



MEMORANDUM OF AGREEMENT

IN CONNECTION WITH

ENTERED INTO BY AND BETWEEN

THE WATER RESEARCH COMMISSION

A statutory entity with legal personality established in terms of Section 2 of the Water Research Act No. 34 of 1971 (as amended)

herein represented by the Group Executive: Research and Development, who is duly authorised thereto
(hereinafter referred to as the “**WRC**”)

and

.....

herein represented by in her or his capacity as and duly authorised hereto
(hereinafter referred to as the “**Contractor**”)

WRC	Witness 1	Witness 2	Signatory	Lead Org	Witness 1	Witness 2	Signatory

PREAMBLE

WHEREAS the WRC, in the execution of its statutory charge, promotes water research, development and innovation as well as the generation and dissemination of water knowledge;

WHEREAS the Contractor desires to undertake appropriate research, development, innovation or knowledge dissemination project; and

NOW THEREFORE the WRC and the Contractor agree that:

1. Introduction

- 1.1 The headings of the clauses in this agreement are for the purpose of convenience and reference only and shall not be used to interpret, modify or amplify the terms and conditions of this agreement.
- 1.2 Unless a contrary indication clearly appears, words importing
- 1.2.1 any one gender includes the other genders;
- 1.2.2 the singular includes the plural and *vice versa*; and
- 1.2.3 natural persons include juristic persons and the state and *vice versa*.
- 1.3 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
- 1.3.1 "Audited Statements" mean statements of income and expenditure that have been audited and signed off by an external auditor appointed to perform the audit;
- 1.3.2 "Background Intellectual Property" means intellectual property associated with the Project belonging to the Contractor, a Researcher and/or a third party; and listed, described and/ or stated in Annexure D hereto;
- 1.3.3 "Capital Assets" mean all equipment, whether movable or immovable, which is required for use in the Project and which is acquired by the Contractor or otherwise by expending the funds provided by the WRC in terms of this agreement, including, but not limited to pilot plants, computer equipment, computer software;
- 1.3.4 "Commencement Date" means **1 April**; "Termination Date" means **31 March 20** and "Effective Date" means the date of signature of this agreement by the party last signing, provided that where the effective date is earlier than the commencement date the duties and obligations and rights contained in this agreement shall arise and the agreement shall start only from the commencement date.
- 1.3.5 "Commercialisation" means the process by which any intellectual property or innovation emanating from WRC-funded research and development is or may be adapted for use for any purpose that may provide any benefit to society or commercial use on reasonable terms and "commercialise" shall have a corresponding meaning;
- 1.3.6 "Contract Amount" means **(ZAR.....) (VAT Inclusive)** which is the full amount made available by the WRC to the Contractor for the Project;
- 1.3.7 "Contract Period" means the duration of the Project as stipulated in Annexure A, commencing on **1 April** and ending on **31 March**; irrespective of the Effective Date;
- 1.3.8 "Disclosure" means the provision of full details of potential Intellectual Property and other matters as appropriate;

WRC	Witness 1	Witness 2	Signatory	Lead Org	Witness 1	Witness 2	Signatory

- 1.3.9 "Final Report" means the print ready edited report, duly approved by the WRC for publication purposes, which addresses all the deliverables and products identified in Annexure A, as amended in terms of this agreement from time to time;
- 1.3.10 "Intellectual Property" means any creation of the mind that is capable of being protected by law from use by any other person, whether in terms of South African law or foreign Intellectual Property law, and includes any rights in such creation, but excludes copyrighted works such as thesis, dissertation, article, handbook or any other publication which, in the ordinary course of business, is associated with conventional academic work;
- 1.3.11 "Intellectual Property Creator" means the person involved in the conception of Intellectual Property in terms of the Intellectual Property Rights from Publicly Financed Research and Development Act of 2008 and identifiable as such for the purposes of obtaining statutory protection and enforcement of Intellectual Property rights;
- 1.3.12 "IPR Act" means Intellectual Property Rights from the Publicly Financed Research and Development Act No. 51 of 2008.
- 1.3.13 "Intellectual Property Transaction" means any agreement in respect of Intellectual Property emanating from WRC-funded research and development, and includes licensing, assignment and any arrangement in which the Intellectual Property rights are transferred to a third party;
- 1.3.14 "NIPMO" means the National Intellectual Property Management Office established by section 8 of the Intellectual Property Rights from Publicly Financed Research and Development Act of 2008;
- 1.3.15 Process and/ or processing means the definition(s) that are assigned to these word(s) in the Protection of Personal Information Act 4 of 2013;
- 1.3.16 "The Parties" means the WRC and the Contractor and party means the WRC or the Contractor depending on the context;
- 1.3.17 "The Project" refers to the research and development in relation to project K5/...../.. titled, and includes, but is not limited to, the deliverables against work programmes and time schedules as outlined in Annexure A hereto;
- 1.3.18 "The Reference Group" refers to the panel of experts appointed by the WRC in consultation with the Contractor, tasked to provide the research team with guidance and to assist the WRC in monitoring progress and evaluating deliverables. The Reference Group is required to act in an advisory capacity.
- 1.3.19 "Researcher" means faculty, staff, and other persons employed or contracted by the Contractor, or the Contractor itself, whether full-time or part-time; and/or any other persons, including a student, a student employee, a graduate student, a post-doctoral fellow, and a non-employee (including visiting faculty, affiliate and adjunct faculty, industrial personnel, fellow, etc.) who participates in the creation or generation of applicable knowledge and/or Intellectual Property in the scope of the Project;
- 1.3.20 "Scholarly Disclosures" mean works such as a thesis, dissertation, article, handbook or any other publication which, in the ordinary course of business, is associated with conventional academic work;
- 1.3.21 "Tax Clearance Certificate" means a written certification issued by the South African Revenue Service (SARS) confirming that the Contractor's tax affairs and obligations in the Republic of South Africa are in order at the time of issue of the certificate; and
- 1.4 This agreement includes Annexures A, B, C, D and E as well as the declaration of interest that is completed and duly signed by the Project Leader of this project

