

TERMS AND CONDITIONS OF ENGAGEMENT

1 INTERPRETATION

- 1.1 In this Agreement, references to *AWP*, *EWL*, *we*, *our* and *us* are references to eWater Limited ABN 47 115 422 903 in its capacity as manager of the Australian Water Partnership funded by the Commonwealth of Australia through the Department of Foreign Affairs and Trade (*DFAT*).
- 1.2 The other defined terms used in these Terms and Conditions of Engagement are explained in clause 22 **DEFINITIONS**.

2 COMMENCEMENT

- 2.1 The Partner will start providing the Services on the Commencement Date and will continue until the End Date, unless terminated earlier under these Terms and Conditions of Engagement.

3 PARTNER'S OBLIGATIONS

- 3.1 Partner to provide the Services
- (a) The Partner agrees to provide the Services (including providing any reports specified in the Agreement Particulars) in the manner, at the location(s) and at the times specified in the Agreement Particulars in accordance with these Terms and Conditions of Engagement and any other terms and conditions agreed between the parties in writing.
 - (b) The Partner will perform the Services diligently, effectively, safely and to a professional standard and with the skill and care normally exercised by similarly qualified and competent persons in the performance of comparable work.
 - (c) The Partner will familiarise itself with, and will at all times comply with and ensure that any Personnel comply with, our protocols, policies and procedures and with any applicable policies, procedures or requirements of the Client.
 - (d) The Partner and any Sub-Contractors will collaborate with the Client's personnel involved in the Activity and will provide all information and data and do all things necessary to facilitate the outcomes required under the Activity.
- 3.2 Provision of Specified Consultants
- (a) The Partner will ensure that, where we have specified that the Services are to be performed by a Specified Consultant, only the Specified Consultant performs those Services, unless we consent otherwise.
 - (b) We may at any time advise the Partner that we no longer wish one of its employees, Specified Consultants, agents or contractors to provide the Services. Where the Partner receives such advice from us, the Partner will ensure that the Services are not provided by that person.
 - (c) The Specified Consultant must obtain and maintain any necessary security clearances at the Partner's own expense.

- (d) The Partner will take full responsibility for the insurance, safety, medical welfare, travel and accommodation of the Specified Consultant in performance of the Services.
- (e) The Partner shall furnish at its sole expense all necessary passports, visas, permits or licences required by the Specified Consultant in performance of the Services in the location specified in the Agreement Particulars.
- (f) Specified Consultants shall be liable to conform to international visa conditions (if any) on their own, or via their Partners assistance. AWP is not liable for any assistance or liabilities arising from visa requirements in host countries.
- (g) The Partner will ensure each Specified Consultant is familiar with Services that are required of them as well as work conditions in the location specified in the Agreement Particulars.
- (h) The Partner will ensure the Specified Consultants are at the location as specified in the agreement particulars on the specified dates of mobilisation.
- (i) At no point will it be construed that the Specified Consultants are entering into an employer-employee relationship with us as part of this Agreement, or otherwise. We declare that the Specified Consultants shall not perform any duties or responsibilities that construe the Specified Consultants to be an employees, agents or dependants of the AWP.
- (j) Where it is ascertained that the Specified Consultants create a permanent establishment for the Partner in any Country, or are liable to local taxes in such Country in any other manner, the Partner and the Specified Consultants shall be liable for any tax requirements arising from such situations. AWP shall not be liable for any taxes in such country since the Partners have an independent relationship with AWP.

3.3 Provide Own Equipment

Except for any equipment which we agree to provide, the Partner is required to supply all equipment necessary to perform the Services. The Partner is also required to ensure such equipment is suitable and maintained in good working order.

4 FEES

4.1 How calculated

We agree to pay the Partner the Fees as detailed in the Agreement Particulars and in accordance with this clause 4, subject to compliance with the provisions of this Agreement and the Partner giving to us:

- (a) a tax invoice compliant with Australian GST legislation; and
- (b) all invoices must have a clear breakdown of Specified Consultant inputs and expenses providing the Services as detailed in the Agreement Particulars. Expenses should comply with clause 4.3 and justified by such information as we reasonably require.

