

# Report brief: Impacts of climate change on Australian winters



## 1. Overview of Protect Our Winters Australia

[Protect Our Winters Australia \(POW Australia\)](#) is a not-for-profit organisation run by a passionate community of outdoor enthusiasts, athletes, and industry brands. POW Australia's mission is to advocate for solutions to climate change, with a specific focus on protecting the integrity of Australian winters now and in the future. Recognising the vulnerability of the alpine ecosystem and the significance of winter sports, POW Australia aims to contribute to the fight against climate change and its impact on Australia's alpine regions.

## 2. Project objectives: Report on impacts of climate change on Australian winters

POW Australia is looking to commission an independent report that pulls together the available literature on the impacts of climate change on Australia's winters, particularly from the lens of the winter sports industry and community. The report should investigate this from an economic, social and environmental perspective, and include opportunities and barriers to effective climate adaptation and mitigation in relation to the Australian Alps. Specific focus should be given to Australia's alpine environments, primarily Victorian and NSW areas.

## 3. Project background: Research gap

Existing research on the impacts of climate change on Australian winters, particularly on alpine region and winter sports industry, is fragmented and outdated. While there are a number of studies on the environmental impacts of climate change on alpine ecosystems, there has been limited integration of economic and social impacts of climate change on alpine communities and users. Similarly, there is little available research on snowfall projections under different warming scenarios, and the implications of this on the alpine region. To address this, the report will conduct an in-depth literature review, identify research gaps, and make recommendations for further studies.

## 4. Proposed report focus

The report will present a comprehensive literature review. Possible focus areas include:

- Impacts of climate change on Australian alpine tourism and alpine communities
- Impacts of climate change and reduced snow cover on Australian agriculture

- Impacts of climate change on alpine ecosystem health and biodiversity
- Climate projections for Australian snowfall under different warming scenarios and implications for the winter sports industry
- Opportunities and limitations for climate adaptation in the Australian Alps
- Opportunities and barriers for climate mitigation and barriers specific to the Australian Alps

## 5. Utilisation of the report

The report will serve as a fundamental resource for POW Australia's initiatives aimed at conserving Australian winters. It will support educational campaigns, inform policy development and political engagement efforts, facilitate stakeholder and community engagement, foster strategic partnerships, and contribute to POW Australia's strategic plan.

## 6. Budget and timeframe

The budget for this project is to be determined based on discussions between POW Australia the commissioned organisation/research entity based on the specific requirements and available resources of POW Australia.

The target date for completing the report is February 2024. The timeframe for the completion of the report, including key milestones and deliverables, should be outlined by the commissioned organisation and approved by POW Australia. Any potential constraints or dependencies that may affect the project timeline should be communicated in advance.

## 7. Contact

For any inquiries or further information, please contact:

- s47F [REDACTED] POW Australia:  
s47F [REDACTED]
- Sam Beaver, Policy Officer, POW Australia:  
s47F [REDACTED]
- Sam Quirke, Lead Advocate (President) and Head of Partnerships & Policy, POW Australia: [staycool@protectourwinters.org.au](mailto:staycool@protectourwinters.org.au)



Australian  
National  
University

## RESEARCH SERVICES AGREEMENT

for services provided by

The Australian National University as  
represented by  
the College of Science

for

Protect Our Winters Australia LTD

THIS RESEARCH SERVICES AGREEMENT is entered into on PARTIES

THE AUSTRALIAN NATIONAL UNIVERSITY ABN 52 234 063 906 an educational and research institute and body corporate pursuant to the *Australian National University Act 1991* (Cth), of Acton in the Australian Capital Territory, 2601, as represented by the College of Science (University)

AND

PROTECT OUR WINTERS AUSTRALIA LTD, ABN 60 673 391 127 of 12 Reid St, Fitzroy North VIC 3068 (Client)

#### BACKGROUND

- A. The University is an education and research institute.
- B. The Client wishes to engage the University to undertake Research Services.
- C. The University has agreed to carry out the Research Services described in the Details on the terms and conditions set out in this Agreement.