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- 1.5 Any provision in clause 1.3 that is a substantive provision conferring rights or imposing obligations on any party, shall be given effect to as if it were a substantive provision in the body of this agreement, notwithstanding that it is only in the definition clause.
- 1.6 When any number of days is prescribed in this agreement, same shall be reckoned as working days exclusive of the first and inclusive of the last day, unless that day falls on a Saturday, Sunday or public holiday, in which case the day shall be the next succeeding working day which is not a Saturday, Sunday or public holiday.
- 1.7 In the event of any conflict in this agreement between figures referred to in numerals and in words, the words shall prevail.
- 1.8 Expressions defined in this agreement shall bear the same meaning in a schedule or annexure to this agreement, provided that such schedule or annexure does not itself contain its own independent definitions of said expressions.
- 1.9 Where any term is defined within the context of any particular clause in this agreement, the term so defined shall bear the meaning ascribed to it for all purposes in terms of this agreement, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, notwithstanding that the term has not been defined in this interpretation clause.
- 1.10 The expiration or termination of this agreement shall not affect the provisions of this agreement that expressly provide that they will operate after any such expiration or termination or which necessarily must continue to have effect after such expiration or termination, notwithstanding the fact that the provisions themselves do not expressly provide for this.
- 1.11 In any dispute between the interpretation of the annexures or schedules to this agreement and the provisions of this agreement, the agreement shall prevail.
- 1.12 Any reference to signature in this agreement shall mean a wet ink signature made by or on behalf of a person and shall not include an electronic signature or an advanced electronic signature as defined in the Electronic Communications and Transactions Act, Act No 25 of 2002 and "signed" shall bear the same meaning as used in this agreement.
- 1.13 Any reference to writing, written request, written notice or the like in this agreement shall refer to paper-based communication and shall include writing by facsimile but shall not include writing in the form of data messages as defined in the Electronic Communications and Transactions Act, Act No. 25 of 2002.

2. Commencement and Duration of Agreement

- 2.1 This agreement shall start and come into force on the Effective Date and shall, subject to the provisions set out below, endure for the Contract Period and shall terminate on the Termination Date.
- 2.2 This agreement shall, from the Commencement Date, supersede any previous agreements which may have been in force between the Parties relating to the subject matter hereof.
- 2.3 The Contract Period for this agreement shall only be extended in writing, at the WRC's sole discretion and only under exceptional circumstances.

3. Grant of Contract

The WRC hereby grants to the Contractor the right to undertake the Project, subject to the terms and conditions of this agreement.

WRC	Witness 1	Witness 2	Signatory	Lead Org	Witness 1	Witness 2	Signatory

4. Responsibility of the WRC

- 4.1 The WRC shall, without prejudice to its rights as specified in Section 3(2) of the Water Research Act, No. 34 of 1971, in the discharge of its obligations:
- 4.1.1 Make the Contract Amount available to the Contractor, in terms of clause 6 below;
 - 4.1.2 Appoint a Reference Group as provided for in clause 8 below, unless otherwise agreed to by the Parties;
 - 4.1.3 Take appropriate steps to publish reports or summary descriptions of research reports and Scholarly Disclosures, (in discussion with the Contractor where appropriate), and make available to the public;
 - 4.1.4 Provide any member of the general public with copies of WRC publications related to the Project and research reports, subject to the provisions of clause 11; and
 - 4.1.5 Use its best endeavours to ensure that Final Reports are published within six (6) months of receipt of the WRC-approved report from the Contractor;
- 4.2 The WRC reserves the right to audit the Project at its sole discretion. The WRC shall inform the Contractor whether the Project has been selected for an audit.
- 4.3 Where the Project has been selected to be audited, unless the WRC agrees to an alternative audit procedure, the WRC shall:
- 4.3.1 Appoint an auditor at the WRC's expense to conduct the audit;
 - 4.3.2 Communicate the details regarding the audit to the Contractor; and
 - 4.3.3 Report to the Contractor on the findings of the auditor together with the Audited Statements within three (3) months of the conclusion of the audit.