4.2 When and how invoice/payable

We agree to pay the Partner the Fees as invoiced within 30 days (or such other period as may be stated in the Agreement Particulars) of receiving the tax invoice and other material required under clause 4.1.

The invoice should be raised to eWater Limited in Australian Dollars, and it must be raised from and remitted to the Partner's office / location in Australia.

Invoices to be remitted to:
 team@waterpartnership.org.au
 Accounts Department
 eWater Ltd
 UC Innovation Centre, Bldg 22
 University Drive Sth
 Bruce ACT 2617

4.3 Expenses

- (a) We will reimburse the Partner for reasonable out of pocket expenses incurred by the Partner or Specified Consultants so long as:
 - (i) the expenses were incurred in providing the Services to us or to the Client;
 - (ii) the expenses were detailed in the Agreement Particulars or authorised by us in advance of incurring the expense; and
 - (iii) the Partner provides the original document in evidence of the expenses.
- (b) Expenses incurred in a foreign currency will be reimbursed in Australian Dollars at the exchange rate applicable at the time the expenses were incurred.

5 TAXES

5.1 Acknowledgement Regarding Partner's Compliances:

- (a) The Partner acknowledges that it is solely responsible for the compliances and taxes emanating thereof (including corporate taxes, employee payroll taxes, local taxes etc.), in respect of the Services performed and indemnifies us against any claim for such a liability (including the cost of investigating and defending any claim) made by any person in any country against us. The Partner will comply with all requirements relating to record keeping and lodgement of returns in relation to these obligations.
- (b) The Partner acknowledges that any liabilities in terms of withholding taxes arising in any country (including taxes as a result of the Partner deemed to be having a permanent establishment in such country) will be borne by the Partner, and shall not be reimbursable by AWP. The Partner indemnifies us against any claim for such a liability (including the cost of investigating and defending any claim) made by any person in any country against us. The Partner will comply with all requirements relating to record keeping and lodgement of returns in relation to these obligations.

6 COMPLIANCE WITH LAWS AND DFAT OBLIGATIONS

6.1 The Partner must, and must ensure that any Personnel:

- (a) Have regard to and comply with relevant and applicable laws, guidelines policies including those in Australia and any other country in which the Services are provided (including visa regulations) are in no way linked, directly or indirectly, to organisations and individuals associated with terrorism, Including "terrorist organisations" as defined under Division 102 of the *Criminal Code Act 1995 (Cwth)* and listed in regulations made under that Act and regulations made under the *Charter of the United Nations Act 1945 (Cwth)* and ensure that any funds provided to it under this Agreement are not used in any way to provide direct or indirect support or resources to organisations and individuals associated with terrorism.
- (b) Comply with the laws relating to sanctions, including the *Charter of the United Nations act 1945 (Cwth)* and the *Autonomous Sanctions Act 2011 (Cwth)* and regulations made under those Acts and ensure that any funds provided to it under this Agreement do not provide direct or indirect support or resources to organisations or individuals upon whom Australia has imposed sanctions under relevant legislation.
- (c) Not bribe any public officials or make or cause to be made or received, or seek to receive any offer, gift or payment, consideration or benefit of any kind that would or could be construed as an illegal or corrupt practice (either directly or indirectly) to any party as an inducement or reward in relation to this Agreement.
- (d) Comply with the Child Protection Policy for the DFAT-Australian Aid Program, accessible at the DFAT website <http://www.dfat.gov.au>.
- (e) Comply with all the DFAT policies, including the Australian laws and guidelines which may apply to delivery of developmental aid to foreign countries, as listed on the DFAT website, including ensuring it and any Personnel undertake such training, induction and familiarisation as we deem appropriate.
- (f) Not engage in any Fraudulent Activity.
- (g) Comply with all applicable Health Safety and Environment laws, regulations and policies which are applicable to the location specified on the Agreement Particulars where Services are being performed.
- (h) Comply with DFAT's Environment Management Guide for Australia's Aid Program 2012 accessible at the DFAT website <http://www.dfat.gov.au>

7 ACKNOWLEDGEMENTS AND WARRANTIES

7.1 The Partner acknowledges and warrants:

- (a) The information and material provided by it to us (including its, any Sub-Contractor's and any Personnel's capabilities, experience, qualifications and expertise) is true and correct.
- (b) That it will promptly notify AWP if there is any change to any of the information referred to in this clause or if it becomes aware that there is any non-compliance by it or any Personnel with the requirements in clauses 5 or 6.
- (c) That is has the financial capacity to perform its obligations under this Agreement.