The parties agree: DETAILS

Research Services	The Research Services activities are those set out in Schedule 1 <i>Services will follow brief attached in Schedule 1. Specific deliverables and timeline:</i> <i>Project outline agreed November 1, 2023</i> <i>First rough draft January 5, 2024</i> <i>Complete draft Feb 14, 2024</i> <i>Final report Feb 28, 2024</i> <i>Any follow up arising from report (could include Conversation article if time permits – April 30, 2024</i>
Commencement Date	On execution of this Agreement by both parties
Completion Date	<i>May 1, 2024</i>
Deliverables	<i>As per schedule 1, deliverable is a report on the impacts of climate change on the Australian alpine region and snow industry.</i>
Key Personnel	<i>Adrienne Nicotra, Ruby Olsson</i>
Ethics/Safety approvals required	<i>No</i>

Fee Schedule and Total Fee (excluding GST)	<ul style="list-style-type: none"> <li>• s47F</li> <li>• [REDACTED]</li> </ul>
Invoicing Frequency	<p><i>Insert invoicing frequency eg monthly, fortnightly, on the 1<sup>st</sup> of each month, on the last day of the month etc. (see clause 5.3)</i></p> <p><i>Invoice 1: date of contract commencement (early October) Invoice 2: 15 December</i></p>
Contact details for notices	<p>Client</p> <p>Contact Person s47F [REDACTED]</p> <p>Telephone [REDACTED]</p> <p>E-mail* s47F [REDACTED]@protectourwinters.org.au]</p> <p>University</p> <p>Contact Person [Prof. Adrienne Nicotra]</p> <p>Telephone [+61 2 6125 9763]</p> <p>E-mail* [adrienne.nicotra@anu.edu.au]</p>
Special Conditions	none

## AGREED TERMS

### 1 Definitions and Interpretations

#### 1.1 In this Agreement, unless the context otherwise requires:

Agreed Terms means clauses 1 to 18 of the Agreement which set out terms and conditions agreed by the parties.

Agreement means this agreement and the Schedules attached hereto under which the Research Services are to be provided to the Client.

Background IP means Intellectual Property of a party:

- (a) existing prior to the Commencement Date; or
- (b) acquired or created by a party after the Commencement Date independently of this Agreement,

that is brought to or made available by a party or third party for the purpose of, or in connection with, the Research Services.

Business Day means, for the purposes of this Agreement, a day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory, and which is not during the University shut-down period from 25 December to 1 January inclusive.

Client Material means any tangible or intangible item of real or personal property (including without limitation documents, equipment, data, algorithms or information) provided by the Client and includes Background IP in that material.

Commencement Date means the date on which this Agreement commences, as specified in the Details.

Commercialise means:

- (c) in relation to Intellectual Property, the exercise of the rights exclusively granted to the holder of such Intellectual Property by the laws of the jurisdiction in which the Intellectual Property rights subsist;
- (d) in relation to a product, kit, apparatus, substance, documentation or information resource (or any part of such materials), to make, distribute, market, sell, hire out, lease, supply, or otherwise dispose of it;
- (e) in relation to a method or process, to use the method or process or to develop, make, distribute, market sell, hire out, lease, supply, or otherwise dispose of a product, kit or apparatus the use of which is proposed or intended to involve the exercise of the method or process; or
- (f) if a service uses Intellectual Property, to provide that service;
- (g) to license third parties to perform the acts described in paragraphs (a) to (d), and Commercialising and Commercialisation have a corresponding meaning.

Confidential Information means information disclosed by a party (the discloser) to the other party (the recipient) that:

- (a) is by its nature confidential;
- (b) is designated by the discloser as confidential;
- (c) the recipient knows or ought to know is confidential;
- (d) is included in the terms of this Agreement, but

does not include information which:

- (e) is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligations;
- (f) has been independently developed or acquired by a party, as established by written evidence; or
- (g) is disclosed as required by law.

Deliverables means the deliverables to be supplied to the Client under this Agreement as specified in the details but excludes Research Services IP.

Details means the matters set out in the table under Details at the start of this Agreement.

Fees means the fees payable by the Client to the University in accordance with clause 5 and the Details.

Force Majeure Event means any event which is not within the reasonable control of the party affected, for example an epidemic, act of God, fire, lightning, earthquake, explosion, flood, subsidence, insurrection or civil disorder or military operations or act of terrorism, expropriation, strikes, lock-outs or other industrial disputes of any kind, but does not include any act or omission of the party affected (including any of their sub-contractors).