5. Responsibility of the Contractor

- 5.1 The Contractor shall, in the discharge of its obligations:
- 5.1.1 Assume full responsibility for the management and execution of the Project and submission of specified deliverables;
 - 5.1.2 Furnish the WRC with a Tax Clearance Certificate before the commencement of the agreement, unless the Contractor has already furnished the WRC with a Tax Clearance Certificate in the applicable calendar year. In the event that the Contract Period is more than one year, the Contractor shall annually, until termination of the agreement, furnish the WRC with a new Tax Clearance Certificate.
 - 5.1.3 Ensure that, where the Project has been duly amended, the standards, schedules and time frames as set out in Annexure A are also duly amended in writing and this amendment is signed by both Parties;
 - 5.1.4 Prepare and submit progress reports and, as stipulated in Annexure A, a Final Report for consideration by the WRC;
 - 5.1.5 Prepare, on request by the WRC, reports on the progress of the Project for knowledge dissemination purposes;
 - 5.1.6 Record minutes of Reference Group meetings, or significant project meetings accurately and comprehensively in the format prescribed by the WRC. Such minutes shall be made available to the WRC within two (2) weeks of the date of the Reference Group or project meeting;
 - 5.1.7 Submit to the audit, if the Project has been selected for an audit in terms of clause 4.2, and make all records, referred to in clause 5.1.10, available to the WRC appointed auditors;

WRC	Witness 1	Witness 2	Signatory	Lead Org	Witness 1	Witness 2	Signatory

- 5.1.8 Ensure that final deliverables are submitted in terms of the schedule set out in Annexure B hereto;
- 5.1.9 Ensure that full records are kept, including but not limited to time sheets or monthly records of the estimated time researchers spent on the Project, all applicable financial records relating to the Project, such as invoices relating to direct running expenses and Capital Asset expenditure, and internal and external audited reports and records;
- 5.1.10 Keep comprehensive auditable records of all Scholarly Disclosures and information relating to students involved in the Project and who graduated with a post graduate qualification from a South African institution, whose research formed part of the Project.
- 5.1.11 Annually provide the WRC with such records for the duration of the Project and for a period of no less than two (2) years after termination of this agreement.
- 5.1.12 Report, when submitting final deliverables, on the availability and condition of Capital Assets bought with the Contract Amount and utilised for the Project;
- 5.1.13 Take on the role of lead organisation where other Parties are subcontracted to carry out the Project;
- 5.1.14 Subcontract all other contributing parties in a manner consistent with this agreement and budget set out in the Project;
- 5.1.15 Provide the WRC with copies of signed contracts between the Contractor and all parties subcontracted to contribute to the Project as soon as possible after the conclusion of said contracts;
- 5.1.16 Oversee the work of subcontracted parties and incorporate contributions by sub-contractors, where applicable, into the deliverables specified in the Project; and
- 5.1.17 Make payments to subcontracted parties in accordance with the contractual arrangements between the Contractor and subcontracted parties, as the WRC will make payments to the Contractor only, and only upon achievement and receipt of deliverables as specified in the Project, subject to the provisions of clause 6;
- 5.1.18 Quality assure all deliverables, either generated by the contractor, a subcontractor and/ or a third party, to a print ready final report or product.
- 5.2 The Contractor shall comply with the requirements of the Intellectual Property Rights from Publicly Financed Research and Development Act of 2008 and shall adopt and implement a policy in terms of which Researchers are required to conform to research best practices and procedures, which include, but are not limited to, the responsibility to:
- 5.2.1 Retain all records and documents that are necessary for the protection of the Parties interests in the Intellectual Property; and
- 5.2.2 Create, retain, and use Intellectual Property according to the applicable Intellectual Property legislation.
- 5.3 The Contractor shall ensure that the signed WRC's Intellectual Property Policies Acknowledgement Form is submitted to the WRC with the signed Contract.
- 5.4 It is the responsibility of the Contractor to ensure that its rights and obligations, as well as those of the Researchers, which arise from this agreement, do not conflict with those arising from legislation, other contractual obligations it and/or the Researchers may have.
- 5.5 The Contractor shall at all times be obliged to disclose and make available to the WRC any and all information and/or documentation of any nature as might be required by the WRC and relating to the Project, including but not limited to information of whatsoever nature relating to any student and/ or person who are directly or indirectly involved in the project.

