funds, records, and other matters from the old Lead Agent to the new Lead Agent; and

- (c) will ensure that any of the old Lead Agent's or the new Lead Agent's reasonable costs which arise from the removal or appointment (as the case may be) are met from the IMOS Funds, except where the removal is for unlawful conduct or unsatisfactory performance.

13 Accounting

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 Lead Agent;
- (c) all expenditure incurred by the Party from its Activity Payments;
- (d) any royalties or licence fees paid to it by the Lead Agent.

13.2 IMOS Account

The Lead Agent must establish and keep a separate IMOS Account in its accounting system to record:

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

13.3 Provision of information by Parties

- (a) Each Party must supply to the Lead Agent, within 14 days of a written request from the Lead Agent:
 - (i) all necessary information from the accounts referred to in clause 13.1 for the Lead Agent 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 Lead Agent relating to the IMOS 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 Lead Agent, promptly supply the records to the Lead Agent, in the Approved Form.

14 Reporting by IMOS

- 14.1 Subject to the consent of the Commonwealth and any obligations of confidentiality or privacy owed by the Lead Agent or any Board Members, the IMOS 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 Lead Agent and the Commonwealth; and
 - (b) any notices, other than normal correspondence, the Lead Agent receives from the Commonwealth.

15 Notification of Critical Events

15.1 Notification by Lead Agent

The Lead Agent must give written notice to the Governing Board and each Party within 10 Business Days of becoming aware of any of the following:

- (a) litigation threatened or commenced against the Lead Agent in its capacity as Lead Agent;
- (b) a notification from the Commonwealth in relation to a breach of the Commonwealth Agreement;
- (c) a substantial dispute between the Lead Agent and a Party;
- (d) a substantial dispute between the Lead Agent, acting in its capacity as Lead Agent and another entity;
- (e) a substantial dispute between the Lead Agent, acting in its capacity as Lead Agent and the Commonwealth; or
- (f) notice of circumstances that would or may reasonably warrant expulsion of a Party under clause 25.1(b).

15.2 Notification by Parties

The Parties must notify the Governing Board and the Lead Agent (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 Lead Agent's ability to comply with its obligations of the Commonwealth Agreement and the Lead Agent 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 Lead Agent and the Governing Board 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

16.1 Contribution of Background IP for IMOS Projects

- (a) Each Party grants the other Parties the right to use its Background IP but only for the purpose of the undertaking IMOS Projects and not for the general operations of the IMOS or general overhead activities. Except to the extent set out in a Project Agreement, this licence includes a right for the other Parties to licence the Background IP in conjunction with the IMOS IP to the public under a Creative Commons By Attribution licence. 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 IMOS Project, as specified in a written notice to and approved by the IMOS Director.
- (c) For clarification, any IP developed using IMOS Funds prior to the Commencement Date is IMOS IP and not Background IP unless it falls within clauses 16.1 (a).
- (d) 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 Facilities and Sub-Facilities (IMOS Projects)

17.1 Activities through IMOS Projects

The Activities will be carried out through discrete Project Agreements.

17.2 Facilities and Sub-Facilities

- (a) All Activities involving development of the IMOS research infrastructure must be carried out through a Project Agreement entered into to implement a Facility or Sub-Facility approved IMOS Project.
- (b) At the Commencement Date the Facilities are:
 - IMOS Office
 - Argo Floats
 - Ships of Opportunity
 - Deep Water Moorings
 - Ocean Gliders
 - Autonomous Underwater Vehicle
 - National Mooring Network
 - Ocean Radar
 - Animal Tracking
 - Wireless Sensor Networks
 - Satellite Remote Sensing

- Australian Ocean Data Network (AODN)
 - OceanCurrent
- (c) At the Commencement Date, Sub-Facilities have been agreed within the Ships of Opportunity, Deep Water Moorings, Ocean Gliders, National Mooring Network, Animal Tracking and Satellite Remote Sensing.
- (d) The Parties acknowledge that Project Plans forming part of the Activities have commenced prior to the Commencement Date. Despite the Commencement Date and this Agreement, it is agreed that these Project Plans will be funded until finalised, varied or terminated in accordance with the sub-contracts entered into by the Lead Agent with the Parties and Associate Participants.

17.3 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 Governing Board will decide on the Project Plans to be funded, taking into account recommendations of the IMOS Director and/or any relevant subcommittee approved by the Governing Board. The Governing Board is not required to accept or act on the recommendations.
- (c) The Governing Board will only approve IMOS Projects submitted by the Parties or Associate Participants who have entered into an Associate Participant Agreement. Notwithstanding the preceding sentence, the Governing Board may approve for the Lead Agent to enter into an Associate Participant Agreement under clause 17.5 in order to allow commencement of an IMOS Project.
- (d) Subject to clause 17.2, Parties must follow the selection and approval processes for Project Plans managed by the Governing Board.
- (e) The Project Participants must not start an IMOS Project unless:
- (i) the Governing Board has approved the Project Plan for that IMOS Project;
 - (ii) all relevant ethics approvals have been obtained; and
 - (iii) the IMOS Director has issued a Document in Writing to the Operating Institution confirming the Governing Board has approved the IMOS Project.
- (f) If requested by a Party, the Governing Board will provide reasons in a document in writing for its rejection of a Project Plan.

17.4 Conduct of IMOS Projects

On approval of an IMOS Project by the Governing Board, the Project Participants will carry out the IMOS Project in accordance with this Agreement and the Project Agreement.

17.5 Associate Participant Agreement

- (a) The Lead Agent may enter into agreements with the Associate Participants to secure their Contributions to IMOS, 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 Lead Agent covering such participation as approved by the Governing Board.
- (c) Subject to the Governing Board imposing any contrary requirement, an Associate Participant Agreement with an Associate Participant must be consistent with this Agreement.

18 IMOS Nodes

18.1 IMOS observations are guided by science planning undertaken collaboratively across the Australian marine and climate science community. This is a large, diverse, dispersed community, and IMOS has developed its science planning through a series of integrated nodes. At the Commencement Date the agreed IMOS Nodes are:

- Blue Water and Climate
- Queensland IMOS (Q-IMOS)
- New South Wales IMOS (NSW-IMOS)
- Southern Australian IMOS (SA-IMOS)
- Western Australian IMOS (WA-IMOS)
- South East Australia IMOS (SEA-IMOS)

18.2 The key responsibilities of the IMOS Nodes are:

- To represent the scientific opinion of the marine research community, provide scientific rationale for IMOS, develop research goals and identify the need to obtain specific streams of data.
- To support the development of a National Science Plan through the development of the regionally based science plans and national level planning and coordination
- To advise the IMOS Office on assessment of the technical implementation of IMOS and scientific merit of research undertaken with IMOS data;
- To advise the IMOS Office on priority future observations based on scientific merit, technical maturity and capability/capacity within the community to deliver/use the data.
- To support the IMOS Office in tracking the use of IMOS data.
- To promote the use of IMOS data.

