



PART C
AGREEMENT FOR THE PROVISION
OF CLEANING SERVICES

[insert service provider]

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THIS AGREEMENT is made the [insert date] day of [insert month] 20[insert year]

between

SOUTH GIPPSLAND REGION WATER CORPORATION, ABN 40 349 066 713 (trading as South Gippsland Water)

and

[CONTRACTOR NAME] [ABN AND ADDRESS]

Background

- A South Gippsland Water wishes to engage the Service Provider to provide the Services on and subject to the terms of this Agreement.
- B South Gippsland Water hereby engages the Service Provider and the parties mutually acknowledge that it is their common intention to work together throughout the Term to continuously seek improvements in value, efficiency and productivity in connection with the supply of Services under this Agreement to the mutual benefit of both parties.
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Agreed terms

1 Interpretation

1.1 Definitions

In this Agreement:

Agreement means this agreement and includes the schedules and any annexures to it or documents incorporated by reference.

Authorised Representative means, in respect of South Gippsland Water, any person who holds themselves out as having authority to bind that Purchaser.

Budget Sector Agency means each Victorian Government department (as defined in section 3 of the *Financial Management Act 1994 (Vic)*) as amended from time to time.

Business Day means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993 (Vic)*) in Melbourne.

Contract Responsible Manager means the person nominated by South Gippsland Water pursuant to **clause 9.1(a)(i)** for the time being.

Code of Practice means a code of practice as defined in, and approved under, the *Information Privacy Act 2000 (Vic)*.

Commencement Date means the date set out in **Item 1 of Schedule 1**.

Confidential Information means any technical, scientific, commercial, financial or other information of, about, or in anyway related to, South Gippsland Water, including any information designated by South Gippsland Water as confidential, which is disclosed, made available, communicated or delivered to the Service Provider in connection with this Agreement, but excludes information:

- (a) which is in or which subsequently enters the public domain other than as a result of a breach of this Agreement;
- (b) which the Service Provider can demonstrate was in its possession prior to the date of this Agreement;
- (c) which the Service Provider can demonstrate was independently developed by the Service Provider;
- (d) which is lawfully obtained by the Service Provider from another person entitled to disclose such information; or
- (e) which is disclosed pursuant to legal requirement or order.

Contract Intellectual Property means any and all Intellectual Property Rights incorporated or comprised in any materials created by or on behalf of the Service Provider in the course of providing the Services to South Gippsland Water under this Agreement.

Contracts Publishing System means the system of the Victorian Government requiring publication of details of contracts entered into by South Gippsland Water or any successor system (including variations).

Control means, in relation to any body corporate, the ability of any person directly or indirectly to exercise effective control over the body corporate (including the ability to determine the outcome of decisions about the financial and operating and other policies of that body corporate) by virtue of the holding of voting shares, units or other interests in that body corporate or by any other means.

Corporate Transaction Card means a card issued by a bank to South Gippsland Water for the purchase of Services.

Expiry Date means the date set out in **Item 1** of **Schedule 1**.

Fees means a fixed fee payable to the Service Provider for the provision of specified Services under a Purchase Order Contract, determined in accordance with the Price Schedule.

Government Owned Entity means a statutory corporation, a State owned company or a State body as those terms are defined in the *State Owned Enterprises Act 1992 (Vic)*.

Government Supported Organisation means an organisation the subject of a statement of introduction from the relevant portfolio department as contemplated by **clause 3.1** Error! Reference source not found.. Such organisations will generally be a charitable or other not-for-profit organisation listed on the Web Site.

Information Privacy Principles means the information privacy principles set out in the *Information Privacy Act 2000 (Vic)*.

Intellectual Property Rights includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, confidential information (including trade secrets and know how), registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Laws means the law in force in the State and the Commonwealth of Australia, including common law and legislation.

Pre-Existing Intellectual Property means any and all Intellectual Property Rights in any works, items or systems created by or the property of the Service Provider prior to the commencement of the provision of the Services.

Price Schedule means the schedule of Rates and Fees payable by South Gippsland Water to the Service Provider for the provision of the Services, as set out in **Schedule 2**.

Purchase Order means an order for Services, submitted by South Gippsland Water to the Service Provider in accordance with **clause 7.1**, that is in or substantially in the form set out in **Annexure A**.

Purchase Order Contract means the contract which arises between South Gippsland Water and the Service Provider when South Gippsland Water delivers a Purchase Order or purchases Services using a Corporate Transaction Card under **clause 7.1(c)**.

Purchaser has the meaning given to that term in **clause 3.1**.

Quote means a quote from the Service Provider under **clause 7.1(b)(ii)**.

Rates means the rates (whether charged on an hourly, daily, weekly or other time-related basis) payable to the Service Provider for the provision of specified Services under a Purchase Order Contract, determined in accordance with the Price Schedule.

Relationship Manager means the person nominated by the Service Provider pursuant to **clause 9.1(a)(ii)** for the time being.

Request for Services means a request by South Gippsland Water under **clause 7.1** for a Quote in respect of the provision of specified Services.

Responsibility Chart has the meaning given to that term in **clause 9.2**.

Service Levels means the service levels the Service Provider must comply with in performing its obligations under this Agreement, as specified in **Schedule 3**, and as amended from time to time in accordance with **clause 9.3(d)**.

Services means the Services (or any of them) specified in **Schedule 2** and, in relation to a Purchase Order Contract, means the Services specified in the relevant Purchase Order.

Staff Costs means Pay as You Go tax, withholding tax, superannuation contributions or charge amounts, fringe benefits tax, workers' compensation insurance premiums, payroll tax and any like taxes and charges arising out of or in relation to this Agreement, or any engagement arising under this Agreement (together with all interest or penalties payable by reference to those costs).

State means the Crown in right of the State of Victoria.

Tender Documentation means the documentation submitted by the Service Provider in response to a request for tender or request for proposal, in the form finally accepted by South Gippsland Water, as set out in **Annexure B**.

Term means the term of this Agreement determined in accordance with **clause 2**.

Web Site means the world wide web site maintained by South Gippsland Water and located at universal resource locator www.gippswater.com.au, as amended from time to time.

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;

- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) "\$", "dollars" or "AUD" is a reference to the lawful currency of the Commonwealth of Australia;
 - (vi) a party or parties is a reference to South Gippsland Water and the Service Provider (as the case requires); and
 - (vii) South Gippsland Water is a reference to the Crown in right of the State of Victoria; and
- (g) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day.

1.3 Headings

Headings do not affect the interpretation of this Agreement.

2 Term

2.1 Term

This Agreement commences on the Commencement Date and, unless terminated earlier under **clause 18**, **clause 19** or **Schedule 4** or extended in accordance with **clause 2.2**, will end on the Expiry Date.

2.2 Extension of term

- (a) South Gippsland Water may elect, by notice in writing to the Service Provider not later than two months prior to the expiry of the then current Term, to extend the Term of this Agreement for one or more further periods, as set out in **Item 1** of **Schedule 1**.
- (b) Any such further term or terms will be on the same terms and conditions as this Agreement (excluding, in respect of the final further period, this **clause 2.2**).

3 South Gippsland Water procurement

3.1 Entities entitled to benefit of Agreement

- (a) The Service Provider acknowledges and agrees that South Gippsland Water enter into this Agreement on its own behalf.

3.2 Liability

The Service Provider acknowledges that, notwithstanding anything else in this Agreement, South Gippsland Water is solely responsible for any and all orders placed by it under this Agreement.

3.3 Intentions

- (a) It is the intention of the parties that this Agreement will govern the procurement of all Services by South Gippsland Water during the Term, and that South Gippsland Water will acquire the Services

or any services equivalent to the Services from a supplier other than the Service Provider, except where:

- (i) the Service Provider is one of a panel of suppliers appointed to supply Services (in which case South Gippsland Water and each other Purchaser may acquire the Services from any of the appointed suppliers);
 - (ii) the Service Provider is unable, for whatever reason, to supply the Services (or any of them) in accordance with this Agreement;
 - (iii) the Service Provider has been issued with a notice pursuant to **clause 19.1(b)** in respect of a breach and that breach remains unremedied;
 - (iv) the Services are acquired by a regional Purchaser from a regional supplier and the total cost of those Services (whether individually or in the aggregate) is less than \$25,000; or
 - (v) where the acquisition of Services from the Service Provider is exempted pursuant to the terms of the Victorian Government Policy for State Purchase Contracts due to functional, technical, logistic or geographic requirements.
- (b) The entry into this Agreement does not require South Gippsland Water to place orders for any Services with the Service Provider.

3.4 Agreement subject to policy

The terms of this Agreement, and in particular this **clause 3**, are subject to the terms of South Gippsland Water's Purchasing Policy, as that policy is amended from time to time. However, if any such changes have a material negative financial impact on the Service Provider, South Gippsland Water and the Service Provider will discuss in good faith (subject always to **clause 30.2**) any necessary amendments to this Agreement.