8 CONFIDENTIALITY

8.1 Non Disclosure of Confidential Information

The Partner must not (except in the proper course of providing the Services) disclose to any person, or use for either its own benefit or anyone else's benefit, any Confidential Information which the Partner may acquire or come in contact with during the term of this Agreement, without our prior agreement.

8.2 The obligations under this clause will not be breached to the extent that the Confidential Information:

- (a) is disclosed by party to its Personnel or advisers in order to comply with obligations or exercise rights under this Agreement or for the purposes of performing the Services;
- (b) is required or authorized by law to be disclosed or is required to be disclosed in connection with legal proceedings; or
- (c) is disclosed by AWP to, or as directed by, DFAT.

8.3 Obligations Regarding Others

If requested by us, the Partner must ensure that any Personnel will provide written undertakings regarding confidentiality and Intellectual Property Rights (including any moral rights) in the same terms as provided in this clause and clause 14 (Intellectual Property Rights).

9 INSURANCES

9.1 The Partner(s) must have and maintain the required insurances to the amounts specified in the Agreement particulars in connection with the Services for the duration of this Agreement and must provide proof of these insurances as part of the contracting process.

10 PROTECTION OF PERSONAL INFORMATION

10.1 The Partner must:

- (a) Use any Personal Information provided to, or collected by, it only for the purpose of performing its obligations under this Agreement;
- (b) Not do any act or engage in any practice which would breach an Australian Privacy Principle or do anything which causes us or DFAT to be in breach of an Australian Privacy Principle;
- (c) Comply with any directions, guidelines, determinations or recommendations of the Information Commissioner, Privacy Commissioner or Freedom of Information Commissioner, to the extent that they are not inconsistent with the requirements of this Agreement and promptly notify us in writing of any such occurrence;
- (d) Ensure that any subcontract it enters into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the subcontractor has same awareness and obligations as the Partner has under this clause.

10.2 Subject to this clause and the provisions relating to Confidentiality, the Partner acknowledges that DFAT or AWP may disclose or publish details about this Agreement and

the Services. The details may include (but are not limited to) organisation name, the value of the Fees, and the location where the Services are being performed.

11 CONFLICT OF INTEREST

- (a) The Partner warrants that, to the best of its knowledge after making diligent inquiry at the Commencement Date, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement by itself or any Specified Consultant.
- (b) If a conflict of interest arises or appears likely to arise, the Partner undertakes to notify us immediately in writing and to take such steps as we may reasonably require to resolve or otherwise deal with the conflict.

12 RECORDS, BOOKS AND ACCOUNTS

12.1 The Partner must, at its own cost:

- (a) At all times maintain, and must ensure that Sub-Contractors maintain, full, true, separate and up-to-date records, books and accounts in relation to the Services and this Agreement. These records, books and accounts must, without limitation:
 - (i) Record all operational activities relating to the Services including so as to enable the prevention, detection and investigation of Fraud
 - (ii) Record all receipts and expenses related to the Services, enabling them to be identified and reported in accordance with this Agreement
 - (iii) Be kept in a manner that permits them to be conveniently and properly audited and reviewed and enables the extraction of all information relevant to this Agreement.
- (b) The Partner must retain, and require Sub-Contractors to retain, for a period of seven years after the expiry or termination of this Agreement, all records, books and accounts relating to the Services and this Agreement.

13 AUDIT AND ACCESS

13.1 The Partner acknowledges that AWP, DFAT and other Commonwealth agencies have the right to conduct audits, reviews and investigations for the purposes, inter alia, of determining compliance with the provisions of this Agreement and the conduct of the Activity.