GST has the meaning given to it by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means the happening of any of these events:

- (a) an application is made to a court for an order or an order is made that a body corporate be wound up;
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate, or one of them is appointed, whether or not under an order;
- (c) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved;
- (e) a body corporate is or states that it is insolvent; or
- (f) anything analogous or having a substantially similar effect to any of the events specified above happens under the Law of any applicable jurisdiction.

but does not include any events which under the *Corporations Act 2001* (Cth) are unenforceable indefinitely after the expiration of a stay period.

Intellectual Property or IP means all rights, anywhere in the world, whether or not registered or registrable (and including rights of registration and applications for registration) including, but not limited to:

- (a) copyright;
- (b) inventions and scientific discoveries;
- (c) trademarks;
- (d) designs;
- (e) circuit layouts and the like;
- (f) trade secrets;
- (g) plant breeder's rights; and
- (h) any other rights as defined in Article 2 of the Convention (dated 14th July 1967) establishing the World Intellectual Property Organisation (as amended from time to time).

Key Personnel means the person(s) named in the Details.

Moral Rights has the meaning specified in the *Copyright Act 1968* (Cth).

Personal Information has the meaning specified in the *Privacy Act 1988* (Cth) as amended.

Personnel means in relation to a party, any employee, officer, agent, subcontractor or professional adviser of that party.

Publish means to disseminate or transmit to the public or to any section of it any information in any form (including, without limitation, presentations at any scientific or academic forum

or in any journal or other publication, conference abstracts and other publications) and in any medium and Published and Publication have corresponding meanings.

Safety Committee means any decision making body within the University charged with oversight of biological, chemical or nuclear safety or work health and safety.

Research Services means the activities to be performed as described in the Details.

Research Services IP means Intellectual Property created in the course of performing the Research Services, but excludes Background IP and copyright in a Student Thesis.

Special Conditions means any conditions noted in the Details. Student means a student of the University.

Student Thesis means thesis or other written or verbal assessment material prepared by a Student.

Tax Invoice means a tax invoice which complies with the requirements under *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended.

1.2 In this Agreement, except where the contrary intention is expressed:

1.2.1 words importing a gender include any other gender;

1.2.2 words in the singular number include the plural and words in the plural number include the singular;

1.2.3 a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this Agreement;

1.2.4 a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;

1.2.5 a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

1.2.6 if a day on or by which an obligation (other than the provision of Services) must be performed or an event (other than the provision of Services) must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 This clause 1 will survive the expiration or termination of this Agreement.

## **2** Term

2.1 This Agreement commences on the Commencement Date and continues in force until either:

2.1.1 the Completion Date specified in the Details; or

2.1.2 upon being terminated in accordance with the terms of this Agreement, whichever is earlier.

## **3** Research Services

3.1 The University agrees to provide the Research Services to the Client in accordance with the terms of this Agreement.

3.2 The University will ensure that the Research Services are carried out by the Key Personnel or such other person(s) as may be agreed in writing from time to time.

- 3.3 If, due to circumstances beyond the control of the University, the Key Personnel become unavailable to perform the Research Services, the University will use reasonable endeavours to provide a suitably qualified replacement, subject to the Client's approval which will not be unreasonably withheld. If the University is unable to provide a suitably qualified replacement, the Client may terminate this Agreement by providing 14 days written notice and clause 14.2.1 will apply.
- 3.4 The University will use best efforts to complete the Research Services by the Completion Date specified in the Details or such other date(s) as mutually agreed by the parties in writing.
- 3.5 If the Details specify that Ethics and/or Safety Committee approval (or similar) is required in relation to the Research Services, the University must use reasonable endeavours to obtain such approval. Before such approvals are obtained, the University is not required to commence the Research Services. Where the Research Services are affected by an approval, the University may advise the Client of any changes to the Agreement (which will be varied in accordance with clause 18.8 or if the parties cannot agree to a variation, either party may terminate this Agreement immediately).
- 3.6 The Client acknowledges that where the Research Services involve research, development, expert opinion or testing, the University may produce no results or conclusions, or the University may produce opinions or results that are unpredictable or which do not favour the Client. The University makes no promise, prediction or warranty concerning conclusions, opinions or results that it may produce under this Agreement.

