

**WATER  
RESEARCH  
COMMISSION**

## **MEMORANDUM OF AGREEMENT**

**IN CONNECTION WITH CAPACITY BUILDING FOR WATER INFRASTRUCTURE-BUSINESS PLAN  
(PROPOSAL) PREPARATION & NETWORK TRAINING**

**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

**WRP Pty Ltd**

herein represented by Dr RS Mckenzie

in his/her capacity as Signatory for Contract 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,

*Handwritten signatures and initials:*  
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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 associated with the Project belonging to the Contractor, a Researcher and/or a third party;
    - 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 May 2015;
    - 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 (ZAR95000.00) (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 1 May 2015 and ending on 30 July 2015;
    - 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

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- 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 "The Parties" and "the Party" shall mean the WRC and the Contractor;
- 1.3.16 "The Project" refers to the research and development in relation to project K8/1107/10 titled Capacity Building for Water Infrastructure- Business Plan Preparation & Network Training, and includes, but is not limited to, the deliverables against work programmes and time schedules as outlined in Annexure A hereto;
- 1.3.17 "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.
- 1.3.18 "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;
- 1.3.19 "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;
- 1.3.20 "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
- 1.3.21 "Termination Date" means 30 July 2015.
- 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.

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- 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, (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 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 and submit 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, reports 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

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- 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 no less than two (2) years after termination of this agreement.
- 5.1.13 Report, when submitting final deliverables, on the availability and condition of Capital Assets bought with the Contract Amount and utilised for the Project;
- 5.1.14 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 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;

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- 7.2.2 For the duration of the contract and until Termination Date, utilisation of the Capital Assets for any activities 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 be used to re-allocate said Capital Asset; 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.

## 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 Ensure that the rights to the Background Intellectual Property for the Commercialisation, use or utilisation of the Intellectual Property arising from WRC

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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 protection of Intellectual Property as required by the IPR Act.
- 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 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 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 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 copyright to the WRC in these areas.

## **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 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 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.

**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.
- 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.

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**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:**

Block 5, Greenpark Estate  
Groenkloof  
Pretoria  
0181

- 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.

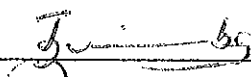

**22. Whole Agreement, No Amendment**

- 22.1 This agreement constitutes the whole agreement between the Parties relating to the subject matter hereof.

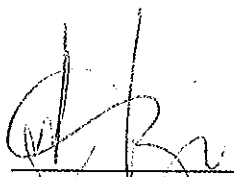
- 22.2 No amendment or consensual cancellation of this agreement or any provision or term hereof and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any 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 29 day of May 2015 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.....2015 in the presence of the undersigned witnesses:

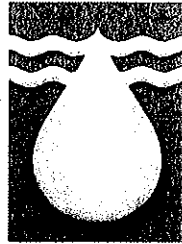
Witnesses:

1    
 2  

(Signatures of witnesses)



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



WATER  
RESEARCH  
COMMISSION

**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 Pretoria on this the 8th day of JULY 2015

Signature *Ronald McKenzie*

Full names of signatory\* RONALD MCKENZIE

Capacity\* MD: WRP Pty Ltd

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

*CS* *MM*  
*JNR*  
*SM* *MY*  
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*(Signature)*



**WATER  
RESEARCH  
COMMISSION**

**ANNEXURE D**

**BACKGROUND INTELLECTUAL PROPERTY DECLARATION FORM**

*If background IP applies to this contract, 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:

- a. disclosed all Background Intellectual Property known to the project team as on the date of signature;
- b. will ensure that all Background Intellectual Property and associated rights will be made available on reasonable terms whether for research, commercialisation or use; and
- c. 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 PRETORIA on this the 8th day of JULY 2015

Signature *Ronald McKenzie*

Full names of signatory\* RONALD MCKENZIE

Capacity\* MD WRP Pty Ltd

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

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**WATER  
RESEARCH  
COMMISSION**

**ANNEXURE E**

**Capital Asset Addendum to K8/1107/10**

Description of the Deliverable for which the Capital Asset has been acquired:	N/A.
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 K8/1107/10 which commenced on 1 May 2015 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 PRETORIA on this the 8<sup>th</sup> day of JULY 2015

Signature *Ronald McKenzie*  
 Full names of signatory\* RONALD MCKENZIE  
 Capacity\* MD WRP Pty Ltd

\* 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.

