



WATER SERVICES
ASSOCIATION OF AUSTRALIA

CONTRACT: PROJECT NAME

AGREEMENT BETWEEN

WATER SERVICES ASSOCIATION OF AUSTRALIA LIMITED

AND

CONSULTANT

Consultancy Agreement

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Parties

THIS AGREEMENT is between **WATER SERVICES ASSOCIATION OF AUSTRALIA LIMITED** (ABN 54 117 907 285) of Level 8, Suite 802, 401 Docklands Drive, Docklands 3008 (“**the Association**”)

AND

[REGISTERED NAME OF SERVICE PROVIDER PTY LTD] (ABN XXXXX) of **[Address of service provider]** (“**the Consultant**”)

Recitals

- A The Consultant represents that it is a highly-skilled independent provider of the Consultancy Services and Project Deliverables to be provided under this Contract.
- B The Association wishes to engage the Consultant to provide those services and deliverables to it.
- C The Consultant has agreed to provide the Consultancy Services and Project Deliverables to the Association on the terms of this Contract.

IT IS AGREED as follows:

1. Defined Terms and Interpretation

1.1. Defined Terms

In this Contract the terms below will apply, except where the context otherwise requires:

Association Material means any material provided by the Association (including its Members) to the Consultant for the purposes of this Contract, including documents, equipment, information and data stored by any means;

Background Intellectual Property means Intellectual Property owned by or licensed to the Consultant and made available by it to the Association and/or Participants or otherwise used by it in the Project, including any Intellectual Property identified and described as such in Schedules 1 or 2, excluding Project Intellectual Property, Contract Material, Project Deliverables and all rights therein;

Business Day means a weekday on which banks are open in Melbourne, Victoria.

Commencement Date means the date of commencement of this Contract as specified in Schedule 1, or if not specified, the date of last signature to this Contract;

Commercialise, in relation to Intellectual Property, means to manufacture, sell, hire or otherwise exploit a product or process, or to provide a service, using the Intellectual Property, or to license any person to do any of those things;

Confidential Information means all information relating to the Consultancy Services, the Association, its Members and any of their businesses which is disclosed to, or otherwise comes to the knowledge of, the Consultant under or in connection with this Contract, including trade secrets and know-how, financial information and other commercially valuable information of whatever description and in whatever form relating to the Association or its Members.

Consultancy Services means the services described in Schedules 1 and 2;

Consultant will, where the context so admits, include the employees, authorised sub-contractors and agents of the consultant;

Contract means this agreement including Schedules 1 and 2;

Contract Material means interim and final reports, survey responses, analysis of survey responses and any other material created for the purpose of providing the Consultancy Services and Project Deliverables. This excludes pre-existing material including documents, equipment, information, software and data stored by any means, which is owned or held by the Consultant at the date of this Contract, together with any demonstration software developed by the Consultant whilst providing the Consultancy Services or Project Deliverables.

Contract Period means the duration of the Contract as stated in Schedule 1;

Control has the meaning given to that term under section 50AA of the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cth).

Dispose means, in relation to any property, to sell, transfer, assign, create any interest over, part with the benefit of, or otherwise dispose of the property;

Insolvency Event means, in relation to a Party, any insolvency-related event that is suffered by that Party, including without limitation where:

- (a) the Party ceases to carry on business;
- (b) the Party ceases to be able to pay its debts as they become due;
- (c) the Party disposes of the whole or any substantial part of its assets, operations or business other than in the normal course of business (other than in the case of a solvent reconstruction or reorganisation);
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or part of the Party's assets, operations or business;
- (e) any step is taken to enter into any arrangement between the Party and its creditor (other than in the case of a solvent reconstruction or reorganisation); or
- (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator, or other like person of the whole or part of the Party's assets operation or business;

Intellectual Property means all intellectual property rights and interests conferred by statute, common law or in equity and subsisting anywhere in the world including:

- (a) registered and unregistered copyright;
- (b) registered and unregistered inventions (including patents, innovation patents and utility models);
- (c) registered and unregistered designs;
- (d) registered and unregistered trade marks and service marks;
- (e) methods, plans, data, drawings and specifications; and
- (f) circuit layout designs, topography rights and rights in databases,

and includes any licences and similar use rights in respect of such rights and interests.

Liability includes any action, claim, loss, liability, damage, cost and expense (including but not limited to court and legal costs);

Participation Agreement means the agreement(s) to be executed between the Association and participants in the Project;

Participants means signatories to the Participation Agreement;

Party means a party to this Contract;

Personnel of a Party means the officers, employees, agents and contractors of the Party and includes the Specified Personnel;

Project means the project detailed in Schedules 1 and 2;

Project Deliverable means anything which is supplied to the Association, and/or the Participants, by the Consultant in the course of performing Consultancy Services under or in connection with this Contract or Project, including:

- (a) any deliverable specified in Schedules 1 or 2; and
- (b) the Contract Materials;

Project Director means the person holding, occupying or performing the duties of Project Director of the Association who is responsible for supervision of the Contract on behalf of the Association and has authority to issue and receive any written notification under the Contract;

Project Intellectual Property means Intellectual Property developed in the course of undertaking the Project. This excludes pre-existing Intellectual Property, which is owned or held by the Consultant as at the date of this Contract;

Project Manager means the person holding, occupying or performing the duties of Project Manager as a Participant who is responsible for supervision of the Contract on behalf of the Participants;

Recognised Industry Practice means the use of practices which are widely accepted within the relevant industry and consistent with:

- (a) recognised industry standards; and
- (b) up-to-date Australian practices as would be used by leading, highly skilled and experienced contractors that provide services and deliverables similar to those provided by the Consultant under this Contract.