#### 4 Client's obligations

##### 4.1 Client to perform Client's duties

The Client will, at the request of the University, promptly provide:

- 4.1.1 any of the Client Material required to be incorporated into, or used to perform, the Research Services;
- 4.1.2 instructions and responses to the reasonable requests of the University on all matters relating to the Research Services; and
- 4.1.3 any other information, ideas or suggestions which the University is to consider in performing the Research Services.
- 4.2 The Client grants to the University, for the duration of this Agreement, a revocable, royalty-free, world-wide, non-exclusive licence to use the Client Material to the extent necessary for the University to perform its obligations under this Agreement.
- 4.3 In respect of the Client Material, the Client will ensure, that, to the extent applicable:
- 4.3.1 the Client Material is accurate, complete and current;
- 4.3.2 the Client is entitled to supply the Client Material to the University and its contractors for the purposes of the Research Services;
- 4.3.3 the use of the Client Material in connection with the Research Services is lawful and does not require the consent, permit or authorisation of any third party, including any consent from third parties to use their Intellectual Property in the performance of the Research Services;
- 4.3.4 if the Research Services include the use, reproduction or adaptation of Client Material, the Client will obtain all necessary authority (including Intellectual

Property licences and authorities relating to Moral Rights) for that use, reproduction and adaptation;

4.3.5 unless specified by written notice to the University, the Client Material is not reasonably capable of constituting a threat to safety, health, life, property or the environment; and

4.3.6 the Client will give written notice to the University of any matters affecting the safe, secure and appropriate transportation, use, storage and disposal of the Client Material.

#### 4.4 No liability if Client duties not fulfilled

The University will not be responsible for any deficiency or alleged deficiency (including delay) in the performance of the Research Services attributable to:

4.4.1 a breach by the Client of a material term of this Agreement; or

4.4.2 a failure by the Client to provide relevant, accurate or timely information or decisions.

#### 4.5 Work health and safety

The Client will ensure that any University Personnel attending a site inspection or any premises of, or known to, the Client in connection with the provision of the Research Services is provided a safe place of work in compliance with any relevant work health and safety legislation or requirements.

### 5 Payment

#### 5.1 Fees

The Client will pay the University the Fees at the rate or amount and in the manner specified in the Details.

#### 5.2 Expenses

5.2.1 The Client must pay all expenses incurred by the University in performing the Research Services as specified in the Details.

5.2.2 Where practicable, the University will not incur any additional expenses without first notifying the Client and obtaining approval for the relevant expenditure.

#### 5.3 Invoices

5.3.1 The University will submit a Tax Invoice to the Client monthly or otherwise in accordance with the Details.

5.3.2 The Client must pay those Tax Invoices within 30 days of the date of issue of each Tax Invoice.

#### 5.4 Overdue payments

The University may suspend:

5.4.1 performance of the Research Services;

5.4.2 the transfer or licence of Intellectual Property or Deliverables; and/or

5.4.3 any of its other obligations under this Agreement, until

all overdue amounts are paid by the Client.

#### 5.5 This clause 5 will survive the expiration or termination of this Agreement.

## **6** GST

- 6.1 Unless otherwise stated in the Details, the amount payable for the supply of any goods, services or other things under or in connection with this Agreement is stated as exclusive of GST.
- 6.2 The party liable to pay for a taxable supply to which this clause applies must also pay the amount of any GST payable in respect of the taxable supply on the date that the payment for the taxable supply is due.
- 6.3 A party need not make a payment for a taxable supply made under or in connection with this Agreement until it receives a Tax Invoice for the supply to which the payment relates.
- 6.4 This clause 6 will survive the expiration or termination of this Agreement.