13.2 The Partner will participate cooperatively in any such audit, review or investigation and will provide such information, data or documentation and access to its premises as and when requested and do all things necessary to comply with any other requirements of ours, DFAT or the relevant agency

14 INTELLECTUAL PROPERTY RIGHTS

14.1 Pre-existing material

- (a) This **Clause 14 (Intellectual Property rights)** does not affect the ownership of the Intellectual Property rights in any DFAT Material, EWL material, Pre-existing Partner Material or Third Party Material.

- (b) EWL will hold or obtain all necessary copyright and other Intellectual Property Right permissions before making any DFAT or EWL Material available to the Partner for the purposes of the services.
- (c) The Partner grants to, or must obtain for us and DFAT a perpetual, irrevocable, world-wide, royalty-free, non-exclusive licence (including a right to sub-licence), to use, reproduce, adapt, modify, distribute and communicate any pre-existing third party or Partner Intellectual Property required to receive the full benefit of the Agreement Material and the services, or in the case of DFAT for any Commonwealth purpose.

14.2 Ownership of Intellectual Property Rights in Agreement Material

Unless otherwise set out in the Agreement Particulars

- (a) All Intellectual Property Rights in the Agreement Materials vest in EWL on creation.
- (b) EWL grants to the Partner, a perpetual, irrevocable, world-wide, royalty-free, non-exclusive licence (including a right to sub-licence) to use, reproduce, adapt, modify, distribute and communicate the Agreement Material.

14.3 Moral rights

- (a) Personnel who may have moral rights under any copyright law in any Intellectual Property, can publish work subject to notification to EWL prior to publication, acknowledgement of EWL and DFAT in the publication and the publication contains a statement to the effect:
 - (i) The views of the publication are that of the authors and does not any way reflect the views of EWL or DFAT.
 - (ii) EWL and DFAT do not guarantee the accuracy, reliability, currency, completeness of any information contained in the material.
 - (iii) EWL and DFAT accept no liability whatsoever arising from any use of the material.

14.4 Non Infringement

The Partner warrants that it will not infringe the Intellectual Property of any third party or EWL and indemnifies EWL against any claim or liability (including the costs of investigating and defending any claim) in respect of any alleged or actual infringement.

15 NATURE OF RELATIONSHIP

15.1 Relationship

The parties agree that their relationship is one of independent contractors. Nothing in this Agreement or anything arising from the arrangements between the Partner and AWP will or is intended to create an employment relationship, a partnership (notwithstanding the use of the definition ‘Partner’) or joint venture or profit-sharing relationship or a principal and agency relationship between us and the Partner, the Specified Consultants or Sub-

Contractors, nor between the Partner, the Client or DFAT. Any liabilities arising out of such an association, if deemed to be established by any Personnel shall be the sole responsibility of the Partner.

15.2 Representations

The Partner will not represent itself as being an officer, employee or agent of ours or DFAT as otherwise able to bind or represent us or DFAT.

15.3 Acknowledgement Regarding Partner's Employees

- (a) The Partner acknowledges that it is solely responsible for the remuneration, expenses, leave entitlements, taxes, superannuation, workers compensation and any other expenses or insurances in respect of any employees and indemnifies us against any claim for such a liability (including the cost of investigating and defending any claim) made by any person against us. The Partner will comply with all requirements relating to record keeping and lodgement of returns in relation to these obligations.
- (b) The Partner also acknowledges that it is responsible for ensuring the health, safety and welfare of any of its employees including providing all necessary induction, training and safety equipment.
- (c) The Partner also acknowledges that the visa requirements are the sole responsibility of the Partner, and will indemnify us against any claim for such a liability (including the cost of investigating and defending any claim) made by any person against us.

16 INDEMNITY

- (a) The Partner agrees to indemnify us and our directors, officers, employees and agents, the Client and DFAT and their officers and employees against all losses, claims, damages and liability (including any expenses incurred in investigating or defending any such claims) which arise out of any breach of this Agreement, or any wilfully wrongful, unlawful or negligent act or conduct of the Partner, Sub-Contractor or any Specified Consultant.
- (b) The Partner's liability to indemnify under this clause will be reduced proportionally to the extent that any negligent act or omission of those indemnified contributed to the loss.

17 ASSIGNMENT OR SUBCONTRACTING

17.1 Assignment

The Partner will not subcontract or assign any of its obligations under this Agreement, without first obtaining our prior written consent (which may be given on such conditions as we believe appropriate).