Specified Personnel means the personnel specified in Schedules 1 and 2, and any other personnel from time to time approved by the Association in writing to work on the Project;

1.2. Interpretation

In this Contract, except where the context otherwise requires:

- (a) any terms which are not defined in this Contract, but are defined in a schedule or annexure, have the meaning given to those terms in that schedule or annexure;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Contract, and a reference to this Contract includes any schedule or annexure;
- (e) clause headings in this Contract are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (f) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (g) a reference to a Party includes the Party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, government or local authority or agency or other entity;
- (i) 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;

- (j) the meaning of general words is not limited by specific examples introduced by the words 'including', 'for example' or similar expressions;
- (k) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Contract or any part of it;
- (l) all rights and powers granted to a Party under this Contract may be exercised by that Party in its absolute discretion; and
- (m) a reference to 'dollars' or '\$' is a reference to the currency of Australia.

2. Provision of Consultancy Services and Project Deliverables

2.1. Appointment

The Association appoints the Consultant on a non-exclusive basis to provide, and the Consultant agrees to provide, the Consultancy Services and Project Deliverables on the terms and conditions of this Contract.

2.2. Contract Period and Milestones

- (a) This Contract commences on the Commencement Date and continues in force for the duration of the Contract Period unless terminated earlier or extended in accordance with this Contract.
- (b) The Consultant must provide the Consultancy Services and the Project Deliverables at the times, and by the due dates for Milestones, specified in Schedule 1, or until this Contract is terminated in accordance with clause 20.

2.3. Performance

- (a) The Consultant must provide the Consultancy Services, the Project Deliverables and any services, functions or activities which are incidental to, or necessary for, delivery of the Consultancy Services and Project Deliverables in accordance with this Contract.
- (b) The Consultant must perform all of its obligations under this Contract in accordance with:
 - (i) all applicable laws and standards;
 - (ii) any applicable standards, policies and procedures or procedures of the Association as notified by the Association from time to time;
 - (iii) any reasonable instructions issued by the Association or its authorised Personnel from time to time in relation to the Consultancy Services or Project Deliverables.
- (c) The Consultant must provide the Consultancy Services and Project Deliverables in a manner that meets or exceeds the Targets for Key Performance Indicators specified in Schedule 1.

2.4. Reporting and Meeting

If and when requested by the Association, the Consultant must:

- (a) report, and must ensure its Personnel report in a full, comprehensive and timely manner to the Association, the Project Director and the Project Manager in relation to the provision of the Consultancy Services and the Project Deliverables;
- (b) provide the Association with such information as is reasonably required for the purpose of the Association supervising or reviewing the provision of the Consultancy Services and Project Deliverables; and
- (c) meet with the Association to discuss the provision of the Consultancy Services and the Project Deliverables.

2.5. Obligations of the Association

- (a) The Association must:
 - (i) pay the fees in accordance with clause 3; and
 - (ii) provide the Consultant with access to such systems, premises, personnel and information of the Association as are necessary for the Consultant to provide the Consultancy Services and Project Deliverables.
- (b) The Association's responsibilities to assist the Consultant are limited to those expressly provided for in this Contract. If the Association fails to perform any such obligation then the Consultant must give the Association prompt written notice of that failure.

3. Fees, Allowances and Assistance

3.1. Fees

- (a) Subject to this Contract, the Association must pay to the Consultant the fees specified in Schedule 1 and any expenses approved by the Association under clause 3.3.
- (b) The amounts stated in Schedule 1 include all amounts payable to the Consultant in connection with the Consultant's provision of the Consultancy Services and Project Deliverables and the performance of the Consultant's obligations under this Contract. No other amounts are payable to the Consultant under or in connection with this Contract unless agreed in writing by the parties.
- (c) Where Schedule 1 provides that the Consultant is to be paid by progressive instalments, the Association may, without derogating from any other right it may have, defer payment of an instalment until the Consultant has completed to the reasonable satisfaction of the Association that part of the Consultancy Services to which that instalment relates.

3.2. Time and Materials charges

If Schedule 1 states that any tasks or activities will be performed by the Consultant on a time and materials basis, the Association will only be obliged to pay for the performance of those tasks or activities after the Consultant has provided the Association with records of time spent and materials used by the Consultant to enable the Association to verify to its reasonable satisfaction the amount claimed in respect of those tasks or activities.

3.3. Out-of-pocket Expenses

On presentation of satisfactory proof of disbursement, the Association is only obliged to reimburse the Consultant for out-of-pocket expenses if:

- (a) the out-of-pocket expenses are reasonably and properly incurred in the provision of the Consultancy Services and Project Deliverables and in accordance with the Association's guidelines and policies in force at the date of such expenditure;
- (b) the Association has provided its written consent (not to be unreasonably withheld or delayed) before the Consultant incurs the expense; and
- (c) the Consultant has provided the Association with documentation evidencing the expense to the Association's reasonable satisfaction.

3.4. Wages and Taxes

- (a) The Consultant is responsible for all necessary wages and any income tax and payroll tax payable under the Income Tax Assessment Act, the Payroll Tax Assessment Act or any other statute imposing any liability for taxation in respect of the Consultant or its Personnel and, without limiting clause 15, the Consultant indemnifies the Association for any liability arising in relation to this clause 3.4. The

Consultant consents to the Association furnishing the Commissioner of Taxation with the Consultant's name and address and all details of payments made to the Consultant by the Association, if so requested by the Commissioner of Taxation.

- (b) The Consultant agrees that the remuneration and the expenses referred to in this clause 3 constitute the only remuneration or financial benefits to which the Consultant is or may become entitled and the Consultant acknowledges that the Consultant and its Personnel will not be entitled to receive any redundancy payments, long service leave, sick leave, parental leave, holiday pay, superannuation benefits or any other benefits.