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# WATER RESEARCH COMMISSION

## PROPOSAL FOR A SHORT TERM PROJECT

### Submission Form: Short Term Project

#### 1. PROPOSAL DETAILS

<b>KSA</b>	10		
<b>Title</b>	Capacity Building for Water Infrastructure – Business Plan Preparation & Network Training		
<b>Duration</b>	<b>Start date</b>	1 May 2015	<b>End date</b>
			30 July 2015

#### 2. ORGANISATION DETAILS

##### 2.1. LEAD ORGANISATION

<b>Name</b>	WRP Pty Ltd		
<b>Department/Division</b>	Not applicable		
<b>Postal address</b>	PO Box 1522, Brooklyn Square		
<b>City/Town</b>	Pretoria		
<b>Postal code</b>	0075		
<b>Street address</b>	Block 5, Greenpark Estate		
<b>City/Town</b>	Groenkloof, Pretoria		
<b>Street code</b>	0181		
<b>Contribution details</b>	Project Co-ordinator/Leader		

##### 2.2. CONTACT DETAILS

<b>Signatory for Contractor</b>	<b>Title</b>	<b>Dr</b>	<b>Initials</b>	<b>RS</b>	<b>Surname</b>	Mckenzie
	<b>First name</b>		Ronnie			
<b>Telephone</b>	<b>Code</b>	012	<b>Number</b>		346 3496	
<b>Fax</b>	<b>Code</b>	012	<b>Number</b>		346 9956	
<b>Cell phone</b>	082 651 7904					
<b>E-mail</b>	Ronniem@wrp.co.za					
<b>Project Leader</b>	<b>Title</b>	<b>Dr</b>	<b>Initials</b>	<b>RS</b>	<b>Surname</b>	Mckenzie
	<b>First name</b>		Ronnie			
<b>Telephone</b>	<b>Code</b>	012	<b>Number</b>		346 3496	
<b>Fax</b>	<b>Code</b>	012	<b>Number</b>		346 9956	
<b>Cell phone</b>	082 651 7904					
<b>E-mail</b>	ronniem@wrp.co.za					
<b>Years experience</b>	30+					
<b>Qualifications</b>	PhD, BSc, MICE, CENG, PENG, FSAICE, FIWA					

*Handwritten signatures and initials:*  
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 GM

### 2.3. CONTACT DETAILS: TEAM MEMBERS

<b>Team member</b>	Title		Initials		Surname	
	First name					
Telephone	Code				Number	
Fax	Code				Number	
Cell phone						
E-mail						
Years experience						
Qualifications						

### 3. RATIONALE

The FETWater National Planning Workshop, held on 22-23 January 2015, established Phase III networks, coordinators for the networks to lead the current FETWater six thematic areas. One of the important outcomes of the workshop was – the need to introduce the Qualification Development Facilitation activity as a pillar to all the networks to align with quality Council for Trades and Occupations (QCTO) to promote ‘demand-driven approach’ as opposed to ‘supply-driven approach’ during Phase III in ensuring sustainability and succession of FETWater Phase III beyond 2017 for effective implementation of NWRS II.

The components of Water Value Chain are

1. Water Resources;
2. Water Bulk Infrastructure; and
3. Water Distribution Infrastructure
  - Connector Infrastructure
  - Internal Infrastructure

Management of the development and operation and maintenance (O&M) of the first two sits with the DWS, who does also function as regulator of the Water Sector and the last one sits within the municipalities (Water Services Authorities and Water Services Providers). Both the DWS and municipalities use the private sector (professional services providers and contractors) extensively in the development and O&M of water infrastructure.

Though the current capacity challenges within the managing organisations (DWS, WSAs and WSPs) and the services providers are extensive (Tally Palmer’s presentation; FETWater workshop, 22-23 January 2015), the NWRS II priorities suggests to focus on

1. CMAs
  - Catchment Management Forum
  - Water Use Associations
2. Local Government
  - Water Services Authorities (WSAs)
  - Water Services Providers (WSPs)

To address NWRS II vision of “Sustainable, equitable and secure water for a better life for all” and NWRS II Water Sector Priority Focus Area of “Institutional establishment and governance”, there is no alternative to capacitate the managing organisations and the services providers.

South Africa is currently running through a deep crisis in the Energy Sector. It is already identified that the second crisis, South Africa is going to face, in no time, is in the Water Sector. Reasons are well established and understood by the government and the water sector stakeholders.