4 Performance of Services

4.1 Standing offer for the provision of Services

The Service Provider hereby makes a standing offer to provide the Services during the Term, on and subject to the terms of this Agreement.

4.2 Services to be performed in accordance with Service Levels

The Service Provider must provide the Services to a standard that reaches or exceeds the Service Levels. In addition, the Service Provider must:

- (a) provide the Services in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services;
- (b) ensure the highest quality of work and the delivery of the Services with the utmost efficiency;
- (c) act in good faith and in the best interests of South Gippsland Water;
- (d) keep South Gippsland Water informed of all matters of which it ought reasonably be made aware, and provide such information in relation to the provision of the Services as may reasonably be required by South Gippsland Water; and
- (e) carry out its obligations and duties and complete the provision of the Services to the reasonable satisfaction of and in accordance with the requirements of South Gippsland Water.

4.3 Service Provider to provide equipment

The Service Provider must provide any and all equipment (including computer hardware and software and any ancillary support) necessary for the performance of the Services.

4.4 Inability to provide Services

If at any time during the Term the Service Provider is unable or is likely to become unable, for whatever reason, to provide any or all of the Services, the Service Provider must immediately notify South Gippsland Water of that fact.

4.5 Time of the essence

Time will be of the essence in the performance of each Purchase Order Contract.

5 Service Provider's staff

- (a) The Services must be performed by the persons specified in **Item 11 of Schedule 1**.
- (b) If the persons identified in Item 11 of Schedule 1 are unavailable or otherwise unable to provide the Services, the Service Provider must promptly notify South Gippsland Water of that fact and provide details of alternate, suitably qualified and experienced staff to replace the persons specified in **Item 11 of Schedule 1 (Replacement Staff)**.
- (c) South Gippsland Water must notify the Service Provider in writing within 2 Business Days as to whether or not it accepts the Replacement Staff proposed by the Service Provider pursuant to **clause 5(b)**. The Service Provider acknowledges and agrees that South Gippsland Water will be under no obligation to accept any person proposed by the Service Provider if South Gippsland Water is not satisfied as to the qualifications and experience of such person.

6 Price for the Services

- (a) The Price Schedule (including the Rates and the Fees) according to which the Service Provider will charge Purchasers for Services is set out in **Schedule 2**. Subject to any change in the Rates or Fees for the Services resulting from the application of any express provision of this Agreement, the Rates and Fees are fixed for the Term.
- (b) Expenses or other disbursements may only be charged by the Service Provider in accordance with **Schedule 2**.

7 Request for Services

7.1 Request for Services

- (a) During the Term, an Authorised Representative of South Gippsland Water may request the Service Provider to provide Services to South Gippsland Water by submitting to the Service Provider, either orally or in writing, a Request for Services.
- (b) A Request for Services must:
 - (i) detail the Services required by South Gippsland Water, together with any applicable deadlines or milestones relevant to the performance of the relevant Services; and
 - (ii) request the Service Provider to provide to South Gippsland Water within 2 Business Days a written Quote in respect of the provision of those Services, such Quote to specify the total amount payable by South Gippsland Water for the provision of the required Services and a break down of the Rates or Fees comprising that amount.

- (c) If South Gippsland Water accepts a Quote provided under **clause 7.1(b)(ii)**:
 - (i) South Gippsland Water will issue a Purchase Order in relation to the required Services, such Purchase Order to specify, as a minimum, the identity of South Gippsland Water and the order number, the Service Provider's details and Quote number or details and the relevant Services; or
 - (ii) the Authorised Representative of South Gippsland Water will place an order for the required Services (either orally or in writing) and pay for the relevant Services by means of a Corporate Transaction Card.

7.2 Formation of Purchase Order Contract

- (a) A Purchase Order Contract will be formed upon the happening of either of the events specified in **clause 7.1(c)**. A Quote will not be binding on the Service Provider or South Gippsland Water until such time as a Purchase Order Contract has been formed.
- (b) A Purchase Order Contract will consist of:
 - (i) the terms of this Agreement (other than **clauses 2, 3, 4.1, 7.1, 9, 11.1, 12, 18, 19.1, 19.5, 19.6, Schedule 1 items 1, 2, 5, 6, 7, 9, 10, Schedule 4** and with such consequential changes as are necessary to reflect the formation of the relevant Purchase Order Contract in such manner);
 - (ii) the Request for Services and the Quote provided in response to the Request for Services;
 - (iii) the Purchase Order; and
 - (iv) any other document that is expressly incorporated as part of the Purchase Order Contract under paragraph (b)(i), (ii) or (iii) above.
- (c) The Service Provider must provide the Services the subject of a Purchase Order Contract in accordance with the Service Levels and otherwise in accordance with this Agreement and the requirements of the relevant Purchase Order.

7.3 Inconsistency

Where there is any inconsistency between the provisions of this Agreement and any Purchase Order Contract, the provisions of this Agreement will prevail to the extent of that inconsistency.

8 Invoicing and payment

8.1 Invoicing

- (a) The Service Provider must submit to South Gippsland Water a tax invoice or tax invoices in respect of each Purchase Order Contract:
 - (i) as soon as practicable after the completion of the Services; or
 - (ii) as otherwise provided for in the relevant Purchase Order.
- (b) A tax invoice submitted for payment pursuant to **clause 8.1(a)** must contain each of the matters specified in **Item 4 of Schedule 1** and be sent to the address specified in **Item 4 of Schedule 1** (or such other address as may be specified in a Purchase Order Contract).

8.2 Payment of invoice

- (a) Subject to the remainder of this **clause 8.2**, South Gippsland Water will pay the invoiced amount to the Service Provider within 30 days of receipt of the invoice, in the manner specified in **Item 5 of Schedule 1**.

- (b) An invoice will not be paid until such time as the invoice is certified for payment by the Authorised Representative of South Gippsland Water. An invoice will not be certified for payment unless the Authorised Representative of South Gippsland Water is satisfied that it is correctly calculated with respect to the Services that are the subject of the relevant Purchase Order Contract and the Service Provider is entitled to claim payment.
- (c) If the Authorised Representative of South Gippsland Water disputes the invoiced amount (whether in whole or in part) for any reason, South Gippsland Water must pay the undisputed amount of such invoice (if any), and notify the Service Provider of the amount South Gippsland Water believes is due for payment. If South Gippsland Water and the Service Provider are unable to agree on the balance of the invoiced amount, the dispute will be referred for determination in accordance with **clause 23**.
- (d) Payment of an invoice is **not** to be taken as:
 - (i) evidence or an admission that the Services have been provided in accordance with the Service Levels and otherwise in accordance with this Agreement and the applicable Purchase Order Contract;
 - (ii) evidence of the value of the Services supplied; or
 - (iii) an admission of liability,
 but must be taken only as payment on account.

8.3 Fair payment

- (a) A Purchaser will, on demand by the Service Provider, pay simple interest on a daily basis on any overdue amount, at the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).
- (b) For the purposes of **clause 8.3(a)**, **overdue amount** means an amount (or part thereof) that:
 - (i) is not, or is no longer, disputed in accordance with this Agreement;
 - (ii) is due and owing under a tax invoice (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) properly rendered by the Service Provider in accordance with this Agreement; and
 - (iii) has been outstanding for more than 30 days from the date of receipt of the invoice or the date that the amount ceased to be disputed, as the case may be.

9 Contract management

9.1 Contract Responsible Manager and Relationship Manager

- (a) For the purposes of ensuring a productive and efficient relationship between South Gippsland Water, South Gippsland Water and the Service Provider under this Agreement:
 - (i) South Gippsland Water nominates the person or persons specified in **Item 2 of Schedule 1** as its Contract Responsible Manager; and
 - (ii) the Service Provider nominates the person or persons specified in **Item 2 of Schedule 1** as its Relationship Manager and alternates.
- (b) It is the intention of the parties that:
 - (i) all queries or issues of a day-to-day operational nature (including the submission of a Purchase Order, the delivery of Services and the invoicing and payment relating to a

Purchase Order Contract) will be dealt with by the Service Provider and the relevant Purchaser; and

- (ii) all other queries, consents, approvals, complaints and disputes required or arising under or in connection with this Agreement (including, for the avoidance of doubt, all matters relating to contract management, the relationship of the parties and the overall operation of the Agreement) will be dealt with by the Contract Responsible Manager (on the one hand) and the Relationship Manager (on the other hand).
- (c) South Gippsland Water may, from time to time, nominate a replacement Contract Responsible Manager by notice in writing to the Service Provider. The appointment of the replacement Contract Responsible Manager will be effective for the purposes of this Agreement from the date on which notice is given to the Service Provider in accordance with this **clause 9.1(c)**.
- (d) The Service Provider may only replace a Relationship Manager or alternate nominated by it if:
 - (i) the proposed replacement Relationship Manager or alternate is of an equal or higher seniority as the Relationship Manager or alternate to be replaced; and
 - (ii) the change to the Relationship Manager or alternate will not adversely affect the quality of the relationship between South Gippsland Water and the Service Provider.
- (e) Unless otherwise agreed, a replacement Relationship Manager or alternate (as the case may be) must be appointed no later than five Business Days after the previous Relationship Manager or alternate ceases to act in that capacity.
- (f) The Relationship Manager must make him or herself available at all times during business hours, and at all other times on reasonable notice by the Contract Responsible Manager, to meet with the Contract Responsible Manager and discuss any queries, concerns, issues or disputes arising under or in connection with this Agreement.