3.5. GST

- (a) If, by operation of the GST Law, any Supply under this Contract is regarded as a taxable supply, the Supplier will be entitled to recover from the Recipient, an amount equivalent to the GST payable by the Supplier in relation to the Supply.
- (b) Any reference in this Contract to price, value, sales, revenue, cost, expense or a similar amount is a reference to that amount exclusive of GST (unless expressly stated otherwise).
- (c) If GST is payable, the Supplier will provide the Recipient with a tax invoice or a document adequate to entitle the Recipient to claim an input tax credit.
- (d) In this clause:
 - '**GST Law**' means A New Tax System (Goods and Services Tax) Act 1999 and any substantially similar legislation when it is passed into law and which may operate at any time during the term of this Contract;
 - '**Recipient**' means a person that has received a Supply;
 - '**Supplier**' means a person that has made or provided a Supply; and
 - '**Supply**' bears the meaning attributed to that term in the GST Law.

3.6. Invoicing

- (a) The Consultant may invoice the Association for the fees specified in Schedule 1 at the times, and upon achievement of the Milestones specified in Schedule 1. If no times or relevant payment milestones are set out in Schedule 1, then the Consultant may invoice the Association in a month for the Consultancy Services and Project Deliverables provided in the previous month.
- (b) All amounts due under this Contract are payable by the Association within 30 days of the date on which a properly issued tax invoice for that amount is received from the Consultant.
- (c) A tax invoice is properly issued only if:
 - (i) the amount specified in the tax invoice is correctly calculated in accordance with Schedule 1;
 - (ii) it is set out in a manner that reasonably enables the Association to ascertain which Consultancy Services and Project Deliverables are covered by the tax invoice, the respective charges payable and how that amount is made up or calculated;
 - (iii) it itemises any expenses incurred in providing the Consultancy Services and Project Deliverables and attaches the receipts to substantiate those expenses as well as the prior written approval from the Association for incurring those expenses; and
 - (iv) is addressed and delivered to the Association's Project Director.

- (d) If the Association disputes in good faith its obligation to pay part or all of a tax invoice submitted by the Consultant under this Contract, then the following provisions apply notwithstanding anything to the contrary in this Contract:
 - (i) the Association must notify the Consultant in writing of the amount on the tax invoice which it disputes (the **Disputed Amount**) and the reasons why it considers it is not required to pay the Disputed Amount;
 - (ii) the Association's failure to pay the Disputed Amount will not be a breach of this Contract and the Consultant must not terminate or suspend the provision of the Consultancy Services or Project Deliverables in accordance with this Contract; and
 - (iii) the parties must refer the matter to be resolved in accordance with clause 30.

4. Entire Agreement and Variation

- (a) This Contract constitutes the entire agreement between the parties and supersedes all conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**), either oral or written, between the parties with respect to the subject matter of this Contract. Neither party has relied on or is relying on any other Conduct in entering into this Contract and completing the transactions contemplated by it.
- (b) No agreement or understanding varying or extending this Contract, including in particular the scope of the Consultancy Services or Project Deliverables in the Schedules, is legally binding upon either party unless in writing and signed by both parties. All variations must be agreed by both parties prior to the commencement of any work related to the variations.

5. Sub-contracting

- (a) The Consultant must not, without the prior written approval of the Association, sub-contract the provision of any part of the Consultancy Services or Project Deliverables. Approved sub-contractors are listed in Schedules 1 and 2. In giving written approval, the Association may impose such terms and conditions as it thinks fit.
- (b) The Consultant must not substitute any subcontractors approved in Schedules 1 or 2 without the written approval of the Association.
- (c) The Consultant remains fully responsible and liable for the provision of the Consultancy Services and Project Deliverables notwithstanding that the Consultant has subcontracted the performance of any part of these services or deliverables.

6. Specified Personnel

- (a) The Consultant must ensure that the Specified Personnel:
 - (i) are made available to provide the Consultancy Services and Project Deliverables; and
 - (ii) undertake work in respect of the Consultancy Services and Project Deliverables in accordance with the terms of this Contract and as outlined in Schedules 1 and 2.
- (b) The Consultant must immediately notify the Association if it considers that any of the Specified Personnel are performing unsatisfactorily. The Consultant must not withdraw the Specified Personnel from providing the Consultancy Services or Project Deliverables without the prior written approval of the Association.
- (c) If any Specified Personnel are unable to undertake work in respect of the Consultancy Services or Project Deliverables, the Consultant must:
 - (i) notify the Association immediately; and

- (ii) if so requested by the Association, provide replacement personnel acceptable to the Association at no additional charge and at the earliest opportunity but no later than **10** Business Days after the withdrawal of the previous Personnel.
- (d) The Consultant must, within **10** Business Days of a reasonable written request from the Association, replace at the Consultant's expense any one or more of the Personnel (including Specified Personnel) it is using to provide the Consultancy Services and Project Deliverables, provided that the Association gives the Consultant full details of the reason for the request at the time of the request.
- (e) If the Consultant is unable to provide acceptable replacement Personnel to the Association under clauses 6(c) or 6(d), the Consultant may terminate this Contract in accordance with the provisions of clause 20.

7. Project Director and Project Manager

- (a) The Consultant must liaise with and report to the Association's Project Director and Project Manager as reasonably required by the Project Director and Project Manager during the period of this Contract.
- (b) The Consultant may nominate from time to time a person who has authority to receive and sign notices and written communications for the Consultant under this Contract and accept any request or direction in relation to the Consultancy Services and Project Deliverables.