Though government has come up with huge funds to face the challenges, it is identified that the organisational capacity to utilise the water sector funds through execution of projects and O&M with sufficient control over quality product delivery

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from the services providers is far behind. This demands immediate and appropriate intervention in development of 'Project Management and Infrastructure O&M Skills' of the managers of the managing government departments and local government institutions. It is worth noting here that government grant funds for water sector are mainly channelled through DWS and MIG under various programmes.

This short term project proposal, therefore, is meant for the development of a 'Business Plan' or proposal for the 'Water Infrastructure Network' to address the followings:

1. Skill audit of the relevant managers of DWS, MIG-MIS, WSA and WSP on Project Management, both Development and O&M;
2. Quick study on sample Water Value Chain Infrastructure emphasizing Treatment Plants in identifying their functionality and performance challenges and causes thereof;
3. Identification of necessary accredited and non-accredited training needs and capable organisations and/ or Skilled Professionals to provide the training;
4. Development of Training modules and training methodologies;
5. Development of Mechanism of Progress Reporting, Quality Assurance and Evaluation of conducted training;
6. Development of indicators to measure impact of training to managers (change in delivery of development projects emphasizing on quality of received products – both design and infrastructure and in performance in O&M management)
7. Development of a Training Calendar (Training implementation schedule)
8. Costing the Implementation of Training (Training Aids, Resources and Logistics); and
9. Conducting the training for the targeted groups.
10. Impact Assessment of the training at the end part of the FETWater Phase III

It is envisaged that this programme will be registered with the Qualifications Council for Trade and Occupation (QCTO).

#### 4. OBJECTIVES

The objective of this short term project proposal is to develop a 'Business Plan' that facilitate in improving the 'Project Management Capacity' of relevant managers of the below mentioned government departments and local government institutions in delivering water infrastructure development projects on time, within the cost and of water industry standards and in Operation and Maintenance of water infrastructure ensuring services delivery to the satisfaction of the customers aligned with the NWRS II visions.

1. DWS;
2. MIG-MIS;
3. WSAs; and
4. WSPs

#### 5. METHODOLOGY

The following methodology will be followed in the development of the Business Plan:

1. Mini workshops with relevant parties from the FETWater networks on requirement of the development of a Business Plan/ Proposal for the 'Water Infrastructure Network' intervention in implementing the NWRS II.
2. Reviewing gap analysis report (*Consultation with the DWS champion for Water infrastructure, Leonardo Manus*)
3. Reviewing NWRS 2: June 2012 version
4. Reviewing of existing training courses (*Consultation with WISA*)
5. Study the QCTO Framework (*Consultation with Alvin Lagardien, CPUT*)
6. Consultation and/ or interviewing key role players in water infrastructure
7. Develop the Business Plan/ Proposal on 'Water Infrastructure Network' intervention for the period of 2015-2017.

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### 7. DELIVERABLES

Deliverable description	Target date (dd/mm/yyyy)	Amount (R)
Advance	15/05/2015	19 000.00
Draft Business Plan	30/05/2015	57 000.00
Final Business Plan & Network Training Report	30/06/2015	19 000.00
Total for financial year 2015/2016 (excluding VAT) – Subtotal A		95 000.00

### 8. HUMAN RESOURCE COSTS

Team member	Rate/day	Number of days	Total
Mckenzie, RS	R 3 000.00	16	R 48 000.00
Jordan, M	R 2500	4	R 10 000
Wegelin, W	R 3000	4	R 12 000
Mongange, A	R 2500	4	R 10 000
Total for financial year 2015/2016 (excluding VAT)			R 80 000.00
TOTAL (excluding VAT) – Subtotal F			R 80 000.00

### 9. RUNNING EXPENSES

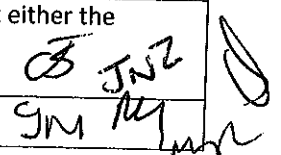
Item description	Not Applicable
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### 10. TOTAL COSTS

Mini Workshop	R 5 000.00
Human resources	R 80 000.00
Subsistence and travel	R 5 000.00
Accommodation/ Venue	R 5 000.00
<b>Total</b>	<b>R 95 000.00</b>

### 11. GENERAL INFORMATION

Provide a comprehensive list of WRC projects and Short Term Research Projects related to this proposal that either the proposer or any of the team member listed in this proposal participated in (last 2 years)


  
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The Project Leader (R Mckenzie) and Deputy Project leader (Wegelin, W) have been involved with many previous projects for the WRC including the assessment of the Non-Revenue Water for all South African Municipalities and the Development of the SANFLOW, PRESMAC, ECONOLEAK, AQUALITE and Municipal Scorecard Models. Dr Mckenzie is currently engaged in a project to review and re-design the various WDM Models offered through the WRC to Municipalities throughout South Africa to assist them in managing and reducing their water losses. Dr Mckenzie is also responsible for the WDM Summits held annually in Cape Town and Johannesburg which are recognised as the key events to promote water loss reduction in South Africa. He is currently a Fellow of the International Water Association and a key member of the IWA Water Losses Specialist Group.