18.3 The leaders of IMOS Nodes (including the deputy Node leaders), the AODN Director and the IMOS Director (who is also the Chair) form the IMOS Steering Committee. The IMOS Scientific Officer is Secretary.

18.4 The IMOS Steering Committee consolidates scientific thinking in the IMOS Nodes and forms a national perspective that guides the preparation of annual and strategic plans and acts in an advisory capacity to the Governing Board.

18.5 The leaders of the IMOS Nodes are Specified Personnel.

19 Intellectual Property

19.1 Data and data products produced under the auspices of IMOS will be openly available, provided unencumbered, and access will be provided on a free, open and timely basis via the AODN Portal. All IMOS data will be licensed by a Creative Commons By Attribution (CC BY) licence (<http://creativecommons.org/licenses/by/2.0/au/>).

19.2 IMOS IP

- (a) The Parties acknowledge and agree that it is intended that all data and data products produced under the auspices of IMOS be openly available.
- (b) Any IP rights associated with IMOS raw data lie with the Party that produced the IMOS raw data.
- (c) Any IP rights associated with IMOS value-added products predominantly developed by an individual Party whether before or after the Commencement Date lie with that Party. For clarification
 - (i) IP rights related to development of the AODN Portal lie with the Party who leads the Australian Ocean Data Network (which is the Lead Agent as at the Commencement Date) and
 - (ii) IP rights related to development of the OceanCurrent website lie with the Party which leads the OceanCurrent Sub-facility (which at Commencement Date is CSIRO).
- (d) The Party owning the IMOS IP right will issue a non-exclusive licence to any user of the data, data products or value added products.
- (e) For value-added products produced other than by the AODN Facility, but which use IMOS data, data products or services, the IP rights of the particular value-added product rests with the Party that produces the product, with no restriction other than that set out in the following sub clauses below.
- (f) Except where otherwise negotiated with the IMOS Office, any users (including re-packagers) of IMOS data, data products and services are required to clearly and prominently acknowledge the source of the material derived from the IMOS, together with (where relevant) a reference/link to the related metadata record. Instructions on how to do this will be prominently displayed on the IMOS website.
- (g) Re-packagers of IMOS 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 IMOS are provided “as is” without any warranty as to fitness for a particular purpose.

19.3 Parties' right to use IMOS 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 IMOS IP for the Activities;
- (b) to each other Party a non-exclusive, royalty-free licence to use, reproduce and adapt its IMOS IP for non-commercial research purposes. This licence includes the right to sub-license use of the IMOS 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 IMOS IP (For the purposes of this subclause only, non-commercial research includes current and future collaborative and funded research carried out with other parties not pursuant to this Agreement);

- (c) the Lead Agent a non-exclusive, royalty-free licence (including the right to sub-licence) to use, reproduce and adapt its IMOS IP for the Activities in accordance with directions of the Governing Board; and
- (d) a licence for the purposes, and on the terms, approved by the Governing Board under clause 19.4 to the relevant Party.

19.4 Licence to use IMOS IP outside the Activities

- (a) A Party wishing to use IMOS IP for any purpose not authorised under clause 19.3, must obtain the prior approval of the Governing Board. The grant of any such approval, and any terms attaching to it, will be at the Governing Board's absolute discretion.
- (b) Where the Governing Board has granted approval under clause 19.4(a), the licence granted under clause 19.3 (d) applies provided that the Party granted such a licence:
 - (i) maintains the confidentiality of Confidential Information;
 - (ii) does not prejudice the Governing Board's ability to:
 - A. protect the IMOS IP;
 - B. use the IMOS IP to achieve the IMOS Objectives; or
 - C. maximise the return from any IMOS IP that has significant commercial potential.

19.5 Use of IMOS IP at own risk

Each Party agrees that it uses the IMOS IP at its own risk and releases and indemnifies the other Parties in relation to such use of IMOS IP in accordance with clause 21.

19.6 Improvements

- (a) Intellectual Property in Improvements made by a Party under the licence granted under clause 19.4 vests in the Party.
- (b) The Party:
 - (i) must advise the Governing Board of the Improvements promptly after creation;
 - (ii) if requested by the Governing Board, must grant to the Parties a perpetual, 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 19.4 is a licence to Commercialise, must not Commercialise any Improvements without an appropriate licence of the IMOS IP on terms agreed by the Governing Board.

20 Moral Rights

If requested by the IMOS Director, 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.

21 Indemnities

21.1 Subject to clauses 21.2, 21.3 and 21.4, 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 36.2) 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 IMOS; or
- (c) the exercise by those Indemnified of any rights granted to them in relation to the IMOS IP or Background IP by the Indemnifying Party.

21.2 Reduction of indemnity

The release and indemnities given under clause 21.1 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 36.2) 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 IMOS IP or Background IP.

21.3 Commonwealth exception

- (a) If the Commonwealth is a Party, it is excluded from the obligation under clause 21.1 to indemnify the other Parties.
- (b) This clause 21.3 does not exclude or reduce the liability of, or benefit to, the Commonwealth that arises by operation of law or breach of statute.

21.4 Consequential losses

A Party is not liable for special, indirect or consequential loss or damages (including loss of income or profits and loss of expectation of income or profits) arising under this Agreement.

21.5 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 21.1.

21.6 Survival

The release and indemnities in clause 21.1:

- (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 IMOS.

22 Insurance

22.1 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.
- (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 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
 - (iv) must include adequate run-off cover after this Agreement has ended.

22.2 IMOS insurance

In addition to clause 22.1 the Governing Board may request the Lead Agent to arrange insurance using IMOS Funds it deems necessary to cover any situation or type of risk, potential or current, that may arise as a result of the Activities of IMOS that may not be covered by the insurances held by the Parties to this Agreement.

- 22.3 Clause 22.1 does not apply to a Principal Participant which is an agency or instrumentality of a State or Territory which self-insures.

23 Amendments

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 Lead Agent'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

24.1 The Parties may, by unanimous written agreement of the Parties:

- (a) decide to admit another organisation to this Agreement ("**Joining Party**"); and
- (b) set the terms of the Joining Party's admission.

24.2 If the Parties unanimously agree to admit the Joining Party, the Joining Party must sign a deed of accession with the Lead Agent on behalf of the Parties to the extent discussed and agreed by the Governing Board under which the Joining Party agrees to be bound as a Party to this Agreement, and when executed will bind all the other Principal Participants to its terms.

24.3 The Lead Agent will provide a copy of the executed deed of accession to all Parties.

25 Retirement and expulsion from IMOS

25.1 **Retirement and expulsion from IMOS**

- (a) a Party may retire from IMOS by giving 12 months written notice to all other Parties; and
- (b) a Party ("**Defaulting Participant**") may be expelled from IMOS 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 Lead Agent.

25.2 **Due Cause**

For the purpose of clause 25.1(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 IMOS 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 IMOS 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 41.2;
- (j) another matter as the Governing Board may reasonably and properly unanimously declare to be a Due Cause.