17.2 Responsibility

If we give that consent, the Partner will nevertheless remain responsible for the satisfactory performance of the requirements of this Contract.

18 TERMINATION OR SUSPENSION

18.1 Termination by agreement

This Agreement may be terminated at any time by mutual agreement between the Partner and us.

18.2 Termination for cause

We may terminate this Agreement immediately by written notice to the Partner if:

- (a) the Partner breaches the terms of this Agreement (including failure to comply with any policy, code of conduct, security or other policy or procedural requirements of ours or DFAT) provided that, if the breach is capable of remedy, the Partner has failed to remedy that breach within a reasonable period (being not less than 28 business days) after receiving written notice requiring the Partner to do so;
- (b) the Partner becomes subject to any form of bankruptcy or insolvency administration;
- (c) DFAT requires us to cease using the Partner's services, in which case the Partner will be entitled to be paid for all services rendered to the date of termination but no other amount;
- (d) we or DFAT require a Specified Consultant to cease providing the Services and the Partner is unable to replace that person with a person acceptable to us within a reasonable time; or
- (e) the Partner engages in conduct which, in our reasonable opinion, has or will detrimentally affect our business or reputation or that of the Commonwealth of Australia.

18.3 Termination for convenience

- (a) The Partner acknowledges that the Activity and the Services are funded by DFAT and that DFAT is entitled, by notice to us to terminate or reduce the scope of the Activity for any reason, in which case we may terminate or reduce the Services by giving a notice of termination or reduction to the Partner.
- (b) If we give the Partner such a notice of termination or reduction, the Partner must;
 - (i) Take all available steps to minimise the loss resulting from that termination or reduction;
 - (ii) In the case of a reduction in scope, continue to undertake any part of the Services not affected by the notice (unless the Partner, acting reasonably, notifies us that it is not commercially viable to do so).
- (c) If the Agreement is terminated under this clause, AWP is only liable for payment for Services performed up to the date of termination and any reasonable costs actually incurred by the Partner and directly attributable to the termination. AWP will not be liable for any loss of profits, or other loss or costs (including redundancy claims against the Partner).

18.4 Actions on Termination

As soon as practical after the expiry or termination of this Agreement for any reason, the Partner will provide any information which we require to enable us to make any payments and will do anything else reasonably required to finalise the Services. The Partner will also comply with any reasonable request to assist in the effective transition of the Services, as we require.

18.5 Return of Material

On request by us, the Partner must immediately return to us (or as we direct) all documents, Confidential Information, equipment, materials and any other property which is or has been in the possession, custody or control of the Partner. If we reasonably believe that all items have not been returned, we may withhold payment of any moneys otherwise payable to the Partner until such items are returned or arrangements acceptable to us are made for their return or replacement.

18.6 Suspension

If any of the events in clause 18.2 occur or if we receive a notice of suspension from DFAT, we may, at our discretion, (and without affecting our right later to terminate our relationship with the Partner) elect to suspend performance of the Services for such period and on such terms as we reasonably determine.

19 GST

19.1 The Fees and any other charges, taxes and expenses payable for the Services do not include Australian Goods and Services Tax (GST).

19.2 If GST is payable on any supply made by a party under or in connection with the Services, the consideration provided (or to be provided) for that supply will be increased by an amount equal to the GST liability properly incurred by the party making the supply.

19.3 The party making the supply must promptly provide a tax invoice or receipt, which is in an approved form for GST purposes, for any supply for which the party making the supply may recover GST.

19.4 If a party has incurred a cost on which GST is payable, that party may claim the cost plus GST, unless the party is entitled to an input tax credit in respect of such GST.

19.5 Any GST Amount must be paid at the same time and in the same manner as the consideration on which the GST Amount is calculated.

19.6 The Partner warrants that it will at all times be registered under the GST legislation and will provide us with satisfactory evidence of registration and its Australian Business Number (ABN) on request. We may withhold any amount necessary to enable us to comply with our GST taxation obligations until the Partner does so.