Additional information

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## PAYMENT DETAILS

The total estimated amount for The Project excluding Value Added Tax (VAT) shall henceforth be referred to as the Contract Amount and may not be exceeded without prior written approval of the WRC.

## 1. Budget Summary

Financial Year	HR (R)	Capital (R)	Running (R)	Minor (R)	Dissemination/Uptake Activity (R)	Total (R)
2015/2016	80000	0.00	15000	0.00		95000
<b>Total (R)</b>	<b>80000</b>	<b>0.00</b>	<b>15000</b>	<b>0.00</b>	<b>0.00</b>	<b>95,000.00</b>

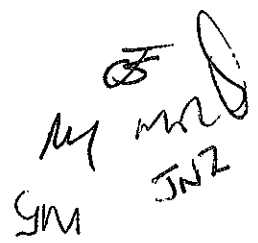
## 1. Deliverable Summary

Financial Year: 2015/2016

No	Title	Target Date	Amount (R)
0	Advance	15/05/2015	19000
1	Draft Business Plan	30/05/2015	57000
2	Final Business Plan & Network Training Report	30/06/2015	19000
3			
4			
<b>Total</b>			<b>95,000</b>

Grand Total:

R 95,000.00


  
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Water Research Commission  
Marumati Building,  
491 18<sup>th</sup> Avenue, Rietfontein, Pretoria  
Private Bag X03, Gezina, 0031, South Africa  
Tel: +27 (0)12 330 0340  
Fax: +27 (0)12 331 2565  
Email: [info@wrc.org.za](mailto:info@wrc.org.za)  
Web: [www.wrc.org.za](http://www.wrc.org.za)

### WRC DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the WRC.
2. Any person, having a kinship with persons in the service of the WRC, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the WRC, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.
3. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

3.1 Full name of bidder or his/her representative:

RONALD MCKENZIE : WRP PTY LTD

3.2 Identity Number: 580812 5288 184

3.3 Position occupied in the Company: MD:  
(director, trustee, shareholder)

3.4 Company Registration Number: 1998/016706/07

3.5 Tax Reference Number: 9223/082/04/16

3.6 VAT Registration Number: 482 017 6685

3.7 Have you been in the service of the WRC in the past twelve months?

YES / (NO)



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3.7.1 If yes, furnish particulars: \_\_\_\_\_  
\_\_\_\_\_

3.8 Do you have any relationship (family, friend, other) with persons in the service of the WRC and who may be involved with the evaluation and/or adjudication of this bid?

YES / NO

3.8.1 If yes, furnish particulars: \_\_\_\_\_  
\_\_\_\_\_

3.9 Are you aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the WRC who may be involved with the evaluation and/or adjudication of this bid?

YES / NO

3.9.1 If yes, furnish particulars: \_\_\_\_\_  
\_\_\_\_\_

3.10 Are any of the company's directors, trustees, managers, principal shareholders or stakeholders in service of the WRC?

YES / NO

3.10.1 If yes, furnish particulars: \_\_\_\_\_  
\_\_\_\_\_

3.11 Is any spouse, child or parent of the company's directors, trustees, managers, principal shareholders or stakeholders in service of the WRC?

YES / NO

3.11.1 If yes, furnish particulars: \_\_\_\_\_  
\_\_\_\_\_

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3.12 Do you or any of the directors, trustees, managers, principal shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract?

YES / NO

3.12.1 If yes, furnish particulars: \_\_\_\_\_

\_\_\_\_\_

4. Full details of directors / trustees / members / shareholders

Full Name	Identity Number	Position (e.g., trustee, board member, shareholder, director)
<i>see attached Shareholders list</i>		

5. Details of person completing the form

I RONALD MCKENZIE (full name and surname), in my capacity as MD WRP Pty Ltd declare that all details completed in this form are correct.

Signature: *R McKenzie* Date: 8 JULY 2015

*CF MK*  
*SM JNZ*