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6. Payment

- 6.1 The Contract Amount and a description of the deliverables against which payments will be made to the Contractor as set out hereunder, are set out in the payment schedule attached as Annexure B.
- 6.2 The WRC shall pay the Contractor as follows:
- 6.2.1 The WRC shall pay the Contractor amounts, as stipulated in the payment schedule, only on submission of an invoice issued upon achievement of each deliverable as set out in Annexure B, if payment of the invoice is duly authorised by the WRC provided that up to twenty percent (20%) of the annual budget for the first year may be paid upfront by the WRC, if requested by the Contractor and approved by the WRC and provided further that the amounts payable in respect of each subsequent deliverable scheduled for the first year will be set off against this advance until depleted.
- 6.2.2 Subject to the provisions of clause 6.4 an amount of twenty percent (20%) of the Contract Amount will be retained and paid as full and final settlement on acceptance by the WRC of the final deliverable or deliverables, as specified in the Project and as duly authorised by the WRC. The final deliverables shall only be deemed to be accepted on notification by the WRC that the Project has been completed.
- 6.3 The WRC places on record that it is not a VAT vendor. The Parties further place on record that all estimates, budgets and/or the Contract Amount referred to in this agreement shall be inclusive of VAT and all VAT invoices that are presented to the WRC for payments shall be prepared and adjusted accordingly.
- 6.4 Where the WRC informs the Contractor that the Project was exempted from an audit in accordance with clause 4.2 and upon receipt of the Final Report, the Contractor may claim the 20% retention or any outstanding amount in accordance with the specified Contract Amount subject to the provisions of clause 6.5 below.
- 6.5 If a Contractor fails to claim an outstanding amount within three (3) months of the finalisation of the Project, the Contractor will be deemed to have forfeited any claim to such outstanding amount in favour of the WRC.
- 6.6 The budget year shall coincide with the WRC's financial year, i.e. 1 April to 31 March.
- 6.7 Where the Project is selected for an audit, the findings of the audit will have the following consequence:
- 6.7.1 The Project will be deemed to have been finalised; and the Contractor can claim 20% retention subject to the time limitation provided for in clause 6.5.
- 6.7.2 Where the total expenditure reflected in the audit is more than the Contract Amount, the Contractor shall only be entitled to claim funds up to the contractual amount, subject to the time limitation provided for in clause 6.5.
- 6.7.3 In the case where the audit indicated that the Contract Amount was only partially used for the Project, the difference and all excess funds paid to the Contractor shall be refunded to the WRC within thirty (30) days of the date of communication of the Audited Statement to the Contractor.
- 6.7.4 Where the audit indicates irregularities the WRC shall take appropriate legal steps against the Contractor.
- 6.8 The parties agree that the WRC is a funder and not a service provider or a client to any institution, organisation, person or company and therefore the WRC funds cannot and shall not be spent towards or in favour of a management fee or levy or any other activities that are not related to the project.

7. Capital Assets

WRC	Witness 1	Witness 2	Signatory	Lead Org	Witness 1	Witness 2	Signatory

- 7.1 The acquisition of Capital Assets for the Project shall be governed by the Capital Asset Addendum, which must be submitted to the WRC and signed by both parties within one (1) month of such acquisition.
- 7.2 Capital Assets shall be the property of the Contractor subject to the following conditions:
 - 7.2.1 The Contractor shall ensure that the Capital Assets purchased for the Project are made exclusively available for the Project during the contract period;
 - 7.2.2 For the duration, any activities of the contract and until Termination Date, utilisation of the Capital Assets for outside of the course and scope of the Project as set out in Annexure B will require written permission from the WRC;
 - 7.2.3 In the event of the Contractor not conducting the Project as per the Schedule in Annexure B to the satisfaction of the WRC, the Contractor gives the WRC, the right to allocate the Capital Assets to a different WRC project or Contractor;
 - 7.2.4 Should the Contractor not have the ability to use the Capital Asset after the Termination Date, the WRC can in its sole and unfettered discretion allocate and/ or re-allocate the said Capital Asset to any of its projects and/ or contractor; and
 - 7.2.5 The Contractor shall ensure that appropriate measures are put in place to address the risk of loss, theft, and/or irreparable damage, at the Contractor’s own expense for the duration of the Contract Period, provided that the WRC funds allocated to the project may be used for this purpose.

8. Reference Group

- 8.1 A Reference Group, if deemed necessary, shall be appointed by the WRC, after consultation with the Contractor.
- 8.2 The WRC shall have the right to co-opt additional members to the Reference Group in accordance with the needs of the Project.
- 8.3 The Reference Group shall meet periodically during the Project to:
 - 8.3.1 Review progress on deliverables against work programmes and time schedules;
 - 8.3.2 Review work programmes and recommend amendments if necessary;
 - 8.3.3 Assess the quality of the deliverables and make recommendations in respect thereof; and
 - 8.3.4 Consider any matter that may impact on project deliverables, time schedules and work programmes.
- 8.4 Each member of the Reference Group shall sign the Reference Group Member Declaration to ensure, among others, that the confidential information relating to the Project to which they may out of necessity be given access, or receive Disclosure of, is not compromised.
- 8.5 The WRC shall, if required, reimburse subsistence and travelling (S&T) costs incurred by the members of the Reference Group to attend project meetings, provided that this shall not apply to members of the Reference Group who are also members of the Project team and/or representatives of the Contractor.