25.3 Consequences

- (a) If a Party is expelled or retires from IMOS, 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 25.3(b), is relieved of its obligation to make further Contributions.
- (b) A Party who is expelled or retires from IMOS remains bound by any extant Project Agreement unless the Party is expelled or retires from the IMOS Project, or is otherwise released from its obligations, in accordance with the relevant Project Agreement.
- (c) The retirement or expulsion of any Party from IMOS 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 19.2(d) and 19.3 in relation to IMOS IP at the date of expulsion or retirement; or
 - (v) the licence granted to the Party under clause 19.3 for IMOS IP.
- (d) A Party who is expelled or retires from IMOS remains subject to the following obligations:
 - (i) clause 25 [Retirement and expulsion from IMOS]; and
 - (ii) clause 27 [Continuing obligations];
- (e) The retirement or expulsion of a Party from IMOS 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

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

On retirement or expulsion under clause 25 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 Lead Agent];
- (b) clause 19 [Intellectual Property];
- (c) clause 21 [Indemnities];
- (d) clause 22 [Insurance];
- (e) clause 25 [Retirement and expulsion from IMOS];
- (f) clause 26 [Effect of termination];
- (g) clause 29 [Safe and ethical research];
- (h) clause 30 [Privacy];
- (i) clause 31 [Records and access];
- (j) clause 33 [Confidential Information].

To the extent any such obligations are applicable.

28 Compliance with law and policy

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.

29 Safe and ethical research

29.1 Compliance with codes

Each Party must ensure that:

- (a) development of research infrastructure conducted by it under the auspices of IMOS; and
- (b) any place where the research infrastructure development is being conducted by it,

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.

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 authority.

29.3 Evidence of compliance

Whenever reasonably required by the IMOS Director, a Party must promptly give written evidence of compliance with this clause 29.

30 Privacy

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

- (a) 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.
- (b) The procedures must at least comply with the Australian Privacy Principles under the *Privacy Act 1988* (Cth).

30.3 Obligations

A Party must:

- (a) 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;
- (b) 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 30;
- (c) ensure that any subcontract made under this Agreement includes enforceable obligations requiring the subcontractor to comply with clause 30; and
- (d) 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

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 Lead Agent or to another person directed by the Lead Agent.

31.2 Access to premises and records

A Party must:

- (a) at all reasonable times provide the Lead Agent 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 IMOS as it applies to the Party;
- (b) at all reasonable times allow the Lead Agent 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; 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 31.

31.3 Limitation on access

Despite clause 31.2(b), a Party granting access ("**Host**") to the Lead Agent, 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 and workplace health and safety legislation.

31.4 Commonwealth right of access

The Commonwealth's rights under clause 31.2(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 31.4(a) does not apply if a matter is being investigated which, in the opinion of the Lead Agent or a senior member of the Commonwealth, may involve an actual or apprehended serious breach of the law.

32 Publications

- 32.1 When any Activity results are published, the publishing party will acknowledge any technical input 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 IMOS 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 clause 35.2(d) or as directed by the Governing Board; 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 IMOS Director of any significant promotional event to be held relating to the Activities. This may include allowing the IMOS Director, or any other person nominated by the IMOS Director to speak at, or play any role (including an integral role) in the relevant promotional event.
- 32.4 The Governing Board may direct the Lead Agent to publish information or material arising from the Activities if the Governing Board decides in its absolute discretion that the benefits of publication, taking into account the IMOS Objectives, outweigh any potential disadvantage for IMOS.
- 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 IMOS 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 35, each Party must ensure that any publication made under this clause 32 acknowledges the contributions (if any) made by other Participants and the support of the Commonwealth and IMOS unless directed otherwise by the Participant or the Commonwealth or the Governing Board (as the case may be).

33 Confidential Information

33.1 Obligation

Except as otherwise provided in this clause 33, 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 Lead Agent, use and disclose IMOS Confidential Information as directed by the Governing Board for the purposes of this Agreement or otherwise for the purposes the IMOS Objectives;

- (c) if the Party is the Lead Agent, 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 advisers
 who 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 33.6;
- (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 33 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 IMOS Confidential Information, the Governing Board has consented to the disclosure; or
 - (vi) is disclosed by the Minister for Agriculture, Food and Fisheries to Parliament, Cabinet or a Parliamentary or Cabinet 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 33 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 IMOS.

34 Public Announcements

- 34.1 The Governing Board has delegated to the IMOS Director responsibility for making public announcements about IMOS.
- 34.2 Subject to clause 34.3, a Party must not make any public announcement in relation to IMOS or this Agreement without the prior approval of the IMOS Director.
- 34.3 If a Party is required by law or a regulatory body to make a public announcement about IMOS or this Agreement, then the Party must, to the extent practicable, first consult with IMOS Director and take into account the reasonable requirements of the Governing Board.

35 Use of Party's name and IMOS logo

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.

35.2 Sublicense to use the IMOS logo

- (a) The Lead Agent owns the IMOS logo.
- (b) The Lead Agent grants each Party a non-exclusive licence to use the IMOS logo during the Term subject to any reasonable conditions required by the Governing Board or Lead Agent.
- (c) Unless the Lead Agent otherwise agrees in writing, the licence granted under clause 35.2(b) immediately ends if:
 - (i) the Term ends; or
 - (ii) the Party is expelled or retires from IMOS.
- (d) During the Term, a Party must ensure that all publications (including reprints) and publicity about the Activities, whether published by the Party or by another person under the Party's control, direction or authorisation:
 - (i) include an acknowledgement of the funding of the Activities by Commonwealth in the Approved Form; and
 - (ii) refer to IMOS; and

- (iii) adhere to the “IMOS Visual Identity Guidelines” and “Acknowledgement of use of IMOS Data” – both will be available on the IMOS website.

36 Conflicts

36.1 Definition of Conflict

For the purposes of this clause 36, “**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 IMOS if:
 - (i) those researchers are not part of IMOS; and
 - (ii) the researchers have not received Confidential Information related to IMOS.

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 Lead Agent or Governing Board may reasonably require to resolve or otherwise deal with the Conflict.

37 Dispute resolution

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 37 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 37.2, 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 37.3(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 37.4; 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 37.3(c)(ii), the chairperson of LEADR 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 37:

- (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 37.
- (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 37.1 to 37.3.
- (b) Clauses 37.7 and 37.8 survive termination of the dispute resolution process.

38 Goods and Services Tax and Tax Invoices

38.1 IMOS Funds payable under this Agreement

The IMOS Funds payable under this Agreement and any approved Project Agreements are exclusive of GST. Payment will be made by the Lead Agent (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 Lead Agent for Activities of IMOS

- (a) The Parties agree and authorise the Lead Agent 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 IMOS, where to do so is expedient, will foster the efficient operation of IMOS and is in the specific knowledge of the management of the Lead Agent compliant with the GST laws. Such authorisation is limited to Supplies ordinarily made in obtaining funding by the Lead Agent for IMOS where the funding is utilised in Activities undertaken by the Lead Agent for the Participants or for an entity established as part of IMOS.
- (b) The Parties acknowledge that this clause 38.2 constitutes a written agreement for the Lead Agent to issue Tax Invoices in respect of the Supplies contemplated by this clause.