9.2 Responsibility Chart

- (a) The parties will, promptly following the entry into this Agreement, prepare a Responsibility Chart identifying the key tasks and obligations under this Agreement, and the party responsible for completing or otherwise performing the relevant task or obligation.
- (b) To assist with the management and successful implementation of the tasks and obligations contained in this Agreement, the parties agree to regularly review and update the Responsibility Chart throughout the Term.
- (c) This clause sets out the intentions of the parties with respect to its subject matter but does not create any binding obligations on the parties.

9.3 Service Levels

- (a) The Service Provider must comply with the Service Levels during the Term.
- (b) Performance against the Service Levels must be tracked, monitored and reported on by the Service Provider to South Gippsland Water by the measurement periods and categories set out in **Schedule 3**.
- (c) The parties acknowledge and agree that the purpose of the Service Levels is to ensure a minimum level of performance by the Service Provider, with the aim of continuous improvement in meeting the identified Service Levels (including measurable improvements in value, efficiency and productivity year on year), thereby increasing the benefits to the State or both parties during the Term.
- (d) South Gippsland Water may from time to time and in its discretion, amend, add to or delete any of the measures and tolerances in the Service Levels by giving the Service Provider not less than 30 days prior written notice of such amendment, addition or deletion.

- (e) If South Gippsland Water makes any amendment, addition or deletion to the measures and tolerances in the Service Levels in accordance with **clause 9.3(d)**, the Service Provider or South Gippsland Water may request a review of the Rates or Fees applicable to the provision of the relevant Services. The review will be negotiated between South Gippsland Water and the Service Provider in good faith. Following the review, the Rates or Fees applicable to the provision of the Services will, in the case of an increase, only be increased to the extent that the Service Provider demonstrates, to the reasonable satisfaction of South Gippsland Water (having regard to the then applicable Rates and Fees), that the amendment, addition or deletion to the Service Levels results directly in an increase in the cost to the Service Provider of providing the Services.

9.4 Progress report

The Service Provider must provide to the Contract Responsible Manager:

- (a) a progress report in respect of the Service Provider's performance under this Agreement, such report to be provided at the times, in the format and containing the matters specified in **Item 6 of Schedule 1**; and
- (b) all other data or information that South Gippsland Water or the Contract Responsible Manager may request to enable it to adequately assess the performance of the Service Provider.

In addition to the obligations contained in paragraphs (a) and (b) above, the Service Provider must, if so requested by South Gippsland Water or the Contract Responsible Manager, ensure that its Relationship Manager attends all relevant government forums.

9.5 "Value adding" initiatives

- (a) The parties agree that they will, to the extent that it is commercially feasible to do so, work together during the Term to identify new measures or initiatives for mutual value enhancement in connection with the provision of the Services under this Agreement, including through the:

- (i) identification of efficiencies in the provision of the Services;
- (ii) implementation of any applicable technological improvements; and
- (iii) utilisation of any applicable industry-wide productivity gains,

with a view to achieving year on year improvements in value for both parties.

- (b) Without limitation to the obligations of the parties under **clause 9.5(a)** if, at any time during the Term, the Rates and Fees:

- (i) are not commercially competitive (in the manner required under **clause 11.1**); or
- (ii) are not as favourable as those offered to other purchasers of services that are equivalent or similar to the Services (as required under **clause 11.2**),

then the Service Provider must promptly notify South Gippsland Water of that fact, detailing the reasons why that is the case. Promptly following such notification, the parties will meet to discuss those matters, with a view to identifying what (if any) steps the parties could take to ensure that the Rates and Fees applicable to the provision of the Services are commercially competitive in the manner required under **clause 11.1** or are no less favourable than those offered to other purchasers of services that are equivalent or similar to the Services (as required under **clause 11.2**).

- (c) Any value adding measures or initiatives identified by the parties will be discussed and, if deemed appropriate, implemented by the parties as soon as practicable.

9.6 Contract management review

The Contract Responsible Manager and the Relationship Manager must meet at the time and in the manner specified in **Item 7 of Schedule 1** to discuss contract management issues and to review the Service Provider's performance under this Agreement, including:

- (a) a review of the Service Provider's compliance with the Service Levels; and
- (b) an examination of the value adding measures or initiatives proposed or implemented by the parties pursuant to **clause 9.5**.

10 Price review

- (a) If the Service Provider wishes to propose any change in the Rates or Fees at which the Services are provided (other than as a result of the application of a price review mechanism pursuant to **clause 10(c)**), the Service Provider must, no later than three months prior to the next anniversary of the Commencement Date, provide to the Contract Responsible Manager a detailed report substantiating any such proposed change.
- (b) South Gippsland Water and the Service Provider will discuss in good faith any changes to the Rates or Fees proposed in accordance with **clause 10(a)**, however South Gippsland Water will be under no obligation to agree to any such proposed change. If the parties do agree to a change in the Rates or Fees at which the Services are provided, such agreement must be in writing, and will take effect from the next anniversary of the Commencement Date.
- (c) In addition to the price review permitted under **clauses 10(a)** and **(b)**, the parties will adopt the price review mechanism (if any) set out in **Item 3 of Schedule 1**. Any revised Rates or Fees agreed by the parties (which agreement must be in writing to be effective) will take effect from the Review Dates set out in **Item 3 of Schedule 1**.

11 Competitive pricing

11.1 Competitive pricing principles

South Gippsland Water and the Service Provider agree that it is their common intention that the Rates and Fees will be (and will remain, for the term of the Agreement) commercially competitive in terms of:

- (a) the prices offered by the Service Provider to other customers whose orders for services are comparable to the orders for Services placed by the Budget Sector Agencies under this Agreement; and
- (b) prices, and terms and conditions, offered by other service providers in the market for services which are the same as or equivalent to the Services.

11.2 Most favoured pricing

The Service Provider must ensure at all times during the Term that:

- (a) the Rates and Fees are no less favourable than any rates and fees at which the Service Provider provides or offers to provide services that are equivalent or similar to the Services to any other customer of the Service Provider whose orders of services are of a comparable volume to those placed by the Budget Sector Agencies under this Agreement; and
- (b) the Rates and Fees at which the Services are offered to one Purchaser must be the same as that at which the Services are offered to each other Purchaser.

12 Access to records

12.1 Service Provider to retain records

The Service Provider must, for a period of seven years after the Expiry Date (or, if the Agreement is extended in accordance with **clause 2.2**, seven years after the date on which such extension of the term concludes) keep true and particular accounts and records of:

- (a) all Services supplied under this Agreement and any Purchase Order Contract; and
- (b) all associated records including:
 - (i) records of purchase of Services by the Service Provider; and
 - (ii) all supporting materials used to generate and substantiate invoices submitted in respect of Services supplied under this Agreement.

12.2 Right to access and audit

- (a) South Gippsland Water or its duly authorised representatives will have the right, after giving reasonable notice at any time during business hours, to inspect and/or audit the accounts and records of the Service Provider relating to the provision of Services, and of all other matters relevant to the calculation of the Rates and/or Fees. Such representatives will be entitled (at the expense of South Gippsland Water) to take copies of or extracts from any such records.
- (b) The right of access and audit granted under to **clause 12.2(a)** may be exercised by South Gippsland Water at any time during the Term or in the seven year period following the expiry of the Term.
- (c) For the avoidance of doubt, South Gippsland Water will be solely responsible for the costs of conducting any audit under **clause 12.2(a)**.

13 Intellectual Property Rights

13.1 Warranty and indemnity by Service Provider

- (a) The Service Provider warrants to South Gippsland Water that it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the provision of the Services under this Agreement.
- (b) The Service Provider indemnifies and will at all times keep South Gippsland Water indemnified against any loss, damage, claim, action or expense (including legal expense) arising out of or otherwise in connection with any breach or alleged breach by the Service Provider of the Intellectual Property Rights of any third person, relating to the provision of the Services under this Agreement or relating to South Gippsland Water's use of the Services.