9. Intellectual Property Rights

- 9.1 The Contractor shall identify, record and disclose to the WRC, in writing, all Background Intellectual Property vesting in itself, in Researchers or any other third party involved in the Project, as well as any pre-emptive or other existing rights vesting in any of the abovementioned Parties, which relate to the undertaking of the Project, prior to the Commencement Date of this agreement.
- 9.2 The WRC shall treat the unprotected Background Intellectual Property, disclosed in terms of clause 9.1, confidentially, as requested to do so by the Contractor.

WRC	Witness 1	Witness 2	Signatory	Lead Org	Witness 1	Witness 2	Signatory

- 9.3 The Contractor shall:
- 9.3.1 Ensure that the rights to the Background Intellectual Property for the Commercialisation, use or utilisation of the Intellectual Property arising from WRC funded Project shall be on reasonable terms before the Commencement of the Project;
- 9.3.2 Inform the WRC upon conception of any Intellectual Property or improvements and continuously thereafter of all steps in the progress made in developing such Intellectual Property on a confidential basis; and
- 9.3.3 At no time disclose any such Intellectual Property or improvement or any information relating thereto, to any person without appropriate and effective protection of Intellectual Property as required by the IPR Act and any other law.
- 9.3.4 The WRC may request the Contractor to delay the proposed presentation, publication, release or submission for a period of 6 (six) months in order to allow for the protection of any Intellectual Property disclosed therein.
- 9.4 The Parties shall deal with all Intellectual Property created within the scope of this Project in accordance with its obligations in terms of the law of general application and specifically Intellectual Property Rights from Publicly Financed Research and Development Act of 2008.
- 9.5 The contractor shall involve the WRC in assessing whether the Intellectual Property arising from this project merits statutory protection and in this regard the parties agree that the WRC may at its own accord and sole discretion initiate and make an independent assessment.
- 9.6 It is the responsibility of the Contractor to inform relevant third parties and all Researchers whose Intellectual Property rights may be affected by this agreement, of such limitations, in writing, and in advance of the Commencement Date.
- 9.7 The Contractor acknowledges that in return for the Contract Amount made available by the WRC in whole or in part, the WRC reserves the right to publish the results of the Project including but not limited to the WRC Final Report, WRC deliverables, and other WRC reports. Signing of this agreement therefore constitutes a duly executed assignment of all future copyright and other intellectual property rights to the WRC.
- 9.8 Where intellectual property, as defined herein and/ or in law, is dependent on the background intellectual property, either disclosed in terms of this agreement or not, the WRC and/ or any of its agents and/ or associated persons shall have a licence to use such background intellectual property to the extent and scope required for the application, commercialisation, dissemination and use, and/ or further research involving the intellectual property. And no consideration shall be paid in exchange thereof.
- 9.9 The parties further agree and record that where the project concept was formulated by the WRC staff in the form of Terms of Reference (ToR) and like processes/ nature, the authorship and ownership of intellectual property created from such a project shall be determined by the WRC in consultation with NIPMO.
- 9.10 Subject to the Law and the WRC Intellectual Property policy, as amended from time to time, intellectual property that results from research that is conducted by private companies and funded by the WRC will be owned by the private company that performs the research, provided that WRC retains certain rights to such intellectual property, including, but not limited to:
- 9.10.1 Exclusive right to use for government purposes and or for public benefit,
- 9.10.2 Right to claim ownership if ownership is waived by the private company concerned, and
- 9.10.3 Right to claim ownership if commercialization does not proceed fast enough.

WRC	Witness 1	Witness 2	Signatory	Lead Org	Witness 1	Witness 2	Signatory

10. Commercially Exploitable Intellectual Property and Innovations

- 10.1 The Parties shall notify each other promptly, in writing, of the Commercialisation potential or Intellectual Property Transactions in respect of Intellectual Property and innovations.
- 10.2 The Parties may collaborate in the protection and Commercialisation of the Intellectual Property and other innovations and the conclusion of Intellectual Property Transactions. The Parties will enter into a separately negotiated written agreement defining the relationship, roles and responsibilities of the WRC and the Contractor in said collaboration, which shall, be in accordance with the WRC's Intellectual Property Policy and applicable statutory provisions.
- 10.3 The Commercialisation of the Intellectual Property and the conclusion of Intellectual Property Transactions shall be subject to:
- 10.3.1 Acknowledgement of the WRC's contribution;
- 10.3.2 The WRC's obligation to disseminate Scholarly Disclosures and research reports in terms of clause 11 below;
- 10.3.3 Due consideration of the public interest and other legal obligations; and
- 10.3.4 The Intellectual Property Rights from the Intellectual Property Rights from Publicly Financed Research and Development Act of 2008.

11. Disclosure & Publication

- 11.1 For the duration of the Contract Period and for a period of 2 (two) years after the finalisation of the Project the Contractor shall furnish the WRC with all articles or papers relating to the Project which they wish to present at conferences, symposia or at national, regional or international professional meetings, and/or to publish in journals, or to submit the methods and results in theses or dissertations, or in other formats of their own choosing at least one (1) month prior to any such presentation, publication, release or submission, in respect of which the WRC shall be entitled to comment. The WRC shall furnish the Contractor with its comments and/ or suggestions within 15 (fifteen) days of receipt of the draft paper.
- 11.2 The WRC shall be duly acknowledged as the full or part funder in any publication, presentation, release or submission for its funding and support in realising the methods and results of the Project.
- 11.3 In the event that the WRC establishes the terms of reference for any research project, the WRC shall be duly acknowledged for its role in initiating and directing the research.