39 Force Majeure

39.1 Definition

- (a) In clause 39, a “**Force Majeure Event**” affecting a Party means, subject to clause 39.1(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 39:

- (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

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 40.1 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* (C'th),

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

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 Governing Board'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 27 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

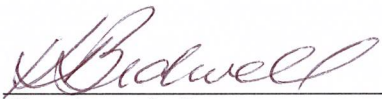
- (a) A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy.
- (b) A single or partial exercise of a right, power or remedy does not stop another or further exercise of that or another right, power or remedy.
- (c) A waiver of a right,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

Signing Page

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


Signature of witness

KERRIE BISWELL
Name of witness (print)


Signature of officer

← BRIGID HEYWOOD
Name of officer (print)

DEPUTY VICE CHANCELLOR
Office held

Signed **Australian Institute of Marine Science** 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)

Signature of officer

Name of officer (print)

Office held

Signing Page

Signed **University of Tasmania** 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 **Australian Institute of Marine Science** by an authorised officer in the presence of



Signature of officer



←

Signature of witness

John Sutherland Gunn

Name of officer (print)

Linda Maree McNamara

Name of witness (print)

Chief Executive Officer

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)

Office held

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

Signature of officer

←

Signature of witness

Name of officer (print)

Name of witness (print)

Office held

Signing Page

Signed **University of Tasmania** 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 **Australian Institute of Marine Science** by an authorised officer in the presence of

Signature of officer

←

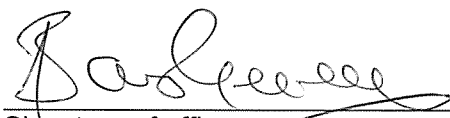
Signature of witness

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



Signature of officer


←

Signature of witness

BORIS KELLY-GERREYN

Name of officer (print)

MARIA DAVEY

Name of witness (print)
23 November 2016

IMOS OPERATOR (HEAD, OBSERVING STRATEGY).

Office held
23/11/16

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

Signature of officer

←

Signature of witness

Name of officer (print)

Name of witness (print)

Office held

Signing Page

Signed **University of Tasmania** 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 **Australian Institute of Marine Science** 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

Signature of officer

←

Signature of witness

Name of officer (print)

Name of witness (print)

Office held

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



Signature of officer

←
S MacMillan

Signature of witness

Andreas Schiller

Name of officer (print)

Sandra MacMillan

Name of witness (print)

A/Director, CSIRO Oceans & Atmosphere

Office held

Signed on behalf of the Minister for
Agriculture, Food and Fisheries acting
through the **South Australian
Research and Development Institute**
by an authorised officer in the presence
of



Signature of witness

Aileen McDonald

Name of witness (print)


Signature of officer

G. BEGG

Name of officer (print)

RESEARCH CHIEF

Office held

Signed **Sydney Institute of Marine
Science** 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 **University of Western
Australia** 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 on behalf of the Minister for
Agriculture, Food and Fisheries acting
through the **South Australian
Research and Development Institute**
by an authorised officer in the presence
of

Signature of officer

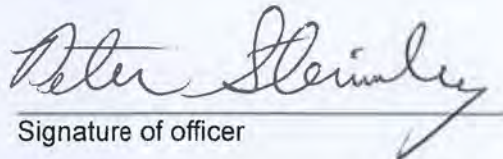
Signature of witness

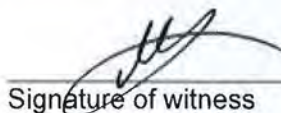
Name of officer (print)

Name of witness (print)

Office held

Signed **Sydney Institute of Marine
Science** by an authorised officer in the
presence of


Signature of officer


Signature of witness

PETER STEINBERG
Name of officer (print)

MARK SCOGNAMIGLIO
Name of witness (print)

CHIEF EXECUTIVE OFFICER
Office held

Signed **University of Western
Australia** 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 on behalf of the Minister for
Agriculture, Food and Fisheries acting
through the **South Australian
Research and Development Institute**
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 **Sydney Institute of Marine
Science** by an authorised officer in the
presence of

Signature of officer

←

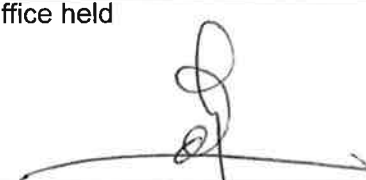
Signature of witness

Name of officer (print)


Name of witness (print)

Office held

Signed **University of Western
Australia** by an authorised officer in the
presence of



Signature of officer



Signature of witness

Bernadette Ferns
Senior Admin Officer to DVCR
The University of Western Australia

Name of witness (print)

Name of officer (print)
DR. CAMPBELL THOMSON
Acting Deputy Vice-Chancellor (Research)
The University of Western Australia

Office held

Schedule 1 – Definitions and interpretation

Definitions

Activities	means the activities described in the Annual Plan and Budget, and includes the IMOS Projects and any other activities that the Parties agree to carry out under this Agreement.
Activity Payment	means a payment made to an Operating Institution from IMOS Funds for the purpose of carrying out the Activities.
Agreement	means this Principal Participants Agreement between the Parties and includes its schedules and any attachments.
Annual Plan and Budget	means the annual plan and budget for IMOS prepared and approved under clause 9.1.
AODN Director	the person holding the position of Director of the Australian Ocean Data Network Facility.
Applicable Jurisdiction	means the State of Tasmania.
Approved Form	means a form and manner specified or approved by the IMOS Director.
Asset	means any item of tangible property purchased, leased, created or otherwise brought into existence either wholly or in part with use of the IMOS Funds which has a value of over \$20,000 exclusive of GST.
Associate Participants	are the organisations outlined at clause 4.4(a)
Associate Participant Agreement	means any agreement entered into under clause 17.5
Background IP	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 IMOS Project or for the Activities but does not include IMOS IP.
Board Member	means a member of the Governing Board appointed under clause 7.
Business Day	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.
Business Hours	means 9am to 5pm on a Business Day
Chairperson	means the chairperson of the Governing Board.
Commencement Date	means the date this Agreement is signed by the last party to do so.
Commercialise	means, in relation to Intellectual Property: (a) to manufacture, sell, hire or otherwise exploit a product or process, that uses or incorporates part or all of that Intellectual Property; (b) to supply a service, incorporating that Intellectual Property; (c) to licence any other person to do any of those things; or (d) to otherwise licence or assign the Intellectual Property, for commercial purposes regardless of whether any revenue is generated or intended to be generated.
Commonwealth	means the Commonwealth of Australia.
Commonwealth Agreement	means any agreement entered into by the Lead Agent whether or before or after the Commencement Date and the Commonwealth to receive financial assistance for IMOS to support major collaborative research infrastructure.