8. Contract Material and Project Deliverables

- (a) The Consultant, as legal and beneficial owner, assigns to the Association all right, title and interest in the Contract Material, Project Intellectual Property and Project Deliverables, including all copyright (including all future copyright) and all other intellectual property rights subsisting, or which may hereafter subsist therein.
- (b) On the expiration or earlier termination of this Contract, the Consultant must deliver to the Association all Contract Material, Project Deliverables and Project Intellectual Property, subject to the conditions of **clause 10** to the Association.
- (c) The Consultant must use best endeavours to ensure that all Contract Materials (including all data and test results included or relied upon in the Contract Materials) are accurate to the best of its knowledge, information and belief. If the Consultant obtains any data, test results or information derived from such data or test results or any other information from the Members or Participants, the Consultant must use reasonable endeavours to ensure and verify the accuracy of the information obtained.
- (d) Prior to the issue of any final version of the Contract Material to the Association, its Members or Participants:
 - (i) the Consultant must:
 - a. submit the proposed final version of such Contract Material to the Association for its review;
 - b. use reasonable endeavours to obtain a confirmation letter from the Association under which it confirms that it has reviewed the submitted Contract Materials;
 - c. if it is unable to obtain such a confirmation letter from the Association, submit a signed letter stating this fact and whether, in its opinion, the Association has been provided with a reasonable opportunity to review and comment upon the final version of the Contract Materials prior to its issue to the Association; and

- d. submit any such letters with the final version of the Contract Materials issued to the Association; and
- (ii) the Association reserves the right to:
 - a. review the data, results and conclusions derived from the Project;
 - b. correct or comment upon any discrepancies in the Contract Material; and
 - c. review all Contract Material prior to its publication to verify that no Confidential Information will be disclosed through publication.
- (e) The Consultant must ensure that the Contract Material, Project Deliverables and Project Intellectual Property are only used, copied, supplied or reproduced for the purpose of performing this Contract

9. Association Material

- (a) Association Material remains the property of the Association and, on the expiration or earlier termination of this Contract, the Consultant must return to the Association all Association Material.
- (b) The Association must inform the Consultant of any Association Material in which third parties own the copyright and of any conditions attaching to the use of that material because of that copyright. The Consultant must only use that material in accordance with those conditions.
- (c) The Consultant is responsible for the safe keeping and maintenance of Association Material when it is in the possession or custody of the Consultant or its Personnel.

10. Background Intellectual Property

10.1. Provision

During the term of this Contract, the Consultant must make available for the Project the Background Intellectual Property identified in Schedules 1 and 2.

10.2. Ownership

- (a) When the Consultant makes Background Intellectual Property available, it must give notice to the Association identifying the Background Intellectual Property and the ownership of it, the right of the Party to make it available and details of any encumbrances.
- (b) Notwithstanding any other provision of this clause 10, the Consultant retains ownership of any Background Intellectual Property.

10.3. Warranty

The Consultant warrants that:

- (a) it is the owner of, or is otherwise entitled to provide, the Background Intellectual Property which it makes available for the Project;
- (b) the use of Background Intellectual Property in accordance with this Contract will not infringe the Intellectual Property rights of any other person;
- (c) except to the extent disclosed to the other Party at the time of making it available, the Background Intellectual Property is unencumbered; and
- (d) it will not Dispose of or Commercialise the Background Intellectual Property so as to prejudice its use in accordance with this Contract.

10.4. Rights of use

- (a) To the extent to which use, disclosure, publication, exhibition, transmission, adaptation or reproduction of any Contract Materials, Project Deliverables or Project Intellectual Property requires a licence to use the Background Intellectual Property, the Consultant grants to the Association and Participants a royalty-free, non-exclusive, worldwide, perpetual, irrevocable licence to use the Background Intellectual Property. The Consultant warrants that it is entitled to grant such a licence and that such use will not infringe any rights (including Intellectual Property) of any person nor give rise to any obligation on behalf of the Association to pay compensation or royalty to any person.
- (b) If the Association requires a licence to use the Background Intellectual Property for the purposes of Commercialisation of the Project Intellectual Property, the Consultant must grant the licence, subject to agreement being reached on reasonable commercial terms.

10.5. Protection

The Association must:

- (a) take reasonable steps to protect the Background Intellectual Property (but not including applying for, maintaining, prosecuting or enforcing any form of Intellectual Property rights protection); and
- (b) give the Consultant prompt notice of any infringement or threatened infringement of that Background Intellectual Property which comes to its attention.

11. Project Intellectual Property

11.1. Consultant's Licence Rights

The Association grants to the Consultant a limited, revocable, non-exclusive, royalty-free licence to use the Project Intellectual Property for the sole purpose of performing its obligations under this Contract.

11.2. Consultant's Obligations

- (a) The Consultant must ensure that it and its Personnel who participate in the Project:
 - (i) identify Project Intellectual Property generated or developed by them;
 - (ii) promptly communicate details of any identified Project Intellectual Property to the Association;
 - (iii) do not register, or attempt to register, any interest in respect of any Project Intellectual Property; and
 - (iv) assign ownership of all Project Intellectual Property in accordance with clause 8(a).
- (b) The Consultant must procure from all its Personnel involved in the development of Project Intellectual Property a moral rights consent substantially in a form approved by the Association. In procuring such consents, the Consultant must not apply any duress to any person or make a statement to any person knowing that the statement is false or misleading in a material particular or knowing that a matter or thing is omitted from the statement without which the statement is false or misleading in a material particular.
- (c) The Consultant must, and must procure that its Personnel, execute such further documents and assurances and take such further action as may be necessary to register and protect any of the Association's interests in the Project Intellectual Property and to generally give effect to clauses 8 and 11.

- (d) The Consultant acknowledges and warrants that the Association will, by virtue of clauses 8 and 11, own (without any restriction or limitation) on a worldwide basis, all right, title and interest to any and all of the Project Intellectual Property including all rights to exploit the Project Intellectual Property in any and all media (whether now or in the future developed).
- (e) The Consultant must ensure that a copyright notice or other proprietary notice as is required by the Association is included in any copy made of the Project Intellectual Property (including the Project Intellectual Property as stored on information storage, computer disks and database) and such notice must be clearly and legibly marked in a prominent place.