12. Amendment of Agreement

Any agreed variation or amendment to this agreement shall not be of any force and effect, unless recorded in writing as an amendment to this agreement and signed by both Parties.

13. Indemnity

- 13.1 The Contractor hereby indemnifies the WRC and holds it harmless against all damages, losses and/or costs arising out of, or in connection with illness, injuries, death and/or damage to and/or loss of property of any and all persons (including employees and/or agents of the Contractor and its Sub-contractors) in any way sustained in connection with the performance of the Project in terms of this agreement by the Contractor and its subcontractor(s).
- 13.2 Notwithstanding the provisions of clause 13.1 above, any claim for damages, including, but not limited to, loss of income, consequential or incidental damages, against the Contractor, whether in delict or based on this agreement, shall be limited to an amount equal to the Contract Amount or the amount

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actually paid by the WRC to the Contractor in respect of the work performed in terms of the Project, whichever is the lesser.

14. Declarations

- 14.1 The Contractor does not warrant specific outcomes or research results to and in favour of the WRC.
- 14.2 The Contractor declares that:
- 14.2.1 It has the infrastructure, research capacity and other resources necessary to perform the Project and to give proper effect to the terms of this agreement;
- 14.2.2 The Researchers are suitably qualified and capable to participate in the Project;
- 14.2.3 The Contractor shall, in relation to research and work performed for the Project, use reasonable endeavours to ensure that it will not infringe on any Intellectual Property rights, or other rights, of any third party; and
- 14.2.4 The Contractor shall familiarise itself and comply with the provisions of the Intellectual Property Rights from Publicly Financed Research and Development Act of 2008 and related laws and policies.
- 14.3 The WRC warrants to and in favour of the Contractor that it has the full right, power and authority to enter into this agreement and to grant to the Contractor the various rights granted to it hereunder.
- 14.4 The Contractor and WRC, subject to provisions and limitations as per clause 13.2 above, hereby indemnify each other against any loss, damage, expense which may be suffered by, or action which may be instituted against, the indemnified parties as a result of a breach of any of the foregoing warranties.
- 14.5 By signing this memorandum of agreement, the signatory of the contractor agrees to the collection, use and disclosure of personal information of the contractor by the WRC, including the processing of personal information of all persons who are participating in the research and/ or study in question. Without limiting the generality of the foregoing, such personal information is covered by this agreement if it is either provided in this agreement or in the proposal that preceded the conclusion of this agreement and/ or obtained by the WRC pursuant to the conclusion and implementation of this memorandum of agreement.

The consent is granted to and shall apply to processing of the following personal information, as further defined in the Protection of Personal Information Act 4 of 2013:

- a) Full name, identity and/ or passport number, contact telephone numbers, e- mail address, etc.;
- b) Place of employment and position, country of origin, place of origin, nearest town, etc.;
- c) Details of education, further training and career development;
- d) Information relating to the race, gender, sex, marital status, national, ethnic or social origin, colour, age, disability, conscience, belief, culture, language and birth of the person;
- e) The personal opinions, views or preferences of the person;
- f) Correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence.

15. No Agency

- 15.1 The Contractor acknowledges and agrees that it acts herein as an independent contractor and is not an employee, or agent in employ of WRC.

WRC	Witness 1	Witness 2	Signatory	Lead Org	Witness 1	Witness 2	Signatory

15.2 The Contractor shall not hold out or represent in any manner whatsoever that it represents the WRC or that it has any power or authority to commit or legally bind the WRC, except insofar as the Contractor may be expressly authorised thereto in writing.

16. No Assignment

The Contractor shall not be entitled to assign this agreement to any third party without the prior written consent of the WRC, which consent shall only be given if such assignment is deemed to be in the public interest, provided that the contractor shall also seek and obtain an approval of the text of the deed of assignment from the WRC.

17. Force Majeure

Neither party shall have any liability or be deemed to be in breach of this agreement for any delays or failures in performance of this agreement which result from circumstances beyond the reasonable control of that party, including without limitation labour disputes involving that party. The party affected by such circumstances shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance of any of the provisions this agreement, as amended, and when they cease to do so. If a force majeure event prevents performance of this agreement for a continuous period of six (6) months, the Parties shall meet to discuss the termination of this agreement.

18. Breach

18.1 Should either Party (“the defaulting party”) be in breach of any material term(s) or condition(s) of this agreement and fail to remedy such breach within a period of 14 (fourteen) days (or any other reasonable period mutually agreed in writing between the Parties with due consideration of the nature and extent of the breach) after having received written notification from the other Party (“the aggrieved party”) to rectify such breach, the aggrieved party shall declare a dispute in writing, and an attempt shall be made by the Parties to resolve the said dispute in terms of the dispute resolution procedure stipulated in clause 19 of this agreement.

