



# MEMORANDUM OF AGREEMENT

IN CONNECTION WITH **TITLE AND NUMBER OF PROJECT**

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 Chief Executive Officer, who is duly authorised thereto

(hereinafter referred to as the “**WRC**”)

and

**CONTRACTOR NAME**

herein represented by .....

in his/her capacity as.....and duly authorised thereto

(hereinafter referred to as the “**Contractor**”)

## 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,

and

the **Contractor** has submitted a proposal and desires to undertake appropriate research, development or innovation project,

## It is hereby agreed

### 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 gender;
- 1.2.2 the singular includes the plural and *vice versa*; and
- 1.2.3 natural persons include created entities (corporate or unincorporated) 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 rights belonging to the **Contractor**, a **Researcher** and/or a third party associated with the **Project** that is declared to the **WRC** prior to the **Commencement Date**;
- 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 2012;
- 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.....00) (VAT exclusive) 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 ..... and ending on .....
- 1.3.8 **"Disclosure"** means the provision of full details of potential **Intellectual Property** and other matters as appropriate;
- 1.3.9 **"Final Report"** means the edited report, duly approved by the **WRC** for publication purposes, which addresses all the deliverables and products identified in Annexure A;
- 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, developed by **Researchers** within the scope of the **Project** but excludes copyrighted 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;
- 1.3.11 **"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 "**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;
- 1.3.13 "**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;
- 1.3.14 "**The Parties**" and "**the Party**" shall mean the **WRC** and the **Contractor**;
- 1.3.15 "**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;
- 1.3.16 "**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.
- 1.3.17 "**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**;
- 1.3.18 "**Scholarly Disclosures**" mean copyrighted 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;
- 1.3.19 "**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
- 1.3.20 "**Termination Date**" means **.....**.
- 1.4 Any reference to an enactment shall mean that enactment as at the **Commencement Date** hereof and as amended or re-enacted from time to time.
- 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 commence and come into force on the **Commencement 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.

## 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**, (as approved by the **Contractor**), and make available to the public;
- 4.1.4 Provide any member of the general public with copies of such **Scholarly Disclosures** 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 Submit to the **WRC** deliverables according to the standards, schedules and time frames as set out in Annexure A;
  - 5.1.4 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**;
  - 5.1.5 Prepare progress reports and, as stipulated in Annexure A, a **Final Report** for consideration by the **WRC**;
  - 5.1.6 Prepare, on request by the **WRC**, a brief report on the progress of the **Project** for knowledge dissemination purposes;
  - 5.1.7 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;
  - 5.1.8 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;
  - 5.1.9 Ensure that final deliverables are submitted in terms of the schedule set out in Annexure B hereto;
  - 5.1.10 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;
- 5.1.11 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**.
- 5.1.12 Annually provide the **WRC** with such records for the duration of the **Project** and for a period of two (2) years after termination of this agreement.
- 5.1.13 Report, when submitting final deliverables, on the availability and condition of **Capital Assets** owned by the **WRC** and utilised for the **Project**;
- 5.1.14 Take on the role of lead organisation where other **Parties** are subcontracted to carry out the **Project**;
- 5.1.15 Subcontract all other contributing parties in a manner consistent with this agreement and budget set out in the **Project**;
- 5.1.16 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;
- 5.1.17 Oversee the work of subcontracted parties and incorporate contributions by subcontractors, where applicable, into the deliverables specified in the **Project**; and
- 5.1.18 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.
- 5.2 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 other contractual obligations it and/or the **Researchers** may have.
- 5.5 The **Contractor** shall at all times be obliged to disclose any and all information and/or documentation as might be required by the **WRC** relating to the **Project**.
- 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 exclusive of VAT and all payments of VAT by the **WRC** shall only be made upon receipt of VAT invoices.
- 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**.

## 7. Capital Assets

- 7.1 The **Contractor** must record all acquisitions of **Capital Assets** for the **Project** on a Capital Asset Acquisition Form, which must be submitted to the **WRC** within one (1) month of such acquisition.
- 7.2 **Capital Assets** shall remain the property of the **WRC** and;

- 7.2.1 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**; and
- 7.2.2 Shall be duly returned to the **WRC** in good working order on or before the **Termination Date**.
- 7.3 If the **Contractor** wishes to acquire any **Capital Asset** at the **Termination Date**, a formal written request for such **Capital Asset** must be submitted to the **WRC** for its consideration.