11.3. Project Intellectual Property Protection

- (a) The Association will have the right to decide whether, and in which countries to apply for a patent or other form of registered Intellectual Property protection in relation to any Project Intellectual Property.
- (b) Each Party must give the other prompt notice of any infringement or threatened infringement of Project Intellectual Property which comes to its notice and the Association may take such action and incur such costs as may be reasonably required to protect its interests in that Project Intellectual Property.
- (c) Costs incurred by the Association in relation to the matters covered by this clause 11.3 will be borne by the Association.

11.4. Other

Where any action or claim causes the Association's quiet enjoyment of the Project Intellectual Property to be disrupted or impaired, the Consultant must, at its own expense and at the Association's option, procure for the benefit of the Association the right to continue to use and exploit the Project Intellectual Property in accordance with this Contract without restriction.

12. Commercialisation of Project Intellectual Property

12.1. Commercialisation decisions

Commercialisation of Project Intellectual Property will be a matter for decision by the Association.

12.2. Consultant's rights

This Contract does not confer on the Consultant any right to Commercialise Project Intellectual Property.

13. Confidentiality and Disclosure of Information

13.1. Confidential Information

- (a) Subject to clause 13.2, the Consultant must:
 - (i) keep the Confidential Information of the Association and Participants secret and confidential;
 - (ii) take all reasonable steps necessary to keep the Confidential Information secret and to prevent its unauthorised use, reproduction or disclosure;
 - (iii) not, either during the term of this Contract or at any time afterwards, disclose to any person any Confidential Information (or allow, assist or make it possible for any person to have access to or use any Confidential Information) unless:
 - a. disclosure or use of the Confidential Information is permitted under this Contract; and

- b. prior to disclosing the Confidential Information to a person, the Consultant instructs that person that the Confidential Information is confidential and may not be used for any purpose other than for the purpose of performing this Contract; and
 - (iv) not reproduce or record, or permit or cause any reproduction or recording of, any Confidential Information except to the extent permitted under, and necessary for performing, this Contract.
- (b) The Consultant and its Personnel must, at its own expense, immediately on demand by the Association, and, in any event, upon completion of work under this Contract:
 - (i) cease to use or make any further disclosure of any Confidential Information, including use or disclosure for the purpose of performing this Contract;
 - (ii) return to the Association all Association Material obtained directly or indirectly from the Association by the Consultant and if any Association Material is stored by the Consultant or its Personnel in an electronic format, ensure that such material in its possession or control is:
 - a. permanently deleted; or
 - b. if that material also contains information that is not Confidential Information, destroy, permanently erase or delete all Confidential Information contained in such material,

unless required by applicable laws to retain such material (in which case the Consultant must notify the Association of the requirement for the Consultant to retain such materials and the materials will remain subject to this Contract).
- (c) Once the Consultant has complied with its obligations under clause 13.1(b), it must provide a statutory declaration to the Association to confirm that it has so complied.
- (d) This Contract applies to all Confidential Information, whether or not any Confidential Information was disclosed to, or accessed by, the Consultant before the date of this Contract.
- (e) The Consultant and its Personnel must only use the Confidential Information provided by the Association and the Participants for the purposes of the Project and as contemplated by this Contract.

13.2. Exclusions

The obligations of confidence in clause 13.1 do not apply to:

- (a) the use, retention or disclosure of information after it ceases to be confidential other than because of a breach of this Contract or of any obligation of confidence owed by the Consultant or any third party accessing the information directly or indirectly from the Consultant;
- (b) the disclosure of information in order to comply with any applicable law or legally binding order of any court, government, semi-government authority or administrative or judicial body or the applicable rules of any stock exchange, provided that the Consultant:
 - (i) immediately notifies the Association giving full details of the circumstances of the proposed disclosure and of the relevant information to be disclosed;
 - (ii) (to the maximum extent permitted by law) gives the Association a reasonable opportunity in a court of law or other appropriate body to:
 - a. challenge whether the proposed disclosure is in accordance with this Contract;

- b. challenge the obligation of the Consultant or any other person to make that disclosure; or
 - c. secure an order or other ruling (for example, that the disclosure should only be made on a confidential basis) to protect or preserve the confidentiality of the relevant information; and
- (iii) takes all reasonable steps to preserve the confidentiality of the information being disclosed (for example, by making an application for an order that the information be disclosed only in a confidential exhibit or in proceedings heard in closed court);
- (c) the disclosure of information to legal advisers of the Consultant whose duties in relation to the Consultant require the disclosure;
 - (d) the use or disclosure of information in any proceedings arising out of or in connection with this Contract to the extent necessary to protect the lawful interest of a party; or
 - (e) the use or disclosure of information after the Consultant receives it from a third person legally entitled to possess the information and provide it to the Consultant other than for performance of this Contract, to the extent that the information is used, disclosed, or otherwise dealt with in accordance with the rights or permissions lawfully granted to the Consultant by that third person.

13.3. Permitted Disclosures

- (a) The Consultant may disclose Confidential Information of the Association, including any Association Material or Contract Material, only on a "need to know" and confidential basis:
 - (i) with the prior written consent of the Association; or
 - (ii) subject to clause 13.3(c), to its Personnel,
 for the exercise of rights or the performance of obligations under this Contract.
- (b) In giving written approval under clause 13.3(a) the Association may impose such terms and conditions as it thinks fit.
- (c) In disclosing Confidential Information under clause 13.3(a)(ii), the Consultant must ensure that its Personnel:
 - (i) keep the Confidential Information confidential; and
 - (ii) are subject to confidentiality obligations no less onerous than those set out in this clause 13.
- (d) The Consultant remains responsible and liable for ensuring that its Personnel comply with the terms of this clause 13.
- (e) The Association may at any time require the Consultant to give and to arrange for its Personnel engaged in the provision of the Consultancy Services or Project Deliverables to give written undertakings in the same form as clauses 13.1 and 13.2 hereof.