18.2 In the event of the Contractor being the defaulting party, it shall immediately refund to the WRC, pending the outcome of the dispute resolution procedure, any funds already transferred, but not yet utilised towards or committed under the Project, with interest calculated from date of breach at the prevailing prime interest rate calculated per annum.

19. Dispute Resolution

19.1 All disputes arising out of, or relating to, this agreement shall first be resolved, or attempted to be resolved, amicably by the Parties through *bona fide* discussion or correspondence.

19.2 Should the dispute remain unresolved after *bona fide* discussion or correspondence, the dispute shall be referred to the senior management and/or executive body of both Parties and their duly designated representatives for mediation.

19.3 Should the dispute remain unresolved for a further period of 60 (sixty) days after being referred for mediation, the dispute shall be referred to arbitration. Either party to the dispute will be entitled to require, by written notice addressed to the other party to this agreement (in which notice particulars of the nature of the dispute be given), that the dispute is submitted to arbitration in terms of this

WRC	Witness 1	Witness 2	Signatory	Lead Org	Witness 1	Witness 2	Signatory

paragraph.

- 19.4 Subject to the provisions of this paragraph, the arbitration will be in terms of the provisions of the Uniform rules of the High Court of South Africa.
- 19.5 The arbitrator will be
- 19.5.1 an independent person agreed upon by the Parties and, failing such agreement within 5 (five) days after the date on which the arbitration is requested by a party to the agreement, will be appointed the Law Society of the Northern Provinces, who may be requested on notice by either party to make the appointment at any time after the expiry of that five-day period;
- 19.5.2 a person with the knowledge of the law;
- 19.5.3 assisted by a person with the knowledge of the relevant research discipline and practices.
- 19.6 Immediately after the arbitrator has been agreed upon or appointed, the party who has given the notice shall request the arbitrator to nominate a date and place when and where the arbitration proceedings will be held and to settle the procedure and manner in which the arbitration proceedings will be held.
- 19.7 The arbitration will be held as soon as possible after it is requested with a view to it being completed within 30 (thirty) days if possible, after it has been so requested.
- 19.8 The arbitrator will be entitled to make such award, including an award for specific performance, an interdict, damages or a penalty or otherwise, as he in his sole discretion may deem fit and appropriate and to deal as he deems fit with the question of costs, including, if applicable, costs on the attorney and client scale.
- 19.9 Any award made by the arbitrator
- 19.9.1 will be final and binding on the Parties to the agreement; and
- 19.9.2 may be made an order of any court to whose jurisdiction the Parties are subject.
- 19.10 The sub-clauses aforesaid of this clause will not preclude either party from obtaining intermediate relief on an urgent basis from the High Court of South Africa with the relevant jurisdiction, pending the decision of the arbitrator.
- 19.11 Any of the Parties shall, and notwithstanding the aforesaid provisions, and without prejudice to the legal rights and obligations of the other Parties, be entitled to terminate this agreement by giving three (3) calendar months prior written notice of such termination to the other Parties.

20. Effect of Termination

- 20.1 Upon the Termination Date or termination of this agreement, the grant of the right to undertake the Project and other rights granted by the WRC to the Contractor shall cease.
- 20.2 The termination of this agreement for whatever reason, shall not affect the legal rights and obligations of any of the Parties which may have accrued as irrevocable rights and obligations as at the date of termination and will further not affect any legal rights and/or obligations in terms of this agreement which specifically or by their nature survive the termination of this agreement.

21. *Domicilium Citandi et Executandi*

- 21.1 Notices in terms of this agreement must be in writing and delivered to the chosen *domicilium citandi et executandi* of the Parties by registered mail or by hand against written confirmation of receipt, or by facsimile;
- 21.2 Either Party may by written notice to the other Party change its chosen address and/or fax number and/or email address, provided that the change will become effective on the 10th (tenth) Business Day after the receipt of the notice by the addressee.
- 21.3 Any notice given in terms of this Agreement will:

WRC	Witness 1	Witness 2	Signatory	Lead Org	Witness 1	Witness 2	Signatory

- 21.3.1 if delivered by hand be deemed to have been received by the addressee on the date of delivery;
- 21.3.2 if transmitted by fax be deemed to have been received by the addressee on the 1st (first) Business Day after the date of transmission; or
- 21.3.3 if transmitted by email be deemed to have been received once the email enters an information system outside the control of the Party sending it, unless the contrary is proved.
- 21.4 Notwithstanding anything to the contrary contained in this clause, a written notice or communication actually received by a Party will be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen address and/or fax number and/or email address.
- 21.5 For the purposes of this agreement, the Parties choose as their *domicilia citandi et executandi* for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

Party	Physical Address	Postal Address	Facsimile
The WRC:	Lynnwood Bridge Office Park 2 nd Floor, Bloukrans Building 4 Daventry Street, Lynnwood Manor, Pretoria, 0081	Private Bag x 03 Gezina PRETORIA 0031	+2712 761 9300
(contractor)			

- 21.6 Any notice or communication required or permitted to be given in terms of this agreement shall not be valid and effective if it is in the form of a data message.