13.2 Ownership of Contract Intellectual Property

- (a) Subject to **clause 13.3**, as between the parties, all Contract Intellectual Property vests in and is the property of the relevant Purchaser from the time of its creation.
- (b) Subject to **clause 13.3**, the Service Provider hereby irrevocably and unconditionally assigns to South Gippsland Water, free of additional charge, all of its right, title and interest in and to the Contract Intellectual Property, and the Service Provider must sign all documents and do all things reasonably required to ensure that such assignment is effected.
- (c) The Service Provider must procure from all of its employees, agents, contractors and other third parties who are authors or makers of any Contract Intellectual Property (and must procure that any contract with any third party for the creation of any Contract Intellectual Property includes a provision that requires such person to obtain from its employees, agents and contractors) a written

assignment of all Intellectual Property Rights of the employee, agent, contractor or third party in the Contract Intellectual Property as necessary to give effect to **clauses 13.2(a) and (b)** and a written consent from all individuals involved in the creation of any Contract Intellectual Property irrevocably consenting to South Gippsland Water exercising its rights in the Contract Intellectual Property in a manner that, but for the consent, would otherwise infringe the moral rights of those individuals.

13.3 Ownership of Pre-Existing Intellectual Property

All Pre-Existing Intellectual Property used by the Service Provider in connection with the provision of Services under this Agreement or the creation of Contract Intellectual Property remains the property of the Service Provider or its licensors.

13.4 Licence of Pre-Existing Intellectual Property

- (a) Subject to **clause 13.4(b)**, the Service Provider hereby irrevocably and unconditionally grants to South Gippsland Water, free of additional charge, a non-exclusive, worldwide licence to use any Pre-Existing Intellectual Property to the extent that such Pre-Existing Intellectual Property forms part of or is integral to, any works or other items created by the Service Provider for such Purchaser in connection with the provision of Services under this Agreement or the creation of Contract Intellectual Property.
- (b) The licence granted in **clause 13.4(a)** is limited to use of the relevant Pre-Existing Intellectual Property by South Gippsland Water for the purposes of South Gippsland Water and for no other purpose.

14 Failure to perform

- (a) Without limiting any other clause of this Agreement, or any other remedy South Gippsland Water may have, if the Service Provider fails to provide or perform any of the Services in accordance with the requirements of a Purchase Order Contract and the applicable Service Levels, the relevant Purchaser will not be required to pay for those Services and may, by notice in writing to the Service Provider, require the Service Provider to:
 - (i) remedy any default (if the default is capable of being remedied) at the Service Provider's own expense; or
 - (ii) re-perform the Services (if the Services are capable of being re-performed by the Service Provider),within the time specified in the notice (which must be reasonable having regard to the nature of the Services).
- (b) If the remedied or re-performed Services are remedied or re-performed in accordance with the applicable Service Levels and otherwise to the satisfaction of South Gippsland Water, then South Gippsland Water will pay the applicable Rates or Fees for those remedied or re-performed Services (which the parties acknowledge may be less than the cost to the Service Provider of remedying or re-performing the Services).
- (c) If the default referred to in **clause 14(a)** is not capable of being remedied or the Services are not capable of being re-performed, or the Service Provider fails within the time specified to remedy the default or re-perform the Services, South Gippsland Water may either:
 - (i) remedy that default or re-perform the Services itself; or
 - (ii) have the Services remedied or re-performed by a third party,and in either case, the Service Provider must pay the reasonable costs incurred by South Gippsland Water in doing so.

15 Liability

- (a) The Service Provider must indemnify South Gippsland Water and South Gippsland Water and each of their respective officers, employees and agents (**Indemnified Party**) against any loss, damage, claim, action or expense (including legal expense) which any Indemnified Party suffers as a direct or indirect result of any of the following:
- (i) a breach of this Agreement by the Service Provider, including any failure to provide the Services in accordance with this Agreement or any Purchase Order Contract;
 - (ii) any warranty given by the Service Provider under this Agreement being incorrect or misleading in any way; or
 - (iii) any negligent act or failure to act by the Service Provider or any of the Service Provider's employees, agents, officers or sub-contractors,
- except to the extent that any such loss, damage, claim, action or expense is caused by the negligence or other wrongful act or omission of South Gippsland Water, its employees or agents.
- (b) If any indemnity payment is made by the Service Provider under this **clause 15**, the Service Provider must also pay to the Indemnified Party an additional amount equal to any tax which is payable by the Indemnified Party in respect of that indemnity payment.
- (c) If the Service Provider fails to meet any date for delivery of the Services as specified in a Purchase Order Contract, the Service Provider must pay to South Gippsland Water any liquidated damages in accordance with the Purchase Order Contract.

16 Warranties

The Service Provider warrants to South Gippsland Water that:

- (a) the provision of the Services will be carried out with all due care and skill and in accordance with all applicable standards, principles and practices;
- (b) the Service Provider has the accreditation or membership of professional or other bodies in relation to the provision of the Services as set out in the Tender Documentation for the provision of the Services and that it will use its best endeavours to maintain such accreditation or membership during the Term;
- (c) it and its employees, agents and contractors are appropriately qualified and have the requisite knowledge, skill and expertise to provide the Services in accordance with the Service Levels;
- (d) whilst on premises owned or controlled by South Gippsland Water, the Service Provider and its employees, agents and contractors will at all times comply with South Gippsland Water's lawful directions and policies of which the Service Provider is notified or is otherwise aware, including any applicable occupational health and safety and security policies;
- (e) where South Gippsland Water has, either expressly or by implication, made known to the Service Provider any particular purpose for which the Services are required, the Services will be performed in such a way as to achieve that result;
- (f) the provision of the Services will not infringe any right of any third party (including, without limitation, any intellectual property right) or any Laws;
- (g) all representations made by the Service Provider in or in connection with the Tender Documentation were and remain accurate and the Service Provider has and will maintain during the Term the quality assurance arrangements set out in the Specifications; and

- (h) the Information contained in the Tender Documentation as to the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Service Provider, its employees and contractors is correct.

17 Conflict of interest

- (a) The Service Provider warrants to South Gippsland Water that it does not, and will ensure that its employees, agents and contractors do not, hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with or might appear to be created in conflict with their duties and interest under this Agreement.
- (b) The Service Provider must promptly inform South Gippsland Water of any matter which may give rise to an actual or potential conflict of interest at any time during the Term.
- (c) The Service Provider acknowledges and agrees that failure to comply with this **clause 17** will constitute a breach of a fundamental term of this Agreement.

18 Change in Control

- (a) The Service Provider must notify South Gippsland Water in writing of any proposed or impending change in Control of the Service Provider (or of the ultimate holding company of the Service Provider) of which it becomes aware and obtain South Gippsland Water's prior written consent to such change in Control.
- (b) In determining whether or not to provide its consent to a change in Control, South Gippsland Water may consider such information as it considers relevant or necessary, including:
 - (i) compliance by the proposed owner with Governmental policies including in relation to ethical employment standards;
 - (ii) insurance coverage maintained by the proposed owner;
 - (iii) the financial viability of the proposed owner; and
 - (iv) the likely ability of the proposed owner to satisfy the requirements set out in the Tender Documentation, and the obligations of the Service Provider under the Agreement.
- (c) If South Gippsland Water notifies the Service Provider that it does not consent to the proposed or impending change in Control, and the change in Control occurs notwithstanding, South Gippsland Water may, by notice in writing to the Service Provider, terminate this Agreement and any outstanding Purchase Order Contracts, such termination to take effect at any nominated time within the immediately succeeding 12 months.

19 Termination

19.1 Grounds for termination by South Gippsland Water

South Gippsland Water may terminate this Agreement and any or all Purchase Order Contracts by notice in writing to the Service Provider (such termination to take effect at any nominated time within the immediately succeeding 12 months) if:

- (a) the Service Provider consistently fails to provide the Services in accordance with the Service Levels or otherwise in accordance with the requirements of this Agreement;

- (b) the Service Provider fails to remedy, to the satisfaction of South Gippsland Water, any breach of this Agreement (which in the reasonable opinion of South Gippsland Water is able to be remedied) within 14 days after the date on which South Gippsland Water issues the Service Provider a written notice requiring the Service Provider to remedy the breach;
- (c) the Service Provider breaches any material provision of this Agreement and in the reasonable opinion of South Gippsland Water such breach cannot be remedied;
- (d) the Service Provider or any of its employees, agents or sub-contractors are guilty of fraud, dishonesty or any other serious misconduct;
- (e) during the Term there is a change in governmental policy that affects South Gippsland Water's ability to perform its obligations under this Agreement or which, in the reasonable opinion of South Gippsland Water, has the effect of making the provision of Services under this Agreement unviable, inappropriate or otherwise unsuitable;
- (f) the Service Provider commits any act or does any thing that is contrary to prevailing community standards, or is otherwise regarded by the public as unacceptable or which brings the reputation of the Service Provider into disrepute and as a consequence South Gippsland Water believes that its continued association with the Service Provider will be prejudicial or otherwise detrimental to the reputation of the State; or
- (g) if the Service Provider:
 - (i) being a partnership, company or other composite body undergoes a change in its structure which, in the reasonable opinion of South Gippsland Water, limits the capacity of the Service Provider to provide the Services or otherwise preclude or adversely affect the Service Provider's ability to carry out its obligations and duties under this Agreement or under a Purchase Order Contract; or
 - (ii) goes into liquidation or a receiver and manager or mortgagee's or chargee's agent is appointed or becomes subject to any form of insolvency administration or arrangement, or in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors.