Commonwealth Funding	means the funding to be given to IMOS under Commonwealth Agreements for the Activities.
Confidential Information	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).
Conflict	is defined at clause 36.1.
Contribution	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.
Deliverables	means the required deliverables for an IMOS Project as described in the Project Plan.
Document in Writing	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.
Facility	means any one of the facilities named in clause 17.2 (b), or otherwise agreed by the Parties
Facility Requirements	means the accommodation and related requirements set out in clause 5 of Schedule 4.
Financial Year	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.
Funding Agreements	means the agreements referred to in Recital C.
Governing Board	means the board of IMOS established under clause 7.
GST	means a goods and services tax or any similar tax, levy or impost imposed by the Commonwealth of Australia.
IMOS	means the unincorporated joint venture formed by the Parties and known as the Integrated Marine Observing System as referred to in the Recitals and clause 4.
IMOS Account	means a unique range of accounts in the Lead Agent's financial system to record IMOS Funds and expenses, under the delegated control of the IMOS Director.
IMOS Confidential Information	means Confidential Information generated from the Activities.
IMOS Director	means the chief executive officer of IMOS and at the Commencement Date being the person specified in Schedule 3.
IMOS Funds	means the income comprised in the IMOS Account including the cash Contributions from Principal Participants, the Commonwealth Funding, cash contributions to IMOS received from third parties and interest on the IMOS Account.
IMOS IP	means the Intellectual Property that was developed in the course of the Activities of IMOS, including those developed using IMOS Funds or IMOS Resources prior to the Commencement Date.
IMOS Node	means an agreed node specified in clause 18.1, or otherwise agreed by the Parties.
IMOS Objectives	means the objectives of the IMOS as set out in clause 5.
IMOS Office	the Facility established by the Lead Agent to coordinate and manage the operation of IMOS as described in clause 8.3.

IMOS Collaborative Partners	means the organisations outlined at clause 4.4, and IMOS Collaborative Partner means any one of them.
IMOS Project	means a Project Plan approved by the Governing Board as a project to be carried out and funded by IMOS.
IMOS Resources	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.
IMOS Strategy	Means the strategic priorities set out in clause 5.1
Improvements	mean a modification, enhancement or improvement of IMOS IP that cannot be used without infringing the Intellectual Property Rights in the underlying IMOS IP.
Independent Board Member	means a Board Member that is not employed by an Operating Institution.
Intellectual Property or IP	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.
Lead Agent	means the University of Tasmania or as appointed from time to time by the Governing Board in accordance with clause 12.3(a).
Loss	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).
Management Functions	means the activities to be performed by the Lead Agent as set out in Schedule 4.
Material	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.
Milestones	means the milestones for an IMOS Project set out in the Project Plan or an Annual Plan and Budget.
Moral Rights	has the same meaning as in the <i>Copyright Act 1968</i> (Cth).
Operating Institutions	means the Principal Participants and Associate Participants as outlined at clause 4.4(a).
Other Funding Parties	means any institution or organisation which from time to time provides funding for the purposes of meeting the IMOS Objectives
Other Participants	means other organisations involved in IMOS as outlined at clause 4.4(b).
Parties	means the Principal Participants who sign this Agreement or become bound to this Agreement by signing a deed of accession under clause 24 but does not include any Principal Participant that has retired or been expelled from IMOS under clause 25 and Party means any one of them.
Party Confidential Information	means any information of a party, not including IMOS 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.

Personal Information	has the same meaning as in the <i>Privacy Act 1988</i> (Cth)
Principal Participants	means the Parties, and Principal Participant means any one of them.
Project Agreement	means the Project Plan and the Project Terms
Project Leader	is the person responsible for leading each Facility or Sub-Facility
Project Participants	means the participants in an IMOS Project (excluding the Lead Agent if only participating in its capacity as Lead Agent).
Project Plan	means a proposal for a research or development activity or series of activities to be funded substantially from the IMOS Funds.
Project Plan Template	means the template set out in Schedule 5 as varied by the Governing Board.
Project Terms	means the project terms set out in Schedule 6.
Representative	means the persons listed for each Party in Schedule 2
Rules	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.
Specified Personnel	means the Representatives, Project Leaders and Node Leaders appointed in accordance with this Agreement and any replacement or substitute appointed in accordance with this Agreement.
Sub-Facility	means any of the sub-facilities contributing to the Facilities listed at clause 17.2, or otherwise agreed by the Parties but not being itself a Facility.
Supply	has the same meaning as given in the A New Tax System (Goods & Services Tax) Act 1999 (Cth).
Tax Invoice	means a tax invoice which complies with the A New Tax System (Goods & Services Tax) Act 1999 (Cth).
Term	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 IMOS Objectives is preferred to a construction that does not promote the IMOS Objectives.

Schedule 2 – Notice Details

University of Tasmania

ABN: 30 764 374 782

Representative: Brigid Heywood, Deputy Vice-Chancellor (Research)

Postal address: Private Bag 01, Hobart, Tasmania, 7001

Phone: 03 6226 2419 Facsimile: 03 6226 2765

Email: brigid.heywood@utas.edu.au

IMOS Director: Tim Moltmann

Postal Address: Private Bag 110, University of Tasmania, Hobart, Tasmania, 7001

Phone: 03 6226 2767 / 0407 558 004 Facsimile: 03 6226 2107

Email: tim.moltmann@utas.edu.au

Australian Institute of Marine Science

ABN: 78 961 616 230

Representative: Lyndon Llewellyn, Research Program Leader, Data and Technology Innovation

Postal address: PMB 3, Townsville MC, Queensland, 4810

Phone: 07 4753 4449 Facsimile: 07 4772 5852

Email: l.llewellyn@aims.gov.au

Bureau of Meteorology

ABN: 92 637 533 532

Representative: Boris Kelly-Gerreyn, Acting Manager, Network Architecture

Postal address: GPO Box 1289, Melbourne, Vic 3001

Phone: 03 9669 4183 Facsimile: 03 9669 4699

Email: b.kelly-gerreyn@bom.gov.au

Commonwealth Scientific and Industrial Research Organisation

ABN: 41 687 119 230

Representative: David Smith, acting Science and Deputy Director, Oceans and Atmosphere Flagship

Postal address: GPO Box 1538, Hobart, Tas, 7001

Phone: 03 6232 5222 Facsimile: 03 6232 5125

Email: David.C.Smith@csiro.au

South Australian Research and Development Institute

ABN: 53 763 159 658

Representative: Gavin Begg, Research Chief, Aquatic Services

Postal Address: PO Box 120, Henley Beach, South Australia, 5024

Phone: 08 8207 5482 Facsimile: 08 8207 5406

Email: gavin.begg@sa.gov.au

Sydney Institute of Marine Science

ABN: 84 117 222 063

Representative: Mark Scognamiglio, General Manager

Postal address: 19 Chowder Bay Road, Mosman, New South Wales, 2088

Phone: 02 9435 4600 Facsimile: 02 9969 8664

Email: mark.scognamiglio@sims.org.au

University of Western Australia

ABN: 37 882 817 280

Representative: Peter Davies, Pro Vice-Chancellor (Research)