14. Warranties

14.1. Warranties

The Consultant warrants that:

- (a) it has the authority to grant the rights granted to the Association under this Contract and that neither the provision to, receipt or use by the Association of the Contract Material, the Project Deliverables, the Background Intellectual Property or the

Project Intellectual Property in accordance with this Contract will infringe any other person's Intellectual Property;

- (b) the Association is entitled to use and otherwise exploit the Project Intellectual Property without being required to obtain the consent of, or pay compensation or royalty to, any third party;
- (c) there are no encumbrances, obligations or agreements that may affect the warranties given by the Consultant under or in connection with this Contract;
- (d) the Consultancy Services and Project Deliverables will be provided under this Contract:
 - (i) with due care and skill to a high professional standard and to the best of the Consultant's knowledge and expertise;
 - (ii) in a timely, thorough, efficient, professional and competent manner and conform to a standard of competence equal to that normally employed by consultants of good standing for services and deliverables of a similar type, scale and importance; and
 - (iii) in accordance with Recognised Industry Practice;
 - (iv) by Personnel of the Contractor who have the necessary experience, skill and ability to properly provide the Consultancy Services and Project Deliverables on the terms set out in this Contract; and
- (e) it has the necessary Personnel, facilities, resources, expertise and experience necessary to provide the Consultancy Services and Project Deliverables in accordance with this Contract;
- (f) the Consultancy Services and Project Deliverables will be fit for the purposes set out expressly in this Contract, or for purposes which would reasonably be considered by a service provider of reasonable competency and experience in the industry in which the Consultant operates, to be the purposes for which such Consultancy Services and Project Deliverables are used;
- (g) it is solvent within the meaning of section 95A of the Corporations Act and a court would not be required to presume that the Consultant is insolvent by reason of section 459C(2) of the Corporations Act;
- (h) it has disclosed in writing to the Association prior to the Commencement Date:
 - (i) any suit, cause of action, proceeding, application, claim or investigation (including without limitation any product liability or workers' compensation claim), whether current, pending, threatened or in prospect against the Consultant;
 - (ii) the existence of any material breach or default or alleged material breach or default of any agreement, award or order binding upon the Consultant; and
 - (iii) matters relating to the commercial, technical or financial capacity of the Consultant,that may materially adversely affect the Consultant's ability to perform any of its obligations under this Consultant;
- (i) it is not aware of any matter, fact or thing as at the Commencement Date that would give rise to a right for the Association to terminate this Contract;
- (j) it has the right and authority to enter into this Contract; and
- (k) all information and materials forming part of any proposal provided to the Association by the Consultant in relation to provision of the Consultancy Services or Project Deliverables are true and correct in every respect, and are not misleading or deceptive.

14.2. Breach of warranty

- (a) If either party becomes aware at any time that the Consultant does not, will not or may not comply fully with the warranties set out in clause 14.1, that party must immediately notify the other party in writing.
- (b) The Consultant must use its best endeavours to comply with the warranties set out in clause 14.1 as soon as possible after (and in any event within 30 days of) first becoming aware of any non-compliance with these warranties.
- (c) The Consultant must promptly inform the Association of whether or not the Consultant can remedy any non-compliance and, if it can remedy the non-compliance, promptly take all necessary remedial action (including modification of the Consultancy Services or Project Deliverables, where applicable) at no additional cost to the Association.
- (d) Should the non-compliance in the Association's reasonable belief be incapable of remedy, the parties must meet within 5 days of the Association giving written notice to the Consultant of that belief in order to discuss a suitable monetary compensation for the non-compliance.
- (e) Nothing in this clause 14.2 limits the Consultant's liability for breach of any warranty or the Association's rights or remedies under this Contract, at law or in equity.

14.3. Enjoyment of the Deliverables

Without limiting any other remedy of the Association, where any action or claim causes the Association's (or a Participant's) ability to use the Consultancy Services, Project Deliverables or Project Intellectual Property, or any part of them, in accordance with this Contract to be disrupted or impaired, the Consultant must at its own expense and at the Association's option:

- (a) procure for the benefit of the Association (or the relevant Participant, as the case may be) the right to continue to use and exploit the Consultancy Services, the Project Deliverables and the Project Intellectual Property in accordance with this Contract; or
- (b) modify or replace the affected Consultancy Services, Project Deliverables or Project Intellectual Property so that no further infringement will occur and so that the modified or replacement Consultancy Services, Project Deliverables or Project Intellectual Property will meet the Association's warranties under this Contract.

14.4. Exclusion of indirect loss

- (a) Neither party is liable to make any payment (whether by way of indemnity, damages or otherwise) in respect of any losses that do not arise naturally from any breach of this Contract or negligence.
- (b) Paragraph (a) does not apply to the following:
 - (i) personal injury, nervous shock or death;
 - (ii) property damage;
 - (iii) third party liability claims in respect of property damage, personal injury, nervous shock or death;
 - (iv) negligent, unlawful or criminal acts or fraud;
 - (v) wilful default or wilful misconduct;
 - (vi) an infringement of Intellectual Property ;
 - (vii) breach of the confidentiality provisions of this Contract; and
 - (viii) liability under any of the express indemnities of this Contract.

- (c) Notwithstanding paragraph (b), in no circumstances will a party be liable under this Contract for any of the following:
 - (i) loss of opportunity;
 - (ii) damage to goodwill or reputation;
 - (iii) loss of access to markets;
 - (iv) loss of anticipated savings; and
 - (v) damage to credit rating.

15. Indemnity

The Consultant indemnifies the Association, its Personnel and the Participants against any Liability (including any loss of profits and costs or liabilities incurred in respect of a claim by a third party whether or not involving formal legal proceedings) arising out of or otherwise in connection with:

- (a) any action or claim by a person alleging that the Association's (or any Participant's) possession, use, exploitation or Commercialisation of the Contract Materials, Project Deliverables, the Project Intellectual Property or the Background Intellectual Property infringes any Intellectual Property Rights or other rights of any person;
- (b) a breach by the Consultant of this Contract, including:
 - (i) the warranties in clauses 14.1(a) or 14.1(b); and
 - (ii) a breach of clause 13 by the Consultant or its Personnel; and
- (c) any misleading or deceptive conduct, fraud, unlawful or negligent act or omission of the Consultant or its Personnel in connection with this Contract.