19.2 Termination of Purchase Order Contract without cause

- (a) A Purchaser may terminate a Purchase Order Contract without cause by giving the Service Provider not less than 14 days notice in writing.
- (b) For the avoidance of doubt, where a Purchase Order Contract is terminated by South Gippsland Water pursuant to **clause 19.2(a)**, South Gippsland Water will pay to the Service Provider all amounts owing in respect of Services undertaken, and work in progress as at the date of termination, provided that such Services or work in progress have, in the reasonable opinion of South Gippsland Water, been performed in accordance with the Service Levels and the requirements of the relevant Purchase Order Contract.

19.3 Grounds for termination by the Service Provider

The Service Provider may immediately terminate any Purchase Order Contract by notice in writing to the relevant Purchaser (with a copy to the Contract Responsible Manager) if:

- (a) South Gippsland Water fails to remedy, to the satisfaction of the Service Provider, any breach of this Agreement (which in the reasonable opinion of the Service Provider is able to be remedied) within 14 days after the date on which the Service Provider issues that Purchaser a written notice requiring South Gippsland Water to remedy the breach; or
- (b) South Gippsland Water breaches any material provision of this Agreement and in the reasonable opinion of the Service Provider such breach cannot be remedied.

19.4 Consequences of termination or expiry

- (a) Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry (as the case may be).
- (b) Termination or expiry of a Purchase Order Contract will not prejudice any right of action or remedy which may have accrued to either party to it prior to termination or expiry (as the case may be).
- (c) Upon termination or expiry of this Agreement, South Gippsland Water must pay to the Service Provider all amounts owing in respect of Purchase Order Contracts that have been completed but not billed as at the date of termination or expiry (provided that such Services have been supplied in accordance with the Specifications, any applicable performance standards and otherwise in accordance with the terms of this Agreement and the relevant Purchase Order Contract).
- (d) If this Agreement is terminated by South Gippsland Water pursuant to **clause 19.1(e)**, South Gippsland Water will pay to the Service Provider, in addition to any amounts payable pursuant to **clause 19.4(c)**, an amount referable to the reasonable cost to the Service Provider of implementing any systems required to perform its obligations under this Agreement (which systems the Service Provider will not be able to otherwise make use of in the conduct of its ordinary business), as demonstrated by the Service Provider to the reasonable satisfaction of South Gippsland Water. The Service Provider acknowledges and agrees that:
 - (i) any amount paid by South Gippsland Water pursuant to this **clause 19.4(c)** will be finally determined by South Gippsland Water (acting reasonably); and
 - (ii) in no event will South Gippsland Water or any Purchaser be liable to the Service Provider in respect of any indirect or consequential costs, including any loss of profit or loss of opportunity.

19.5 Transitional assistance

The Service Provider acknowledges and agrees that on termination or expiry of this Agreement the Service Provider will provide all such transitional assistance as may be reasonably necessary or requested by South Gippsland Water to facilitate the smooth transition of any relevant information, knowledge, systems or assets from the Service Provider to South Gippsland Water (or to a third party nominated by South Gippsland Water) to enable South Gippsland Water to continue to obtain the benefit of such information, knowledge, systems or assets for the business purposes of South Gippsland Water, following the termination or expiry of this Agreement. South Gippsland Water will pay fair compensation to the Service Provider in respect of any physical assets which have not been fully amortised by the Service Provider and which are required to be provided to South Gippsland Water under this **clause 19.5**.

19.6 Survival

Clauses 12, 13, 15, 16, 19.4, 22 and 23 of this Agreement survive the termination or expiry of this Agreement and may be enforced at any time.

20 Insurance

20.1 Service Provider to maintain insurance

- (a) The Service Provider must (and must ensure that any sub-contractors appointed by it under **clause 25**) obtain and maintain for the Term the insurances specified in **Item 8 of Schedule 1**.
- (b) The Service Provider must provide South Gippsland Water with evidence of the currency of any insurance it is required to obtain on or prior to submitting its first invoice under this Agreement, and otherwise on request by South Gippsland Water at any time during the Term.

- (c) Where any insurance the Service Provider is required to obtain and maintain expires during the Term (**Initial Insurance**), the Service Provider must provide South Gippsland Water with evidence of the currency of relevant replacement insurance prior to the expiration of the Initial Insurance.
- (d) Any insurance obtained pursuant to **clause 20.1(a)** or **(c)** must be:
 - (i) taken out with an insurer acceptable to South Gippsland Water; and
 - (ii) on terms (including any excess) which are acceptable to South Gippsland Water.

20.2 Cross liability

In addition to the requirements of **clause 20.1(d)**, any insurance that the Service Provider is required to obtain and maintain under this Agreement must:

- (a) be in the joint names of the Service Provider and South Gippsland Water (for and on behalf of itself and South Gippsland Water); and
- (b) include a cross liability clause under which the insurer agrees to waive all rights of subrogation or action against any of the persons named in the relevant insurance policy as the “insured” and for the purpose of which the insurer accepts the term “insured” as applying to each of the persons so named as if a separate policy of insurance had been issued to each of them.

21 Accident compensation

The Service Provider must ensure that, in respect of its employees and contractors and any other persons engaged by the Service Provider to provide the Services, it:

- (a) complies with the provisions of the *Accident Compensation Act 1985 (Vic)*;
- (b) insures against its liability to pay compensation whether under legislation or otherwise; and
- (c) produces to South Gippsland Water on request any certificates or like documentation required by the *Accident Compensation Act 1985 (Vic)*.

22 Confidentiality and privacy

22.1 Use of Confidential Information

- (a) The Service Provider will (and will ensure that its employees, agents and advisers will):
 - (i) use and reproduce Confidential Information only to perform its obligations under this Agreement; and
 - (ii) not disclose or otherwise make available Confidential Information other than to personnel who have a need to know the information to enable the Service Provider to perform its obligations under this Agreement.
- (b) All Confidential Information will remain the property of South Gippsland Water or the relevant Purchaser and all copies or other records containing the Confidential Information (or any part of it) must be returned by the Service Provider to South Gippsland Water or the relevant Purchaser on termination or expiry of this Agreement.
- (c) The Service Provider acknowledges that South Gippsland Water or other Purchaser (as the case may be) will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Service Provider of this **clause 22** and without the need on the part of South Gippsland Water or the relevant Purchaser to prove any special damage.

22.2 Disclosure of Service Provider's information

- (a) Subject to **clause 22.2(b)**, South Gippsland Water agrees to treat as confidential all information of or relating to the Service Provider that is provided to it, whether under this Agreement or the Tender Documentation, by or on behalf of the Service Provider.
- (b) The Service Provider hereby acknowledges and/or consents to:
 - (i) South Gippsland Water (or such other Governmental Agency as may, from time to time, be responsible for doing so) publishing, whether on the internet or otherwise, all such information as is necessary to comply with the requirements of the Contracts Publishing System;
 - (ii) South Gippsland Water making available to the Victorian Auditor-General all information that is requested by the Auditor-General; and
 - (iii) South Gippsland Water making available all information in relation to the Service Provider or this Agreement as may be required to comply with its obligations under the *Freedom of Information Act 1982 (Vic)*.

22.3 Privacy

The Service Provider acknowledges that it will be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done or practice engaged in by the Service Provider under or in connection with this Agreement or any Purchase Order Contract in the same way and to the same extent as the State or South Gippsland Water would have been bound had it been directly done or engaged in by the State or South Gippsland Water.

23 Disputes

23.1 Parties to meet

If any dispute arises under or in connection with this Agreement or any Purchase Order Contract (**Dispute**) which Dispute is not able to be resolved by the Contract Responsible Manager and the Relationship Manager appointed by each of the parties within 14 days, the nominated senior executive officer (or equivalent) of each of South Gippsland Water (on the one hand) and the Service Provider (on the other hand) will promptly meet and discuss in good faith with a view to resolving such Dispute.