22. Whole Agreement, No Amendment

- 22.1 This agreement and annexures A through to E hereto, constitutes the whole agreement between the Parties relating to the subject matter hereof.
- 22.2 No amendment or consensual cancellation of this agreement or any provision or term hereof and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this agreement shall be binding unless recorded in a written document signed by the Parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 22.3 If any clause of this agreement is found to be invalid, unenforceable or illegal, then the remaining provisions of this agreement shall be deemed to be severable therefrom and shall continue to be in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this agreement.
- 22.4 The validity and interpretation of this agreement will be governed by the laws of the Republic of South Africa.

WRC	Witness 1	Witness 2	Signatory	Lead Org	Witness 1	Witness 2	Signatory

SIGNED at **PRETORIA** on this the day of **2017** in the presence of the undersigned witnesses:

(On behalf of **WRC**)
Group Executive: Research and Development, or duly authorized delegated official

As witnesses:

1. Full name: _____ Signature: _____

2. Full name: _____ Signature: _____

SIGNED at on this the day of..... **2017** in the presence of the undersigned witnesses:

On Behalf of the Contractor, who warrants his/her capacity and authority to execute this agreement

As witnesses:

1. Full name: _____ Signature: _____

2. Full name: _____ Signature: _____

WRC	Witness 1	Witness 2	Signatory	Lead Org	Witness 1	Witness 2	Signatory



ANNEXURE C

INTELLECTUAL PROPERTY POLICY ACKNOWLEDGEMENT FORM

I hereby acknowledge that I have read and understood the Intellectual Property Policy of the Water Research Commission, and agree to abide by the terms and conditions thereof.

I hereby acknowledge that I represent a *private sector company/public institution* and the ownership of Intellectual Property will vest with the WRC/private sector company/public institution as stipulated in clause 5.1.1.1/5.1.1.2/5.1.2.1/5.1.2.2 in the IP Policy (*delete as applicable*).

SIGNED at.....on this theday of..... 2017

Signature

Full names of signatory*

Capacity*

* to be signed by the individual duly authorized thereto by the contractor and/or organisation submitting this research proposal.

WRC	Witness 1	Witness 2	Signatory	Lead Org	Witness 1	Witness 2	Signatory



ANNEXURE D

BACKGROUND INTELLECTUAL PROPERTY DECLARATION FORM

Does the contractor have background IP to declare?

Yes

No

If yes, the background IP applies to this contract and the contractor is required to fill in the details of the Background Intellectual Property, including but not limited to who owns the Rights to the Background Intellectual property and must declare whether the Background Intellectual Property Rights belong to the Contractor or not.

Description of IP considered as background IP	Owner of such IP	If the IP is in the form of patents, designs – give registration/application numbers	Publications related to the IP	Any known licensees including type of license if known	Additional comments

I hereby acknowledge that I have:

- disclosed all Background Intellectual Property known to the project team as on the date of signature;
- will ensure that all Background Intellectual Property and associated rights will be made available on reasonable terms whether for research, commercialisation or use; and
- any and all Background Intellectual Property that I become aware of that may affect the use or utilisation including commercialisation of the Project's Intellectual Property will be promptly disclosed to the WRC in writing as further annexures to this agreement and will ensure right to use of such Background Intellectual Property on reasonable terms.

SIGNED at.....on this theday of..... **2017**

Signature

Full names of signatory*

Capacity*

* to be signed by the individual duly authorized thereto by the contractor and/or organisation submitting this research proposal.

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WRC	Witness 1	Witness 2	Signatory	Lead Org	Witness 1	Witness 2	Signatory



ANNEXURE E

CAPITAL ASSET ADDENDUM TO K5/...../.....

Description of the Deliverable for which the Capital Asset has been acquired:	
Date of Acquisition of the Capital Asset:	
Supplier Name:	
Invoice Number:	
Invoice Amount:	
Contracting Party for the maintenance of the Capital Asset:	
Period for which the Asset maintenance contract exists:	

I hereby acknowledge that this capital equipment has been obtained with funds budgeted for within Contract **K5/...../.....** which commenced on **.....** and will be used as per the conditions of acquisition and use as agreed within the contractual agreement.

I agree to maintain an Asset Register for such assets and ensure that such assets are properly maintained and kept in an acceptable condition. The WRC shall have the right to examine the Asset Register at any reasonable time during and after the subsistence of this Agreement.

SIGNED at.....on this theday of..... **2017**

Signature

Full names of signatory*

Capacity*

* to be signed by the individual duly authorized thereto by the contractor and/or organisation acquiring such capital asset as part of expenditure of a contract amount.

WRC	Witness 1	Witness 2	Signatory	Lead Org	Witness 1	Witness 2	Signatory