## 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, fund 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 or as soon as the **Contractor** becomes aware of the existence of any of the abovementioned rights.
- 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**.
- 9.3 The **Contractor** shall:
- 9.3.1 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
- 9.3.2 At no time disclose any such **Intellectual Property** or improvement or any information relating thereto, to any person without the prior written consent of the **WRC**.



- 9.4 The **Parties** shall deal with all **Intellectual Property** created within the scope of the **Project** in accordance with its obligations in terms of the Intellectual Property Rights from Publicly Financed Research and Development Act of 2008.
- 9.5 The **WRC** may on request assist the **Contractor** in assessing whether the **Intellectual Property** merits statutory protection.
- 9.6 The **Parties** shall in principle support each other in any legal action instituted to enforce and/or defend its respective **Intellectual Property** rights associated with the **Project**.
- 9.7 The **WRC** shall give **Researchers** due recognition as the **Intellectual Property Creators** of the **Intellectual Property** created within the scope of the **Project** as provided for in the Intellectual Property Rights from Publicly Financed Research and Development Act of 2008.
- 9.8 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**.
- 9.9 Copyright in any copyrighted works emanating from the **Project**, other than **Scholarly Disclosures**, including, but not limited to the **Final Report** and other project related deliverables in terms of this agreement, shall vest in the **WRC**, and nothing in this agreement shall be construed as an assignment of ownership of copyright to the **Contractor**.

## 10. Commercially Exploitable Intellectual Property and Innovations

- 10.1 The **Parties** shall notify each other promptly, in writing, of the potential for commercial exploitation 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 The **WRC's** obligation to disseminate **Scholarly Disclosures** and research reports in terms of clause 11 below;
- 10.3.2 Due consideration of the public interest and other legal obligations; and
- 10.3.3 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 any article or paper relating to the **Project** which they wish to present at 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 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**.
- 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 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 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 legislation.
- 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.

**15. No Agency**

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

**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 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 paragraph.
- 19.4 Subject to the provisions of this paragraph, the arbitration will be in terms of the provisions of the High Court Rules for the time being in force in the Republic 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 by the president and, failing him, any competent officer for the time being of 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 necessary knowledge of the relevant research 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, or own client scale, and his own fees.
- 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 in terms of clause 19.5 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 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 :

**The WRC:**

**Physical address:**

Marumati Building  
491 18<sup>th</sup> Avenue, Rietfontein,  
Pretoria

**The Contractor:**

**Physical address:**

.....  
.....  
.....

21.2 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by facsimile, but not in the form of a data message.

21.3 Either party may by notice to the other party change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs or its postal address or its facsimile number, provided that the change shall become effective on the 7th business day from the deemed receipt of the notice by the other party.

**22. Whole Agreement, No Amendment**

22.1 This agreement 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.

SIGNED at **PRETORIA** on this the ..... day of ..... **2012** in the presence of the undersigned witnesses:

Witnesses:

1 \_\_\_\_\_

2 \_\_\_\_\_

*(Signatures of witnesses)*

\_\_\_\_\_

*(On behalf of **WRC**)*

Chief Executive Officer, or duly authorized delegated official

SIGNED at ..... on this the ..... day of..... **2012** in the presence of the undersigned witnesses:

Witnesses:

1 \_\_\_\_\_

2 \_\_\_\_\_

*(Signatures of witnesses)*

\_\_\_\_\_

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



## 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.

SIGNED at.....on this the .....day of.....2012

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.



**BACKGROUND INTELLECTUAL PROPERTY DECLARATION FORM**

Declaration in terms of Clause 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 or as soon as the **Contractor** becomes aware of the existence of any of the abovementioned rights.”

The contractor hereby declares the following **Background Intellectual Property** related to the **Project**:

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SIGNED at.....on this the .....day of.....2012

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.