23.2 Mediation

- (a) If any Dispute is unable to be resolved in accordance with **clause 23.1** within 14 days, the parties agree to endeavour in good faith to settle the Dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**) before having recourse to arbitration or litigation.
- (b) The mediation will be conducted in accordance with the mediation guidelines of ACDC (**Guidelines**) which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and the terms of those Guidelines are incorporated in this Agreement.

23.3 Arbitration or litigation

- (a) If the parties fail to settle any Dispute in accordance with **clause 23.2**, the parties may agree to submit the Dispute for resolution to final and binding arbitration under the Rules of Arbitration of the Institute of Arbitrators and Mediators Australia by one or more arbitrators appointed in accordance with those rules.
- (b) If the parties do not agree to refer the Dispute to arbitration in accordance with **clause 23.3(a)**, either party may submit the Dispute for resolution to the exclusive jurisdiction of the Courts of Victoria, Australia.

23.4 Performance during Dispute resolution

The parties to a Dispute will continue to perform their respective obligations under this Agreement, and under any Purchase Order Contract, pending the resolution of a Dispute under this **clause 23**.

23.5 Interlocutory relief

Nothing in this **clause 23** is to be taken as preventing any party to a Dispute from seeking interlocutory relief in respect of such dispute.

24 Compliance with Law

The Service Provider must, in performing its obligations under this Agreement and under any Purchase Order Contract, comply with all Laws affecting or applicable to the provision of Services by the Service Provider. Without limitation to the foregoing, the Service Provider must comply with the provisions set out in **Schedule 4**.

25 Sub-contracting

- (a) Except as expressly provided in this Agreement, the Service Provider must not sub-contract to any third person any of its obligations under this Agreement or a Purchase Order Contract without the prior written consent of South Gippsland Water, which consent may be given or withheld by South Gippsland Water in its absolute discretion.
- (b) The Service Provider must ensure that any person engaged by it complies with all obligations imposed on the Service Provider by this Agreement. The Service Provider will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Agreement or a Purchase Order Contract and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Service Provider itself.

26 Access and safety

26.1 Access to premises

If the Service Provider requires access to the premises of South Gippsland Water in connection with the provision of the Services, that Purchaser will, subject to its usual security requirements, permit the Service Provider reasonable access to the premises at such times as may be reasonably necessary to enable the Service Provider to provide the Services.

26.2 Obligations

When the Service Provider enters the premises of South Gippsland Water, the Service Provider must and must ensure that its employees, agents and contractors use all reasonable endeavours to:

- (a) protect people and property;
- (b) prevent nuisance and unnecessary noise and disturbance; and
- (c) act in a safe and lawful manner and comply with the safety standards and policies of South Gippsland Water (as notified to the Service Provider).

26.3 No occupier's liability

- (a) South Gippsland Water and its officers, employees, agents and invitees will not be responsible for any damage done to the Service Provider's property or to that of any of the Service Provider's officers, employees, agents or sub-contractors or for any personal injury sustained by any of the

Service Provider's employees, agents or sub-contractors occurring on South Gippsland Water's premises as a result of:

- (i) the negligence or recklessness of such employee, agent or sub-contractors; or
 - (ii) if such employee, agent or sub-contractor has failed to comply with the occupational health and safety and security policies of South Gippsland Water (as notified to the Service Provider).
- (b) The Service Provider unconditionally and irrevocably releases South Gippsland Water and its employees, agents and invitees from all such responsibility and agrees to indemnify South Gippsland Water, its officers, employees, agents and invitees (**Indemnified Party**) against any loss that the Indemnified Party may suffer as a result of any third party bringing an action against that Indemnified Party in relation to any such circumstances, except to the extent that such circumstances were caused directly as a result of the Indemnified Party's negligence.

27 GST

27.1 Definitions

Terms used in this clause have the same meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

27.2 Consideration is exclusive of GST

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

27.3 Recipient to pay an additional amount

If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this Agreement.

27.4 Reimbursement

If this Agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (reimbursable expense) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense plus any GST payable by the other party.

28 Staff Costs

- (a) The Service Provider will indemnify and keep indemnified South Gippsland Water from and against all liability for the Staff Costs in any way relating to the Services.
- (b) If South Gippsland Water is or becomes liable to pay any Staff Costs, that Purchaser may deduct the amount of its liability for the Staff Costs from any amount due by South Gippsland Water to the Service Provider, whether under this Agreement or otherwise.

29 Notices

29.1 Giving a communication

A Purchase Order, notice, demand, certification, process or other communication relating to this Agreement must be in writing in the English language, and may (in addition to any other method permitted by law) be sent by pre-paid post, pre-paid courier or by electronic mail as follows:

- (a) to South Gippsland Water: at the address which is set out in **Item 9 of Schedule 1** (or, where the notice or document is in relation to a Purchase Order Contract, to the address nominated in the relevant Purchase Order);
- (b) to South Gippsland Water: at the address which is nominated in a Purchaser Order; and
- (c) to the Service Provider: at the address which is set out in **Item 9 of Schedule 1**.

29.2 Time of delivery

A notice or document shall be taken to be delivered or served as follows:

- (a) in the case of delivery in person or by courier, when delivered;
- (b) in the case of delivery by post, two Business Days after the date of posting;
- (c) in the case of facsimile transmission, on receipt by the sender of a transmission report from the despatching machine showing: the date of transmission, the relevant number of pages, the correct telephone number of the destination facsimile machine and the result of the transmission as satisfactory; and
- (d) in the case of electronic mail, if the receiving party has agreed to receipt in that form under the Agreement or a Purchase Order Contract, and the message is correctly addressed to and successfully transmitted to that party's electronic mail address (e-mail address), when acknowledgment of receipt is recorded on the sender's computer.

29.3 After hours communications

If any notice or document is delivered or deemed to be delivered:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken as having been delivered at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

30 General

30.1 Legal costs

Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

30.2 Amendment

- (a) This Agreement may only be varied or replaced by a document executed by South Gippsland Water and the Service Provider.
- (b) A Purchase Order Contract may only be varied or replaced by a document executed by the relevant Purchaser and the Service Provider.

30.3 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right by the first party.

30.4 Severability

Any provision of this Agreement or a Purchase Order Contract which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision shall, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

30.5 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

30.6 Set off

A Purchaser may set off against any sum owing to the Service Provider under this Agreement or any Purchase Order Contract any amount then owing by the Service Provider to that Purchaser.

30.7 Governing law and jurisdiction

- (a) This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria.
- (b) Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

30.8 Assignment of rights

- (a) A party may assign any right under this Agreement with the prior written consent of the other party.
- (b) The Service Provider will not, as a result of any assignment pursuant to **clause 30.8(a)**, be relieved from the performance of any obligation under this Agreement, and will be responsible for acts and omissions of any assignee.
- (c) South Gippsland Water and any other Purchaser may, by notice in writing to the Service Provider, assign its rights to any other State government department, administrative office or other entity (including any Budget Sector Agency, Government Owned Entity or Government Supported Organisation) in the event of any State government restructure or other re-organisation.

30.9 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

30.10 Entire understanding

- (a) This Agreement, together with:
 - (i) the Tender Documentation; and
 - (ii) any other documents or representations specified in **Item 10 of Schedule 1**,contains the entire understanding between the parties as to the subject matter of this Agreement.

- (b) Each Purchase Order Contract formed pursuant to this Agreement contains the entire understanding between the parties as to the subject matter of that Purchase Order Contract.
- (c) Except as otherwise provided in **clause 30.10(a) or (b)** (as the case requires):
 - (i) all previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement or Purchase Order Contract (as the case requires) are merged in and superseded by this Agreement or Purchase Order Contract (as the case requires) and are of no effect; and
 - (ii) no oral explanation or information provided by any party to another:
 - (A) affects the meaning or interpretation of this Agreement or Purchase Order Contract (as the case requires); or
 - (B) constitutes any collateral agreement, warranty or understanding between any of the parties.

30.11 Relationship of parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

Schedule 1 - Contract Variables

Item 1: Term (Clause 2)

Commencement Date: 1st May, 2016

Expiry Date: 30th April, 2019

Further term(s): Two options of (3) years can be exercised, subject to satisfactory review of the contractor's performance by South Gippsland Water at the end of the first term.

Item 2: Contract Manager and Relationship Manager (Clause 9.1)

South Gippsland Water Contract Manager

Name: Kerry Mooney

Title: Customer Service Team Leader

Telephone: 03 5682 0444

Email: kmooney@sgwater.com.au

Service Provider's Relationship Manager

Name:

Title:

Telephone:

Mobile:

Email:

Item 3: Price review (Clause 10)

Review Mechanism:

Each of the rates and prices in the Schedule of Rates for the second and any subsequent years of the Term will be determined in accordance with the Australian Bureau of Statistics; 6401.0 - Consumer Price Index, Australia, All Groups Percentage Change for MELBOURNE (from the corresponding quarter of the previous year) – the quarter ending immediately prior to the Contract Date (the anniversary date) for the first and subsequent rate reviews

If there is any suspension or discontinuance in the publication of the Consumer Price Index, then until publication of the Consumer Price Index is resumed, some other index reflecting fluctuations in the cost of living in the relevant location (Melbourne);

- (i) Upon which the parties agree, or
- (ii) If the Contract Responsible Manager and the Service Provider agree from time to time that an alternative formula or mechanism more accurately reflects the effect of rise and fall on the cost of the relevant Services (including to take into account any increases in wages under any Certified Agreement under the *Fair Work Act*)

2009 which the Contract Responsible Manager determines is applicable to the Services), that mechanism or formula.