## **7** Research Services IP and Deliverables

- 7.1 Title to the Research Services IP and Deliverables vests in the University immediately upon creation.
- 7.2 Subject to full payment by the Client of all Fees and expenses due under this Agreement, the University gives the Client a non-exclusive, royalty free licence to use the Deliverables but not for Commercialisation.
- 7.3 The University gives the Client a non-exclusive, royalty free licence to use the Research Services IP [to the extent the Research Services IP is incorporated into the Deliverables, and/or as required to obtain the full benefit of the Deliverables as contemplated under this Agreement] but not otherwise for Commercialisation.
- 7.4 If the Client wishes to Commercialise all or part of the Deliverables or Research Services IP owned by the University it must separately negotiate and enter into a commercialisation agreement with the University.
- 7.5 This clause 7 will survive the expiration or termination of this Agreement.

## **8** Background IP

- 8.1 Other than as expressly set out in this Agreement, nothing in this Agreement is intended to assign, transfer or otherwise grant any right, title to or interest in or to Background IP.
- 8.2 This clause 8 will survive the expiration or termination of this Agreement.

## **9** No encumbrances

- 9.1 No party may in any way encumber, charge, or grant a security interest over the other party's Background IP or Research Services IP or this Agreement generally.

## **10** Confidential Information, privacy and publications

- 10.1 Each party must in relation to any Confidential Information:
  - 10.1.1 keep the Confidential Information confidential;
  - 10.1.2 use the Confidential Information only for the purposes of the Research Services in respect of which the Confidential Information was provided, or as permitted under this Agreement;
  - 10.1.3 not disclose the Confidential Information to any person other than to its Personnel and Students:

- (a) who have a need to know (and only to the extent that each such person has a need to know); and
  - (b) who are bound by an obligation of confidentiality to the party that employs them, or who have first agreed in writing to keep the Confidential Information confidential and to use the Confidential Information only as permitted under this Agreement;
- 10.1.4 immediately notify the relevant party of any suspected or actual unauthorised copying, use or disclosure of that party's Confidential Information; and
- 10.1.5 comply with any reasonable direction given by the party that provided the Confidential Information about a suspected or actual breach.

## 10.2 Privacy

- 10.2.1 The parties agree to comply with the *Privacy Act 1988* (Cth) (as amended) and the reasonable directions of the other party in relation to the handling of any Personal Information that that party holds or has held and used in connection with this Agreement.
- 10.2.2 The parties agree to comply with the Australian Privacy Principles.
- 10.2.3 The parties agree to take all reasonable measures to ensure that Personal Information in its possession or control is protected against loss and unauthorised access, use, modification or disclosure.
- 10.2.4 Each party will notify the other party immediately if the other party becomes aware of a breach or a possible breach or any of the obligations under this clause, including if any unauthorised access or disclosure of Personal Information occurs in relation to any activities undertaken under this Agreement. Such notification is to be made by way of a statement which includes a description of the breach and details of the Personal Information the subject of the breach.

## 10.3 Publications

- 10.3.1 A party (the Requesting Party) may Publish information relating to the Research Services, including the Research Services IP or Deliverables (subject to licencing restrictions), in academic, scientific and technical publications provided no Confidential Information owned by the other party (the Owner) is disclosed without the prior written consent of the Owner.
- 10.3.2 If the Requesting Party intends to publish the Owner's Confidential Information, the Requesting Party will submit to the Owner (in accordance with clause 16.1 (Notices)), for written approval, copies, draft or otherwise, of all intended Publications containing the Owner's Confidential Information that the Requesting Party wishes to Publish at least 30 days prior to submission for Publication.
- 10.3.3 The Owner will not withhold its approval except on reasonable grounds and as necessary to ensure protection or Commercialisation of the Intellectual Property (if relevant).
- 10.3.4 If at any time during the 30 day period referred to in clause 10.3.2, the Owner requests the Requesting Party not to proceed with submission for Publication or disclosure of the material in the form submitted, then the Requesting Party will either:
- (a) amend the material in any reasonable manner requested by the Owner (but only for the purposes specified in clause 10.3.3); or

- (b) delay submission of the material for Publication or disclosure for a period not exceeding 90 days, or such longer period as is reasonably determined by the Owner as necessary to ensure protection or Commercialisation of Intellectual Property (if relevant).
- 10.3.5 If the Owner does not notify the Requesting Party of its decision within 30 days of receipt of the Requesting Party's request under clause 10.3.2, the Requesting Party will be entitled to proceed to Publication.
- 10.3.6 The parties acknowledge that one of the aims of the University is to encourage the public dissemination of research results generated through University research programs. As such, the parties agree (subject to the other provisions within clause 10) to:
  - (a) limit any restrictions they impose on publication to only protect Confidential Information and Commercialisation of Intellectual Property or Deliverables; and
  - (b) not authorise or permit anyone else to copy, reproduce, divulge, Publish or circulate information arising out of the Research Services where it may have an effect on the University's or a Student's ability to Publish.
- 10.4 This clause 10 will survive the expiration or termination of this Agreement.