16. Insurance

- (a) The Consultant must, at its own expense, at all times maintain:
 - (i) adequate workers' compensation insurance as required by law for its Personnel;
 - (ii) professional indemnity and public liability insurance as required in Schedule 1 in respect of each claim or event; and
 - (iii) such other insurance cover as the Association may from time to time reasonably require.
- (b) On request by the Association, the Consultant must produce evidence of the currency of the insurance policies referred to in clause 16(a).

17. Conflict of Interest

- (a) The Consultant warrants that, as at the date of this Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract.
- (b) The Consultant must immediately and fully disclose in writing to the Association any agreement, obligation or interest of it or its Personnel that may conflict with its obligations to the Association under this Contract.
- (c) If the Association considers that a conflict exists or is likely to exist, the Consultant must immediately comply with any direction or request of the Association in relation to resolution of the conflict.

18. Security and Access

- (a) The Consultant must, when using the Association's premises, comply with all reasonable directions and procedures relating to occupational health and safety and security in regard to those facilities, as notified by the Association.

- (b) The Consultant must at all reasonable times give to the Project Director(s), access to premises occupied by the Consultant from where the Consultancy Services and Project Deliverables are being provided and must permit those persons to inspect the provision of the Consultancy Services and Project Deliverables and any Contract Material or other material relevant to the Consultancy Services or Project Deliverables.

19. No Employment, Partnership or Agency

- (a) This Contract does not set up or create an employer/employee relationship, 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 Contract.
- (b) The Consultant must not represent itself, and must ensure that its Personnel do not represent themselves, as being Personnel of the Association.
- (c) Without limiting clause 15, if any of the Consultant's Personnel are held or deemed to be Personnel of the Association at common law or under any statute, the Consultant must indemnify and keep indemnified the Association in respect of any additional workers' compensation insurance premiums, remuneration, tax, levy or other impost (including any fines, penalties and interest) that may be payable as a result of the Consultant's Personnel being held or deemed to be Personnel of the Association at common law or under any statute.

20. Termination, Reduction and Survival

20.1. Termination

- (a) The Association may, by written notice, terminate this Contract in whole or in part:
 - (i) with immediate effect, if the Consultant:
 - a. commits a material breach of this Contract which is incapable of being remedied, or which the Consultant fails to remedy, within 30 days after being required in writing to do so, including:
 - 1. failure to achieve a Milestone by the due date in accordance with Schedule 1, or if not specifically detailed in Schedule 1 then as described in Schedule 2;
 - 2. failure to provide a Consultancy Service or Project Deliverable in accordance with the requirements of Schedule 1 and 2;
 - 3. persistently fails to achieve the Targets for Key Performance Indicators specified in Schedule 1; and
 - 4. persistently breaches its obligations under this Agreement;
 - b. assigns any of its rights or purports to transfer any of its obligations under this Contract, or there is a change in Control of the Consultant, unless the Consultant has received the Association's prior written consent to that assignment or change in Control (such consent not to be unreasonably withheld); or
 - c. is insolvent within the meaning of section 95A of the Corporations Act;
 - (ii) by giving 30 days' notice if the Association is of the reasonable opinion that:
 - a. the objectives of the Project are unlikely to be achieved; or
 - b. the Project is no longer consistent with or likely to contribute to the achievement of the objectives of the Association.

- (b) Upon termination of this Contract, the Association has no liability to pay the Consultant for any amounts other than such payments as are due for those Consultancy Services and Project Deliverables properly performed by the Consultant in accordance with this Contract prior to the date of termination. Any fees that were prepaid to the Consultant in relation to Consultancy Services or Project Deliverables that remain undelivered must be returned to the Association.
- (c) Upon receipt of a notice of termination the Consultant must:
 - (i) stop work as specified in the notice;
 - (ii) take all available steps to minimise loss resulting from the termination and hand over to the Association all Contract Materials, Project Deliverables and Project Intellectual Property;
 - (iii) continue work on any part of the Consultancy Services or Project Deliverables not affected by the notice; and
 - (iv) issue a final invoice of expended payments due to the Consultant for those Consultancy Services and Project Deliverables delivered as at the date of receipt of the notice of termination.
- (d) In the event of partial termination, the Association's liability to pay fees under Schedule 1, in the absence of agreement to the contrary, abates proportionately to the reduction in the Consultancy Services and Project Deliverables required to be provided.
- (e) The Association is not liable to pay compensation or any other monies for any reason including, without limitation, breach of contract or negligence in an amount which would, in addition to any amounts paid or due or becoming due to the Consultant under this Contract, together exceed the fees set out in Schedule 1. The Consultant is not entitled to compensation for loss of prospective profits.
- (f) Termination under this clause 20 will be without prejudice to any other rights or remedies to which either party may be entitled.

20.2. Survival of certain provisions

The following provisions will survive the termination of this agreement and continue in effect according to their terms: Clauses 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 24, 30 and this clause 20.2.

21. Unavoidable Delay

A party to this Contract is not entitled to exercise its rights and remedies upon the breach of this Contract by the other party (whether at common law or under the default clause) if that breach:

- (a) is caused by an act or event that is beyond the reasonable control of that other party;
- (b) continues for less than one (1) month; and
- (c) was not reasonably foreseeable at the time this Contract was entered into.

22. Waiver

A waiver by the Association in respect of any breach of a condition or provision of this Contract is not deemed to be a waiver in respect of any other provision or of any subsequent breach.