The Service Provider is required to submit the revised rates one month prior to the lapse of each 12-month period.

South Gippsland Water will not consider submissions for rate reviews received after the due date. In such cases rates will remain as is for the following (12) months until the next rate review is due.

Review Dates:

Revised pricing when approved takes effect from the anniversary date of the commencement of the contract.

Anniversary Date: For the purpose of assessing rate reviews, the anniversary date will be the 1st day of July in each subsequent annual contract term.

Each of the rates and prices in the Schedule of Rates for the second and any subsequent years of the Term will be determined by the Contract Administrator in accordance with the following formula:

$$F2 = F1 \times (C2 / C1)$$

Where:

F2 = the Rate for the applicable year of the term;

F1 = the Rate for the first year of the Term (as stated in the Contract Particulars) for the first rate review and thereafter the rate for the previous twelve (12) month period of the Contract Term; and

C1 = the Consumer Price Index Number for the quarter ending immediately prior to the Contract Date (anniversary date) for the first rate review and thereafter the Index Number for the quarter ending immediately prior to each anniversary date of the Contract Term; and

C2 = the Consumer Price Index number of the quarter ending immediately prior to the applicable year of the Term.

Item 4: Invoicing (Clause 8)

Invoice requirements:

Invoices must contain the information necessary to be a tax invoice for the purposes of the *A New Tax System (Services and Services Tax) Act 1999 (Cth)* in addition to the following:

Invoices shall be received by South Gippsland Water no later than the third (3rd) working day of the end of the prior month, and shall itemise all services claimed to be undertaken (and the respective fees due for provision of those services) for that month.

Each invoice shall include the following specific information as a minimum:

- Contract Number
- Invoice Number
- The words "Tax Invoice" and the amount of applicable GST
- Service provider's nominated Representative
- Total agreed monthly amount exclusive of GST
- Itemised services undertaken during the period and the respective fees due for provision of those services (this may include the main activities undertaken and the percentage complete for each of these activities).

Payment of the invoice (subject to approval) shall be made within thirty (30) days of receipt of the invoice, provided the invoice is received within the specified period.

Address for invoice:

All invoices must be sent to Accounts Payable with an electronic email addressed as follows:

South Gippsland Water
PO Box 102
FOSTER VIC 3960
accounts@sgwater.com.au;

Item 5: Payment (Clause 8)

Payment for Services will be made via electronic transfer of funds.

Item 6: Progress report (Clause 9.4)

The Contractor may be required to provide regular and ad hoc reports about the status of South Gippsland Water's accounts. The content of these may include a summary of the works completed in a specific time period and the hours worked on individual jobs.

Item 7: Contract management review (Clause 9.6)

Contract management review meetings will occur quarterly or at alternative times agreed by both parties

Item 8: Insurance (Clause 20.1)

Tick one or more of the boxes below to specify the types and amount of insurance that the Service Provider is required to obtain and maintain during the Term:

	Type of coverage	Amount (AUD)
<input checked="" type="checkbox"/>	Public liability insurance	10,000,000
<input checked="" type="checkbox"/>	Workers compensation insurance	
<input type="checkbox"/>	Other (please specify)	<i>[Insert]</i>

Please specify below details of any conditions attaching to such insurance coverage (eg run-off insurance, etc)

.....
.....

Item 9: Notice particulars (Clause 29)

South Gippsland Water
PO Box 102
FOSTER VIC 3960

Service Provider

Address:

Fax:

Email:

Addressee:

Item 10: Documentation (Clause 30.10)

Insert details of any additional documentation (other than the Tender Documentation) that forms part of this Agreement:

Item 11: Service Provider's staff (Clause 5)

Insert details of Service Provider's employees or contractors who will be engaged in the provision of the Services:

Schedule 2 - Services and Price Schedule

[Insert details of the Services, the Price Schedule and details regarding liability for expenses and disbursements incurred by the Service Provider.]

Schedule 3 - Service Levels

In providing the Services and otherwise performing its obligations under the Agreement, the Service Provider must comply with the following Service Levels:

[to be inserted, together with applicable measurement periods and categories (including performance scorecard measures, customer satisfaction surveys, etc)]

Schedule 4 - Compliance with Law

In performing its obligations under this Agreement, the Service Provider must comply with the following (without limiting any of its other obligations under this Agreement):

1 Employment policy

The Service Provider shall not be in breach of the *Equal Opportunity for Women in the Workplace Act 1999* (Cth), the *Equal Opportunity Act 1995* (Vic) or the *Disability Discrimination Act 1992* (Cth) during the Term.

The Service Provider and any person engaged in the provision of the Services shall not:

engage in unethical work practices; or

engage employees or sub-contracted workers upon terms and conditions which do not meet industry standards generally applicable in Victoria.

Where a federal industrial award may apply to the capacity in which an employee is engaged by the Service Provider, or by a sub-contractor, in the provision of the Services, the rates of pay and conditions on which that employee is engaged shall be no less beneficial to the employee than the rates and conditions under that award.

2 Ethical Purchasing Policy

2.1 Without limiting or derogating from the Service Provider's obligation to comply with any Law, the Service Provider must satisfy the Ethical Employment Standard at all times during the Term.

2.2 South Gippsland Water may make an Adverse Assessment if, at any time during the term of the Agreement:

a court, tribunal, commission or board makes a finding of serious breach of an Applicable Industrial Instrument against the Service Provider or convicts the Service Provider of a serious offence under Applicable Legislation; or

a court, tribunal, commission or board makes a finding of a breach of an Applicable Industrial Instrument against the Service Provider or convicts the Service Provider of an offence under Applicable Legislation that is part of a pattern of repeated or ongoing breaches or offences; or

the Service Provider fails to meet its disclosure obligations under **paragraph 2.3**.

2.3 The Service Provider must, on request by South Gippsland Water and within the time period required by South Gippsland Water in writing (which must not be less than 30 days) provide an up-to-date Ethical Employment Statement setting out Full Details of:

any adverse finding against the Service Provider by a court, tribunal, commission or board in respect of a breach of an Applicable Industrial Instrument;

any conviction by a court, tribunal, commission or board of an offence committed by the Service Provider under Applicable Legislation; and

any proceeding or prosecution against the Service Provider in respect of a breach of an Applicable Industrial Instrument or an offence under Applicable Legislation instituted since the Commencement Date that has not previously been disclosed to South Gippsland Water.

The up-to-date Ethical Employment Statement may, at the option of the Service Provider, also include details of remedial measures implemented to ensure future compliance with Applicable Industrial Instruments and Legislation.

2.4 The parties acknowledge and agree that:

if this Agreement is terminated pursuant to **paragraph 2.9**, the Service Provider's name and details (including its Australian Business Number) will be included in the Ethical Employment Reference Register for a period of 24 months from the date that termination takes effect;

the Victorian Government departments will access the Ethical Employment Reference Register for the purpose of applying the Ethical Purchasing Policy; and

the inclusion of any details in the Ethical Employment Reference Register is one factor in the assessment process of whether a tenderer satisfies the Ethical Employment Standard, and will not automatically exclude the Service Provider from participation in future tender processes.

2.5 In connection with the requirements of the Ethical Purchasing Policy, the Service Provider will:

permit an accountant or auditor on behalf of South Gippsland Water from time to time during ordinary business hours and upon reasonable notice, to inspect and verify all records maintained by the Service Provider for the purposes of this Agreement; and

give such accountant or auditor all reasonable assistance to facilitate the conduct of such audit or inspection.

Any information provided, or to which an accountant or auditor has access under this clause, shall be treated as confidential information and shall not be used other than for the purposes of this Agreement or disclosed other than as required at law or to meet any requirements of the Parliament of Victoria.

2.6 The confidentiality obligations of the parties shall not extend to:

information already in the public domain other than due to a breach of this Agreement;

any disclosure required by Law;

any disclosure reasonably required in order to comply with a request for information made by the Auditor-General of Victoria; or

information reasonably required in order to publish appropriate and comprehensive performance data relating to the provision of the Services under this Agreement.