Postal address: M460A, 35 Stirling Highway, Crawley, Western Australia 6009

Phone: 08 6488 2698 Facsimile: 08 6488 1380

Email: peter.davies@uwa.edu.au

Schedule 3 – Governance

1 Establishment

1.1 As at the Commencement Date the Governing Board will comprise:

Independent Chairperson:
Dr Ian Poiner

Members:
Mr John Gunn, Australian Institute of Marine Science
Dr Sue Barrell, Bureau of Meteorology
Dr Andreas Schiller, Commonwealth Scientific and Industrial Research Organisation
Dr Pauline Mooney, South Australian Research and Development Institute
Professor Peter Steinberg, Sydney Institute of Marine Science
Professor Brigid Heywood, University of Tasmania
Professor Robyn Owens, University of Western Australia
Commodore Brett Brace (Independent).

IMOS Director (Ex Officio):
Mr Tim Moltmann

Secretary (not a Board Member):
Mrs Jo Neilson, IMOS Project Manager

- 1.2 (a) After the Commencement Date, as positions become vacant, the Governing Board will be re-constituted of the following Board Members each of whom will hold one vote (unless otherwise provided):
- (i) an Independent Board Member to be chairperson appointed by the Governing Board;
 - (ii) one representative from each Party appointed by the Party;
 - (iii) in addition to the chairperson, up to three Independent Board Members appointed by the Governing Board, if deemed necessary to ensure the skill set of the Governing Board collectively covers all of the areas:
 - corporate governance;
 - financial/business management;
 - research and development activities;
 - international and national activities to develop ocean observing systems;
 - ocean and marine data management
 - key stakeholder base (especially State and Commonwealth)
 - (iv) The IMOS Director as an *ex-officio* Board Member but with no voting entitlements appointed by the Governing Board, for a term lasting three years
- (b) A Party may remove or replace its appointed Board Member by notice to the Governing Board.
- (c) The Governing Board may remove or replace any Board Member or the IMOS Director appointed under 1.2(a)(i), 1.2(a)(iii) or 1.2(a)(iv).

- (d) A Board Member will cease to be a Board Member:
 - (i) on the date the Party who appointed the Board Member ceases to be a Party;
 - (ii) immediately if the Board Member resigns by notice in writing to the Governing Board; and
 - (iii) immediately if the Board Member is absent from two consecutive Governing Board meetings without a leave of absence from the Governing Board.
- (e) Each Party agrees to use all reasonable endeavours to ensure that a Board Member employed by it does all that is reasonably necessary to ensure that the Governing Board carries out its functions under this Agreement.
- (f) The Lead Agent will enter into an agreement with any Independent Board Member that will oblige the Independent Board Member to do all that is reasonably necessary to ensure that the Governing Board carries out its functions under this Agreement and indemnifies the Independent Board Member for any Loss incurred by the Independent Board Member in carrying out his or her role as a Board Member in good faith. The terms of remuneration of Independent Board Members will be agreed by the Governing Board.
- (g) The Lead Agent will maintain insurance to cover any Loss incurred by the Lead Agent in meeting the obligation to indemnify an Independent Board Member in accordance with clause 22.2.

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 casting vote.
- 2.2 Any casual vacancy occurring in the position of Chairperson will be filled at the next meeting of the Governing Board 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 Board Members present may choose one of their number to preside at that meeting.

3 Secretary

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

4 Quorum

- 4.1 A quorum for meetings of the Governing Board will be at least 75% of the Board Members entitled to vote, except as specified in clause 6.6 of this Schedule 3.

- 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 Lead Agent under Schedule 4, the Governing Board has full and complete power and authority, and the Parties empower and direct the Governing Board 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 Lead Agent in the management of IMOS business risks;
 - (g) Oversee the communication plan and activities of IMOS;
 - (h) maintain oversight of any major reviews or publications on IMOS;
 - (i) provide other advice and input as required.

6 Meetings

- 6.1 The Governing Board 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 Board Members provided that no less than 14 days' notice has been given to each of the other Board Members; and
 - (c) at least once in each financial year the Governing Board will meet to consider the proposed Annual Plan and Budget for the next financial year.
- 6.2 Meetings of the Governing Board may be held by the Board 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 Board Members will be expected to advise any matters which could be perceived to be a conflict of interest in relation to Governing Board matters,

and if applicable, to abstain from voting on individual matters where that conflict cannot be managed

- 6.4 Subject to this Agreement, the Governing Board may regulate its own proceedings.
- 6.5 Each Board Member has one vote.
- 6.6 Unless specified otherwise, all decisions of the Governing Board must be made by 75% majority vote of all Members present and entitled to vote and are binding on all Parties. Decisions that must be unanimous by all Members are entering into or amending Funding Agreements (cl 3.2), admitting a new Party (cl 24.1) or expelling a Party (cl 25.1b)

7 Alternates and observers

- 7.1 Alternates will only be appointed in exceptional circumstances for individual meetings on approval of the Chairperson, and notified to all Board Members.
- 7.2 An alternate appointed under 7.1 may act only if the Board Member for whom the alternate is appointed is not present at a meeting of the Governing Board, in which event the alternate will be deemed to be that Board Member and may exercise all powers of that Board Member to the extent that the Board Member has not exercised them.
- 7.3 The Governing Board may invite any person to attend and observe at meetings of the Governing Board as it sees fit. Persons invited to attend Governing Board 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 Board 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 Board 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 Board Members present agree.

9 Written records of meetings

- 9.1 The Secretary of the Governing Board must keep a written record of decisions made at each meeting of the Governing Board and distribute copies of the record to each Board Member, within fourteen days following the meeting.
- 9.2 If a Board 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 Governing Board 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 Governing Board

10.1 Subject to:

- (a) each Board Member being given written notice of the matter;
- (b) each Board 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 Board Member requesting that the matter be considered at a meeting of the Governing Board,

any determination which the Governing Board is competent to give or make may be submitted to the Board Members for consideration and vote, without holding a meeting, and the vote will be treated as a vote made at a meeting of the Governing Board.

10.2 Whenever a matter is submitted, each Board Member will vote by giving written notice of the Board Member's vote to the Secretary of the Governing Board and any matter which receives 75% 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 Governing Board.

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 Board Member as soon as practicable after the vote is taken.

11 Subcommittees

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

12 Costs and expenses

Costs and expenses incurred by the IMOS Director, Secretary and Board Members relating to attendance at Governing Board meetings will be paid from the IMOS Account.