23. Applicable Law

This Contract is governed by and construed in accordance with the law for the time being in force in the State of Victoria and the parties submit to the jurisdiction of the courts of the State of Victoria.

24. Notices

- (a) Any notice, request or other communication to be given or served pursuant to this Contract must be in writing and addressed as the case may be, as follows:
 - (i) if given to the Association, addressed and forwarded to the Project Director of the Association;
 - (ii) if given by the Association, signed by the Project Director and forwarded to the Consultant at the address indicated at the commencement of this Contract or as otherwise notified by the Consultant.
- (b) Any such notice, request or other communication must be delivered by hand, sent by prepaid post, or emailed, to the address of the party to which it is sent as specified in Schedule 1.
- (c) Any such notice, request or other communication will be conclusively taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, **two** business days after the date of posting (if posted to an address in the same country) or seven business days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of email, at the time which is the earlier of:
 - a. the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - b. the time that the email is first opened or read by the intended recipient, or Personnel of the intended recipient; and
 - c. two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that two hour period, an automated message that the email has not been delivered,

but if the result is that a notice would be taken to be given or made on a day that is not a Business Day in the place to which the notice is sent or is later than 4pm (local time) it will be conclusively taken to have been duly given or made at the start of business on the next Business Day in that place.

25. Further Assurances

Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Contract and the Project contemplated by it.

26. No Merger

The rights and obligations of the Parties will not merge on the completion of any Project contemplated by this Contract and will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any such transaction.

27. Severability of Provisions

Any provision of this Contract that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Contract nor affect the validity or enforceability of that provision in any other jurisdiction.

28. Costs and Stamp Duty

Each Party must bear its own costs arising out of the negotiation, preparation and execution of this Contract. All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this Contract and any instrument executed under this Contract must be borne by the Consultant.

29. Counterparts

This Contract may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

30. Dispute Resolution

- (a) Subject to clause 30(d), neither party may commence or initiate any court proceedings arising out of this Contract until that party first sends a notice to the other party (a **Notice**) setting out a full description of the dispute (**Dispute**) including a chronology of events. Once a Notice has been served under this clause, a general manager or managing director or each party (or his or her nominee or delegate) must attempt to resolve the Dispute in good faith.
- (b) If the Dispute is not solved within **10** Business Days of the Notice, or any longer time the parties may agree in writing, the parties agree to negotiate in good faith to settle the Dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**) before pursuing any other remedy available to it at law to resolve the Dispute.
- (c) If the Dispute is not resolved at mediation or in any event within **60** Business Days either party may commence or initiate legal proceedings.
- (d) Clauses 30(a)and 30(b) do not apply where a party seeks urgent court intervention (injunctive relief) or terminates this Contract lawfully in accordance with its terms.

Schedule 1 – Consultancy Details

Item	Description	Details
1	Name of Consultant and ABN	Name: [Insert Consultant's Name] ABN: [Insert Consultant's ABN]
2	Consultant's Address	[Insert Consultant's Address]
3	Commencement Date	[Insert Consultancy Commencement Date]
4	Contract Period	The contract period is x months and may be extended by up to 3 months at the discretion of the Project Director.
5a	Fee (GST excl.)	[Insert Consultancy Fee] AUD
5b	Fee (GST incl.)	[Insert Consultancy Fee] AUD
7	Project Director:	[Insert name of WSAA Representative]
8	Project Manager:	[Insert name of Participant Representative]
8	Required public liability insurance	\$10 million AUD
9	Required professional indemnity insurance	\$2 million AUD
10	Consultancy services	[Please specify in detail the Consultancy Services to be provided by the Consultant. If this is not possible, then the following words may be used as a fall-back position: "The Consultant must provide the Consultancy Services as described and in accordance with the consultancy proposal as outlined in Schedule 2 and as amended as a result of discussions at a kick-off meeting which will be documented in an addendum to Schedule 2"]
11	Notices WSAA	Delivery address: Water Services Association of Australia Level 9 420 George Street Sydney NSW 2000 Level 8, Suite 802 401 Docklands Drive, Docklands VIC 3008 <i>delete whichever is not applicable</i> Attention: [Insert name of WSAA Representative] Email: email@wsaa.asn.au
12	Notices Consultant	Delivery Address: [Insert Consultant's Address]

Postal Address:

[Redacted]

Email: [Insert Consultant's Email]

13 Association Assistance

Assistance may be rendered to the Consultant by the Association at the discretion of the Association

Milestones and Invoicing

Insert key milestones and dollar amount due for completion of that milestone. Alternatively invoicing could be one monthly basis where milestone reporting is not appropriate (this should be very rarely for project work). Details to be agreed with the WSAA Project Director. DELETE THIS TEXT WHEN COMPLETE

Due date	Milestone	Amount due on completion of milestone

Nomination of Specified Personnel [delete this table if not applicable]

Name	Role	Hourly Rate (excl. GST)

Approved Sub Contractors [delete this table if not applicable]

Sub-contractor	Service	Hourly Rate (GST excl.)

Key Performance Indicators [delete this table if not applicable]

No	Key Performance Indicator	Target
1	All services and deliverables provided as per contract	In full and 100% on time
2	Monthly status reports	100% on time
3	[Insert additional KPIs]	
4		
5		

Background Intellectual Property [delete this table if not applicable]

Item	Detail of Background Intellectual Property	IP Owner
1		
2		
3		

Schedule 2 – Service Provider’s Proposal

[Insert consultant’s proposal behind this section as part of the Contract].

EXECUTED as an agreement

Signed for and on behalf of and with the authority of
WATER SERVICES ASSOCIATION OF AUSTRALIA LIMITED by

[*]
[Executive Director] _____
Signature

[*]
[Program Coordinator] _____
Signature

Date

Signed for and on behalf of and with the authority of
[SERVICE PROVIDER PTY LTD] by

(Print name)

Signature

Witness (print name)

Signature

Date