## **11 Students**

- 11.1 Where a Student is involved in the Research Services, the University must enter into an agreement with that Student under which:
  - 11.1.1 the Student assigns Research Services IP created by the Student to the University, which will be dealt with in accordance with this Agreement; and
  - 11.1.2 the Student retains ownership of copyright in a Student Thesis;
  - 11.1.3 any Student publications are required to comply with provisions consistent with clause 10.3; and
  - 11.1.4 the Student agrees to observe the confidentiality obligations consistent with clause 10.
- 11.2 Nothing in this Agreement is intended to prevent a Student from having a Student Thesis examined, however where restrictions are necessary to protect Confidential Information, the University will:
  - 11.2.1 require that the examiner of the Student Thesis be bound by appropriate confidentiality obligations; and
  - 11.2.2 restrict access to a Student Thesis submitted to the University's library for an appropriate period not exceeding 12 months.

## **12 Liability and warranties**

- 12.1 Each party (the First Party) will indemnify the other party (the Second Party), from and against any and all liabilities, losses, costs and expenses reasonably incurred or suffered by the Second Party or its officers, employees, contractors and agents (those indemnified) arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by any act or omission of the First Party, their officers, employees, contractors, agents, subcontractors or invitees in connection with First Party's performance of its obligations under this Agreement.

- 12.2 The First Party's liability to indemnify the Second Party under clause 12.1 will be reduced proportionally to the extent that the Second Party or its officers, employees, contractors, agents, subcontractors or invitees contributed to the relevant liability.
- 12.3 No party will be liable to the other party in connection with this Agreement in contract, tort (including negligence), under statute, under any action, claim or liability, or under any other basis in law or equity for any loss of an indirect or consequential nature whether or not such loss was foreseeable, or could have been contemplated by the parties.
- 12.4 The total liability of the University to the Client for loss or damage of any kind whether arising in tort (including negligence), contract, statute, law, equity or under an indemnity is limited to the Fees paid by the Client under this Agreement.
- 12.5 Representations and effect of clause 12
- 12.5.1 The Client acknowledges that it has not relied on any representations made by the University which are not set out in this Agreement.
- 12.5.2 References to the University in this clause 12 include the officers, employees, agents, students and contractors of the University.
- 12.5.3 This clause 12 applies regardless of anything else in this Agreement, to the extent permitted by law.
- 12.6 This clause 12 will survive the expiration or termination of this Agreement.

### **13 Force Majeure Event**

- 13.1 A party (the non-performing party) will not be liable to the other party in respect of the consequences of any non-compliance with its obligations under this Agreement (other than an obligation to pay money) if and to the extent such non-compliance is caused by a Force Majeure Event, provided the non-performing party:
- 13.1.1 is without fault in causing the Force Majeure Event or resulting non-compliance;
- 13.1.2 could not have prevented or reasonably circumvented the Force Majeure Event or resulting non-compliance by taking reasonable precautions, or through the use of alternative sources, work-around plans or other means;
- 13.1.3 as soon as practicable, notifies the other party of the Force Majeure Event and details of any non-compliance;
- 13.1.4 continues to use its best endeavours to recommence performance whenever and to whatever extent possible without delay; and
- 13.1.5 keeps the other party informed of steps taken to address the non-compliance.
- 13.2 Without limiting the Client's right to terminate pursuant to clause 14.1.2, during any period in which the University is not performing obligations because of a Force Majeure Event, the Client:
- 13.2.1 is relieved from the obligation to pay the University to the extent that the University has not performed its obligations in accordance with this Agreement; and
- 13.2.2 may (but need not) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation that the University is not performing without incurring any liability to the University.