Schedule 4 – Lead Agent Appointment Terms

1 Conditions of Appointment and Authority of the Lead Agent

- a. The Lead Agent has been appointed by the Parties as exclusive agent for performance of the Management Functions on behalf of the Parties on the terms and conditions of this Agreement.
- b. The Parties acknowledge and agree that the Lead Agent executed and executes the Funding Agreements for the purposes of this Agreement and the previous collaboration known as IMOS and in accordance with the authority granted under this Agreement.
- c. The Parties acknowledge that the Lead Agent has established an IMOS Office, led by the IMOS Director, to oversee the management of IMOS. The IMOS Director is responsible to the Governing Board. As far as practicable the matters referred to in this schedule have been delegated by the Lead Agent to the IMOS Director.
- d. Each Party will co-operate and do all things necessary and execute all documents required to ensure that the Lead Agent has the authority to carry out the Management Functions.
- e. The Parties agree that the Lead Agent's authority is to carry out the Management Functions and provide the Facility Requirements and not otherwise to affect the rights or obligations of the Parties.
- f. The Lead Agent must carry out the Management Functions in accordance with any reasonable directions given to it from time to time by the Governing Board.
- g. The Lead Agent 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 Governing Board; and
 - ii. does not give rise to a breach of fiduciary duty.
- h. Despite anything to the contrary in this Agreement:
 - i. the Lead Agent will not be required, and the Governing Board may not direct the Lead Agent, to act in any manner which is contrary to its Rules; and
 - ii. all of the obligations of the Lead Agent under this schedule are to be interpreted as being subject to the requirement that in performing such obligations neither the Lead Agent nor any of its employees or officers will be required to act in such a manner as would place the Lead Agent or any of its employees or officers in breach of its Rules.
- i. Any action taken by the Lead Agent in accordance with this Agreement with the approval of the Governing Board 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 unless expressly stated.

2 Financial Management

The Lead Agent agrees, under advice of the IMOS Director, to undertake as service provider to, not agent of, the Parties, the following functions and responsibilities:

- a. establish and oversee the operation of the IMOS Account;
- b. pay the IMOS Funds into the IMOS 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 IMOS 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 Lead Agent;
- 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 IMOS Account;
- g. draw on the IMOS Account to make Activity Payments;
- h. draw on the IMOS Account for the costs of remuneration of the Governing Board, the IMOS Director and staff of IMOS employed by the Lead Agent; and related operating costs of IMOS;
- i. do all things necessary, including the timely and accurate filing of returns, to ensure that IMOS complies with its obligations under all relevant tax laws;
- j. report to the Governing Board at intervals and in such format as determined by the Governing Board;

3 Priority of Payment

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

4 Contract Management and Reporting

The Lead Agent will, subject to the reasonable directions and approval of the Governing Board or a delegate of the Governing Board undertake as service provider to, not agent of, the Parties, the following functions and responsibilities:

- a. engage staff, including through temporary or contract employment, under agreements acceptable to the Governing Board and Lead Agent. 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 Lead Agent or IMOS in carrying out the Activities;

- c. enter other contracts or arrangements with any of the Parties or other entities, as the Governing Board may consider appropriate from time to time; and
- d. receive and sign notices and written communications for the Parties as required under the Funding Agreements and Principal Participants Agreement;
- e. enter into other contracts and legal arrangements in its own right, and not as agent of the Parties, for the purposes of IMOS as the Governing Board may deem necessary from time to time on terms approved by the Governing Board;
- f. perform any functions or activities required of it under this Agreement;
- g. through the IMOS Office, and subject to the approval of the Governing Board, 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 IMOS as may be agreed by the Governing Board and the Lead Agent.

5 Facility Requirements

The Lead Agent agrees that it will provide the following facilities:

- a. appropriate offices and workspaces for all IMOS Office staff, both employed and in-kind positions, based at the Lead Agent 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 the Facility Requirements will be on an in-kind basis unless the Lead Agent reaches agreement with the Governing Board for specific costs from time-to-time which should more appropriately be part of the Activities and if so will be paid from the IMOS Account.

6 Payment of Expenses

- a. The Lead Agent may draw on the IMOS Account to meet its reasonable expenses in carrying out the Management Functions as agreed by the Governing Board, including the costs of remuneration of the Governing Board, the IMOS Director and other IMOS employees in accordance with the Annual Plan and Budget.
- b. The Lead Agent is not entitled to any fee in addition to agreed expenses under 6a or clause 9.

Schedule 5 – Project Plan Template

1. Facility:
2. Sub-Facility (if relevant):
3. Name and details of the Operating Institution:
4. Names of the other Project Participants:
5. Project Commencement Date:
6. Project Completion Date:
7. Project Leader's name and contact details:
8. Project Funds required:
9. Other Contributions required:

(Note: in relation to Items 8 and 9 and based on the circumstances of calling for Project Plans, the IMOS Director 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)

10. Justification for the Project Funds requested:
11. How the proposed work aligns to the scientific plans of IMOS Node(s):
12. Project Objectives:
13. Brief review of the science and intellectual property background, including Background IP and any relevant third party IP:
14. Proposed methodology:
15. Milestones, tasks, any proposed stop/go milestones in relation to deployment and (as applicable) recovery / maintenance of equipment
16. Deliverables, in relation to availability of near-real-time and delayed mode data (as applicable); plus quality controlled data delivery
17. Risk analysis and how identified risks will be managed:
18. Relevance and benefits, including how End-Users will benefit from the outcomes derived from the IMOS Project:
19. 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 IMOS Project, they will participate in and contribute to the IMOS Project under the leadership of the Operating Institution in accordance with this Project Plan and the Project Terms.

[Add signature blocks of Project Participants]

The IMOS Director acknowledges and agrees that this project has been approved as an IMOS Project by the Governing Board.

[Add signature of IMOS Director on behalf of the Governing Board]

[Add signature of Lead Agent's delegate]

Schedule 6 – Project Terms

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 Principal Participants Agreement.
- 1.2 The interpretation rules set out in Schedule 1 of the Principal Participants 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 IMOS 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 IMOS 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) **Milestones** means the milestones set out in the Project Plan;
 - (f) **Project Background IP** means the Background IP which Project Participants make available for the conduct of the IMOS Project;
 - (g) **Project Funds** means that part of the IMOS Funds that the Governing Board has determined will be made available to the Operating Institution for the conduct of the IMOS Project;
 - (h) **Project Commencement Date** means the commencement date for the IMOS Project as set out in the Project Plan or such other date as the Project Participants agree to in writing;
 - (i) **Project Completion Date** means the completion date for the IMOS Project as set out in the Project Plan or such other date as the Project Participants agree to in writing;
 - (j) **Project Contributions** means the money, assets, personnel, facilities and services to be contributed to the IMOS Project by a Project Participant as detailed in the Project Plan;
 - (k) **Project IP** means Intellectual Property arising from the conduct of the IMOS Project;
 - (l) **Project Leader** means the person who will lead the Facility or Sub-facility and identified as such in the Project Plan;
 - (m) **Project Objectives** means the objectives of the IMOS Project as detailed in the Project Plan;