19.7 Terms used in this clause have the same meaning as in the GST legislation.

19.8 Any other taxes (including taxes in other countries, if any, and claims thereof) will be borne by the Partners.

20 DISPUTE RESOLUTION

20.1 Negotiation

Both parties agree to use their best endeavours to resolve any problem that arises by negotiation.

20.2 Requirement to Attempt Resolution

Neither party may resort to legal proceedings or terminate the Agreement until the following process has been exhausted, unless it is necessary to seek an urgent interim determination.

20.3 Referral to Executive

Where an issue cannot be resolved by the parties' respective personnel directly dealing with the matter within a reasonable time (being not less than 5 business days), the issue will be referred to the chief executive of each party (or holder of an equivalent position) who will use their best endeavours within a reasonable period (being not less than 14 days) to resolve the issue or to agree on a process (eg. mediation) to resolve the issue.

20.4 Costs

Each party will bear its own costs associated with such dispute resolution process.

21 GENERAL

21.1 Whole Contract

- (a) The arrangements documented in this Agreement constitutes the whole contract between us and the Partner relating to the Services. They supersede all prior understandings, negotiations, agreements (written or oral), express or implied, in relation its subject matter.
- (b) Any variation or replacement of this Agreement must be in writing and signed by both parties.

21.2 Governing law

This Agreement is governed by and will be construed in accordance with the laws and Courts of the Australian Capital Territory and the parties submit to the jurisdiction of the courts of the Australian Capital Territory.

21.3 Notices

- (a) Unless otherwise agreed, a party may give the other party any notice or other written communication (in addition to any other lawful means of service) by post or email to the party's contact details specified in the Agreement Particulars.
- (b) If posted, the communication is deemed to be received two business days after posting. If sent by email, it is deemed to be received at the time stated on the delivery receipt, or if no delivery receipt is available, 12 hours from the time the email was sent as recorded by the application from which the email was sent.

21.4 Waiver

A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right, or the exercise of any other right.

21.5 Severability

If any provision of these Terms of Engagement is held invalid, unenforceable or illegal for any reason, it may be deleted or modified to the extent that is necessary and this Agreement will otherwise remain in force.

22 DEFINITIONS

22.1 In this Agreement, unless the context otherwise requires:

Activity means the activity specified in the Contract Particulars

Activity Material means any Material created by, for and on behalf of AWP on or following the commencement date, for the purpose of or as a result of performing its obligations under this Agreement including any modifications that may be required.

DFAT means the Commonwealth of Australia as represented by the Department of Foreign Affairs and Trade ABN 47 065 634 525.

Client means the client specified in the Agreement Particulars.

Commencement Date means the date set out in the Agreement Particulars.

Confidential Information means all information of ours, DFAT, the Client, other AWP Partners or their staff, contractors or other personnel, which is confidential or of a sensitive nature including information which is designated or marked confidential and any information which the Partner knows or ought reasonably know should be treated as confidential, but does not include information which is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligation.

End Date means the date determined as set out in the Agreement Particulars.

Fraudulent Activity, Fraud means dishonestly obtaining a benefit, or causing a loss, by deception or other means, and includes an incident of attempted, alleged, suspected or detected fraud.

GST Legislation means *A New Tax System (Goods and Services Tax) Act 1999* and related legislation passed by the Australian Federal Government.

Intellectual Property means all intellectual property rights, including:

- a. copyright, patents, trademarks (including goodwill in those marks), designs, trade secrets, know how, rights in circuit layouts, domain names and any right to have confidential information kept confidential;
- b. any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- c. all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,

whether or not such rights are registered or capable of being registered.

Material includes property, equipment, information, data, documentation or any other material in whatever form, including any software, reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.

Partner means the partner specified in the Agreement Particulars.

Personal Information has the same meaning as in the *Privacy Act 1988 (Cwth)*.

Personnel means any Specified Consultant, employees, agents or contractors engaged by the Partner or Sub-Contractors to perform the Services.

Fees means the fees set out in the Agreement Particulars.

Services means the services set out in the Agreement Particulars.

Specified Consultant means the person(s) named in the Agreement Particulars and such other persons as we may approve.

Sub-Contractor means any party contracted by the Partner to provide services of a Specified Consultant under this Agreement.