2.7 Notwithstanding any other obligation in this Agreement, the Service Provider acknowledges that South Gippsland Water (or such other Victorian Government department as may be charged with the responsibility of monitoring compliance with the Ethical Purchasing Policy from time to time) may publish (whether on the internet or otherwise) the name of the Service Provider and the value of the Services to be provided under this Agreement, together with the conditions of this Agreement generally.

2.8 If at any time during the term of the Agreement, South Gippsland Water notifies the Service Provider in writing that it has made an Adverse Assessment pursuant to **paragraph 2.2**, the Service Provider must, within 14 days of receipt of such notice, or such longer period agreed by South Gippsland Water, provide a statutory declaration from a director or company secretary of the Service Provider, setting out:

any additional information that in the opinion of the Service Provider is relevant to the Adverse Assessment, including the Service Provider's grounds for any objection to the Adverse Assessment;

details of any information on which the Adverse Assessment is based that in the opinion of the Service Provider is incorrect, incomplete or otherwise unfairly prejudicial to the Service Provider; and

any existing or planned remedial measures that the Service Provider has taken or will be taking to prevent a breach or offence similar to the breach or offence on which the Adverse Assessment is based from recurring.

2.9 Following receipt of the statutory declaration or expiration of the period described in **paragraph 2.8**, whichever comes first, South Gippsland Water may, in its discretion, do one or more of the following:

request the Service Provider show cause as to why this Agreement should not be suspended or terminated with effect from 14 days; and/or

suspend the operation of this Agreement for a specified period of up to six months with 14 days notice; and/or

terminate this Agreement with 14 days notice.

2.10 In exercising its discretion under **paragraph 2.9**, South Gippsland Water will take into consideration:

whether the Service Provider has taken or will take measures that, in the reasonable opinion of South Gippsland Water, are commensurate with the breach or the offence on which the Adverse Assessment is based and can be reasonably expected to prevent such breach or offence from recurring; or

whether South Gippsland Water is otherwise satisfied that the Service Provider has shown good cause why the Agreement should not be suspended or terminated.

2.11 The remedies under **paragraph 2.9** are in addition to and do not limit any other rights or remedies of South Gippsland Water under this Agreement or otherwise at Law.

2.12 In this **paragraph 2**:

Adverse Assessment means an assessment by South Gippsland Water pursuant to the Ethical Purchasing Policy that, in the opinion of South Gippsland Water, the Service Provider does not satisfy the Ethical Employment Standard.

Applicable Industrial Instruments means an Award or Enterprise Agreement that specifically applies to the employees of the Service Provider and is binding on the Service Provider.

Applicable Industrial Instruments and Legislation means all Applicable Industrial Instruments and all Applicable Legislation.

Applicable Legislation means:

Federal Awards (Uniform System) Act 2003 (Vic);

Outworkers (Improved Protection) Act 2003 (Vic);

Dangerous Goods Act 1985 (Vic);

Equipment (Public Safety) Act 1994 (Vic);

Occupational Health and Safety Act 2004 (Vic);

Workplace Relations Act 1996 (Cth);

Long Service Leave Act 1992 (Vic);

equivalent legislation in States and Territories other than Victoria; and

any other legislation designated by the Victorian Government as Applicable Legislation under the Ethical Purchasing Policy from time to time.

Award means any award of the Australian Industrial Relations Commission or any tribunal empowered to make industrial awards for Victorian employees or employees in any other State or Territory.

Enterprise Agreement means any certified Agreement of the Australian Industrial Relations Commission or State industrial department.

Ethical Employment Reference Register has the meaning given to that term in the Ethical Purchasing Policy.

Ethical Employment Standard means, in the context of this Agreement, the requirement for the Service Provider to demonstrate, to the reasonable satisfaction of South Gippsland Water, and in accordance with the requirements of the Ethical Purchasing Policy, that the Service Provider has, and will continue during the term of the Agreement, to meet its obligations to its employees under Applicable Industrial Instruments and Legislation.

Ethical Employment Statement has the meaning given to that term in the Ethical Purchasing Policy.

Ethical Purchasing Policy means the Victorian Government's Ethical Purchasing Policy supporting fair and safe workplaces, which is published by the Victorian Government, as amended from time to time.

Full details means details of:

the nature of the breach or offence or alleged breach or offence;

any conviction recorded or adverse finding made in respect of the breach or offence;

any penalty or orders imposed by a court, tribunal, commission or board in respect of the breach or offence and the maximum penalty that could have been imposed under the Applicable Industrial Instruments and Legislation;

the name of the court, tribunal, commission or board, the State or Territory in which the proceeding or prosecution is brought, the date on which the proceeding or prosecution was commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, commission or board;

the name of the entity against which the finding or conviction was made or the proceeding or prosecution was initiated;

this Agreement; and

any further information regarding the matters set out in paragraphs (a) – (f) above that may be requested by South Gippsland Water.

Schedule 5 - Deed of Confidentiality

THIS DEED is made the [insert date] day of [Insert Month] 20[insert year]

BY [Name of employee] of [Name of company] (“Covenantor”)

IN FAVOUR OF

SOUTH GIPPSLAND REGION WATER CORPORATION (Trading as South Gippsland Water)

Introduction

- A. The Covenantor is an employee of or otherwise engaged by [Insert name of contractor] (the “Contractor”) which is involved in providing the Services defined in a contract between South Gippsland Water and the Contractor for the provision of [set out Services] (the “Services Contract”).
- B. The Covenantor will have access to Confidential Information for the performance of his or her obligations in connection with the Services Contract.
- C. The State will allow the Covenantor access to this Confidential Information provided that confidentiality can be maintained and the Covenantor has entered into this deed in order to acknowledge the conditions under which access to the Confidential Information will be granted.

It Is Agreed

- 1. In this deed unless the context otherwise requires or the contrary intention appears:
 - a. The singular includes the plural and vice versa and words importing a gender include other genders.
 - b. Terms importing natural persons include partnerships and bodies corporate.
 - c. Other grammatical forms of defined words or phrases have corresponding meanings.
 - d. Where a party comprises two or more persons, the provisions of this Deed that bind that party shall bind those persons jointly and severally.
 - e. “Confidential Information” means all Information disclosed or otherwise made available by South Gippsland Water to the Contractor or the Covenantor or of which the Covenantor otherwise becomes aware in connection with the Services Contract and the transactions contemplated by the Services Contract which is designated by South Gippsland Water as confidential or which the Covenantor ought reasonably be aware if confidential, but does not include information which:
 - (i) is or becomes public knowledge other than by a breach of the Services Contract or this Deed, or any other confidentiality obligation by the Contractor or the Covenantor; or
 - (ii) has been independently developed or acquired by the Contractor or the Covenantor as

established by written evidence;

- f. **“Services”** means all the services which the Contractor will provide in accordance with the Services Contract.
 - g. **“Information”** means all information, documents or data however held, stored or recorded including drawings, plans, specifications, calculations, reports, models, concepts, source codes, files, computerised data, photographic recordings, audio or audio visual recordings.
2. The Covenantor covenants and agrees to treat as secret and confidential all Confidential Information to which he has access or which is disclosed to him during the course of carrying out the Services , and to discuss any such Confidential Information only with other employees, agents, sub-contractors or personnel of the Contractor who have signed a deed of confidentiality in the same form as this document and only for the purposes of providing the Services.
 3. The Covenantor covenants and agrees that he shall only use the Confidential Information for the purposes of carrying out the Services in accordance with the Services Contract.
 4. The Covenantor covenants and agrees that he will not copy or reproduce the Confidential Information (in whole or in part) without the approval of the State and will take all necessary precautions to prevent unauthorised access to or copying of the Confidential Information by any other person.
 5. The Covenantor acknowledges that the State shall be entitled (in addition to any entitlements to damages) to an injunction or other equitable relief with respect to any actual or threatened breach by the Covenantor of this deed and without the need on the part of the State to prove any special damage.
 6. This deed is governed by the law applicable in Victoria.
 7. The promises in this deed are given in favour of and for the benefit of the State, and the Covenantor agrees that the State may rely on and enforce the promises contained in this deed directly against the Covenantor.

Executed as a deed.

SIGNED SEALED and DELIVERED)

by)

in the presence of:

Signature of Witness: _____

Name of Witness: _____

Executed as an agreement.

Where the contract value is below the Managing Directors Delegation

Signed by [**name**] a duly authorised officer for)
and on behalf of **SOUTH GIPPSLAND REGION**)
WATER CORPORATION in the presence of:)
)

.....
Witness

.....
Name of Witness (print)

Where the Service Provider is a company incorporated in Australia:

Executed by [#])
)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director (print)

.....
Name of Director (print)

Where the Service Provider is an individual:

Signed by [**Insert**] in the presence of:)
)

.....

.....
Witness

.....
Name of Witness (print)

Annexure A - Tender Documentation

[Annex Tender Documentation]