### **14 Termination**

- 14.1 Either party may terminate this Agreement,

- 14.1.1 immediately by written notice to the other party, if the other party:
  - (a) is or becomes bankrupt or suffers an Insolvency Event at any time;
  - (b) is in breach of a provision of this Agreement, where that breach:
    - (i) if capable of being remedied, is not remedied within 14 days of receiving notice requesting it to do so (such notice must provide details of the breach); or
    - (ii) is not capable of being remedied; or
- 14.1.2 a delay or failure of either party to perform its obligations which exceeds [45 days], due to a Force Majeure Event; or
- 14.2 If this Agreement is terminated:
  - 14.2.1 by the Client under clause 3.3 or either party for any reason under clause 14.1, the Client will pay the University the Fees for Research Services performed before the effective date of termination; and
  - 14.2.2 by the University under clause 14.1.1 or by the Client under clause Error! Reference source not found. (in addition to the Fees payable under clause 14.2.1) the Client will pay the University any reasonable costs in respect of unavoidable loss incurred by the University and directly attributable to the termination or partial termination of this Agreement, provided that the costs are fully substantiated by the University. These costs will not exceed the total Fees payable under this Agreement.

## **15 Dispute Resolution**

- 15.1 A party must not start court proceedings (except proceedings seeking interlocutory relief) about a dispute arising out of this Agreement unless it has complied with this clause 15.
- 15.2 A party claiming that a dispute has arisen must notify the other party giving details of the dispute ('Notification').
- 15.3 On receipt of a Notification, each party must negotiate in good faith to resolve the dispute and, if necessary to resolve the dispute, involve the relevant senior officers of the parties directly in those negotiations.
- 15.4 If a dispute is not resolved within 30 days (or longer period agreed between the parties), the parties will refer the dispute for mediation by the Australian Disputes Centre Limited (ADC) for resolution in accordance with the ADC guidelines (operating at the time the matter is referred to ADC) for commercial mediation.
- 15.5 If a dispute is not resolved under clause 15.4 within 90 days after referral (or longer period agreed between the parties) a party may initiate court proceedings.
- 15.6 Parties will share the cost of mediation.
- 15.7 This clause 15 will survive the expiration or termination of this Agreement.

## **16 Notices**

- 16.1 Any notices given under this Agreement must be:
  - 16.1.1 in writing;
  - 16.1.2 addressed to the address of the recipient specified in the Details of this Agreement or as altered by notice given in accordance with this clause; and
  - 16.1.3 left at or sent by prepaid post or email to that address.

- 16.2 A notice given in accordance with this clause will be deemed received:
- 16.2.1 if left at the recipient's address, on the date of delivery;
  - 16.2.2 if sent by prepaid post, 7 days after the date of posting; and
  - 16.2.3 if sent by email, (i) when the sender receives an automated message confirming receipt or (ii) 4 hours after the time sent unless the sender receives an automated message that the email has not been delivered, whichever happens first.
- 17 Acknowledgement**
- 17.1 Subject to obtaining prior written approval in accordance with clause 18.2, the Client agrees to acknowledge the University's research in material published in connection with this Agreement and agrees to use any form of acknowledgement the University reasonably specifies.
- 18 General**
- 18.1 FOI: In the event that the University receives a request under *Freedom of Information Act 1982 (Cth)* (FOI Act) for access to a document, information or government information created by, or in the possession of, the University that relates to the performance of this Agreement, Client must, if required by the University, immediately assist the University in relation to the request (including by providing any document, information or government information that it holds to the University). The terms, 'document', 'information' and 'government information' have the same meaning as they have in the FOI Act.
- 18.2 Trademarks: Neither party is permitted to use the name/s (including Personnel, department, unit, employee or contractor), trademarks or logos of the other party without the prior written approval of that party.
- 18.3 A party must not assign or attempt to assign or otherwise transfer any right arising out of this Agreement without the written consent of the other party.
- 18.4 A party must not assign in whole or in part or novate the Agreement without obtaining the prior written consent of the University, which may withhold consent at its discretion.
- 18.5 This Agreement:
- 18.5.1 records the entire agreement between the parties and supersedes all earlier agreements and representations by the parties about its subject matter;
  - 18.5.2 is governed by the laws of the Australian Capital Territory and each party agrees to submit to the exclusive jurisdiction of the courts of the Australian Capital Territory; and
  - 18.5.3 may only be altered in writing signed by both parties.
- 18.6 If there is any inconsistency between the provisions of this Agreement then the order of precedence will be:
- 18.6.1 Special Conditions (if any);
  - 18.6.2 Details;
  - 18.6.3 Agreed Terms; and
  - 18.6.4 Schedule 1.
- 18.7 If it is not clear in the Agreement which optional clause(s) have been agreed between the parties, it will be determined that the first option has been agreed by the parties.