- (n) **Project Participants** means the Principal Participants involved in the IMOS Project as specified in the Project Plan;
- (o) **Principal Participants Agreement** means the agreement for the establishment and operation of IMOS;
- (p) **Project Plan** means the Project Plan approved by the Governing Board and any variation subsequently agreed to it;
- (q) **Quarterly Progress Report** means a quarterly progress report required under clause 9.1 and as specified in clause 9.2;
- (r) **Project Term** means the period referred to in clause 15.
- (s) **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 PRINCIPAL PARTICIPANTS AGREEMENT

- 2.1 The Project Participants acknowledge that the approved IMOS Project forms part of the Activities under the Principal Participants Agreement and that it must be carried out in a manner that conforms to the Principal Participants Agreement.
- 2.2 The provisions of the Principal Participants Agreement that expressly or by necessary implication apply to the conduct of the Activities will apply to the conduct of the approved IMOS Project and to the Associate Participants and Other Participants as if they were Principal Participants under the Principal Participants 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 IMOS 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 Lead Agent must pay the Project Funds to the Operating Institution from the IMOS Funds in the manner set out in the Project Plan.
- 5.2 Each Project Participant must make its Contribution to the IMOS Project for the purpose of pursuing the IMOS 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 Operating Institution will enter into any agreements it deems necessary to secure contributions from third parties.

- 5.4 The Lead Agent may, on direction of the Governing Board, withhold a payment to the Operating Institution under clause 5.1 if the Operating Institution 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 Governing Board.
- 5.5 If IMOS Funds are identified as unexpended in the Financial Statement provided at the Project Completion Date, those funds must be repaid to the Lead Agent.

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 IMOS Project in accordance with clause 16 of the Principal Participants Agreement.

7 CONDUCT OF THE IMOS PROJECT

- 7.1 Each Project Participant will carry out its part of the IMOS Project diligently and in accordance with generally accepted professional, scientific and ethical principles and standards in the conduct of the IMOS 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 IMOS Project meets the Project Objectives, Milestones and Deliverables as specified in the Project Plan.
- 7.3 The Project Participants acknowledge that the IMOS Project forms part of the Activities and that the IMOS Project will be managed by the Project Leader through the Operating Institution, the IMOS Director and the Governing Board.

8 COMPLIANCE

- 8.1 Each Project Participant will ensure that all applicable codes of conduct and guidelines in carrying out the IMOS 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.
- 8.3 Each Project Participant must comply with all applicable acts, ordinances, rules, regulations and by-laws applicable to the conduct of the IMOS Project in its state or territory.

- 8.4 When requested by the IMOS Director or Lead Agent, each Project Participant must provide evidence of the matters referred to in this clause 8 to the IMOS Director or Lead Agent as requested.

9 REPORTING

- 9.1 The Operating Institution will ensure that the Project Leader prepares and provides to the IMOS Director the Quarterly Progress Reports on the conduct of the IMOS Project and the Milestones and Deliverables set out in the Project Plan.
- 9.2 Each Quarterly Progress Report will be in writing and in an Approved Form with a level of detail reasonably acceptable to the Governing Board and will include:
- (a) the name of the IMOS 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) any knowledge or discoveries, including Project IP, made since the last Quarterly Progress Report;
 - (e) any variation which the Project Participants would like to make to the IMOS Project's methodology or Milestones; and
 - (f) any further information reasonably requested by the IMOS Director.
- 9.3 The IMOS Director may require the Project Leader to provide interim reports. Such interim reports will be in an Approved Form and address matters specified by the IMOS Director from time to time. Interim reports must be provided to the IMOS Director within 30 Business Days of the Project Leader receiving a request from the IMOS Director 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 IMOS Director a Final Report.
- 9.5 The Final Report will be in writing and include the following information:
- (a) the name of the IMOS Project and the Project Leader;
 - (b) the background to the IMOS Project;
 - (c) the Project Objectives;
 - (d) a description and justification of the methodology used;
 - (e) a detailed description of IMOS Project outcomes including Project IP;
 - (f) an analysis of the Project IP in light of the projected Project Objectives;
 - (g) recommendations on further research and development or work needed to be undertaken; and
 - (h) any further information reasonably requested by the IMOS Director.
- 9.6 The Final Report will be the final Milestone of the IMOS Project.

- 9.7 The Final Report must be in an Approved Form and in a level of detail reasonably acceptable to the Governing Board.
- 9.8 A Project Participant must promptly give any information it holds in relation to the IMOS 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 IMOS Director as reasonably necessary to enable the obligations under the Principal Participants 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 IMOS Project and will provide copies of those records to the IMOS Director on request.
- 10.2 The Governing Board or the Lead Agent 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 Operating Institution will provide to the IMOS Director, at the times Quarterly Progress Reports are required to be provided under clause 9.1, a Financial Statement covering the period since the last Quarterly Progress Report.
- 10.4 A final Financial Statement must be provided to the IMOS Director at the same time as the Final Report.

11 VARIATION OF PROJECT

- 11.1 An IMOS Project may, following a request to vary the IMOS Project from the Governing Board or from the Operating Institution to the IMOS Director, be varied by the IMOS Director 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 IMOS IP and will be owned and licensed in accordance with the Principal Participants Agreement.
- 12.2 Each Project Participant agrees to license its interest in the Project IP in accordance with clause 12.1.
- 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 IMOS 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 IMOS 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 IMOS 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 IMOS Project.
- 14.2 The obligations under this clause 14 will survive expiration or earlier termination of this Agreement.
- 14.3 Despite clause 14.1, the South Australian Minister for Agriculture, Food and Fisheries 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 Governing Board may terminate the IMOS Project on 20 Business Days written notice to the Operating Institution if:
- (a) a Milestone has not been met by the due date and is not met within 20 Business Days after the IMOS Director gives written notice to the Operating Institution;

- (b) a Deliverable has not been supplied by the due date and is not supplied within 20 Business Days after the IMOS Director gives written notice to the Operating Institution; or
 - (c) in the reasonable opinion of the Governing Board, the Project Objectives are unlikely to be met.
- 15.3 If the IMOS Project is terminated under clause 15.2 and there are sufficient Project Funds, the Lead Agent will reimburse each Project Participant from the Project Funds for its reasonable expenses necessarily incurred because of the early termination of the IMOS 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 IMOS 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 IMOS 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 Governing Board may expel a Project Participant from an IMOS Project if Due Cause exists and is not remedied within 20 Business Days after the IMOS Director 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 IMOS 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 IMOS Project; or
 - (e) not resolving to the Governing Board's reasonable satisfaction, a conflict of interest in relation to the IMOS Project.
- 16.3 A Project Participant who is expelled from an IMOS 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 IMOS Project does not affect:

- (a) the enforceability of other obligations of the Project Participant under the Principal Participants Agreement or other IMOS 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 IMOS 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 IMOS 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).