- 18.8 No agreement or understanding that varies or extends this Agreement will be legally binding upon either party unless in writing and signed by both parties.
- 18.9 Nothing in this Agreement will be construed as creating a partnership of any kind, an association or trust between the parties, each party being individually responsible only for its obligations as set out in this Agreement. The parties agree that their relationship is one of independent contractors and that no employer/employee relationship is set up by this Agreement nor is either party authorised or empowered to act as agent for the other party for any purpose and will not on behalf of any other party enter into any contract, warranty or representation as to any matter. No party will be bound by the acts or conduct of the other.
- 18.10 This Agreement may be signed in any number of counterparts (including electronically signed counterparts) and all such signed counterparts, taken together, shall be deemed to constitute one and the same instrument even though both parties may not have signed each separate counterpart.
- 18.11 This clause 18 will survive the expiration or termination of this Agreement.

EXECUTED AS AN AGREEMENT

SIGNED )

for and on behalf of the Australian National  
University ABN 52 234 063 906 by an authorised  
officer in the presence of: )

s47F

s47F

(Signature of witness) )

Craig Moritz

(Printed name of authorised officer) )

Vienna Harkness

(Printed name of witness) )

08/01/2024

Date )

SIGNED )

for and on behalf of PROTECT OUR  
WINTERS AUSTRALIA LTD ABN 60 673 391  
127 in accordance with section 127(1) of the  
*Corporations Act 2001* (Cth) by: )

s47F

s47F

(Signature of Director) )

(Signature of Director/Company Secretary) )

Sam Quirke

(Printed name of Director) )

Alastair McLeod

(Printed name of Director/Company  
Secretary) )

9/1/2024

Date )

18/1/24

Date )

# Schedule 1 Research Services

## Report brief: Impact of climate change on Australian winters

### 1. Project objectives

POW Australia is looking to partner with the Australian Mountain Research Facility (AMRF) and the Australian National University (ANU) to deliver an independent report that pulls together the available literature on the impacts of climate change on Australia's winters, particularly from the lens of the winter sports industry and community. The report should investigate this from an economic, social and environmental perspective, and include opportunities and barriers to effective climate adaptation and mitigation in relation to the Australian Alps. Specific focus should be given to Australia's alpine environments, primarily Victorian and NSW areas.

### 2. Statement of need

Existing research on the impacts of climate change on Australian winters, particularly on the alpine region and winter sports industry, is fragmented and outdated. While there are a number of studies on the environmental impacts of climate change on alpine ecosystems, there has been limited integration of economic and social impacts of climate change on alpine communities and users. Similarly, there is little current research on snowfall projections under different warming scenarios, and the implications of this on the alpine region. To address this, the report will conduct an in-depth literature review, identify research gaps, and make recommendations for further studies. Of particular importance, is that it will integrate under one report the standing of the literature of climate change impacts across Australia's alpine regions from a multidisciplinary lens - investigating environmental, social and economic impacts.

### 3. Proposed report focus

The report will present a comprehensive literature review on climate impacts across the Australian Alps. Areas of focus for review will include:

- Impacts of climate change on Australian alpine tourism and alpine communities
- Impacts of climate change and reduced snow cover on Australian agriculture
- Impacts of climate change on alpine ecosystem health and biodiversity
- Climate projections for Australian snowfall under different warming scenarios and implications for the winter sports industry
- Opportunities and limitations for climate adaptation in the Australian Alps

### 4. Utilisation of the report

The report will serve as a fundamental resource for POW Australia's initiatives aimed at conserving Australian winters. It will support educational campaigns, inform policy development and political engagement efforts, facilitate stakeholder and community engagement, foster strategic partnerships, and contribute to POW Australia's strategic plan.