
Joint Venture Agreement

South East Water Ltd

ACN 066 902 547

City West Water Ltd

ACN 066 902 467

Yarra Valley Water Ltd

ACN 066 902 501

Melbourne Water Corporation

**The State of Victoria represented by
the Department of Sustainability and Environment**

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JOINT VENTURE AGREEMENT

DATE PARTIES

South East Water Ltd ACN 066 902 547 (**SEW**)

City West Water Ltd ACN 066 902 467 (**CWW**)

Yarra Valley Water Ltd ACN 066 902 501 (**YVW**)

Melbourne Water Corporation (**MWC**)

The State of Victoria represented by the Department of Sustainability and Environment (DSE),

collectively referred to as the "**Participants**" and each is a "**Participant**".

RECITALS

- A. The Participants agreed in 2002 to establish the Fund, and to enter into this Joint Venture Agreement.
- B. The Fund will provide Funding to successful Applicants for Projects which have the objective of encouraging environmentally sustainable water projects in the greater metropolitan area of Melbourne and the regional urban areas of Victoria.
- C. Participation in the Fund by the Water Companies is a requirement of the Statements of Obligation issued by the Minister for each of MWC, SEW, CWW and YVW under sections 4I and 8 of the *Water Industry Act 1994* (Vic). Through item 5.35 of the White Paper – A Secure Water Future for Victoria, DSE has committed to the continuance of the Fund.
- D. The Participants have agreed to establish the Fund as an unincorporated joint venture on the terms and conditions of this document.
- E. The Participants agreed in 2004 to extend the ambit of the Joint Venture to:
- include representation from the Regional Urban Water Authorities;
 - provide for the delivery of a further four rounds of funding with the last round of funding to be delivered prior to 30 June 2008;
 - divide the funds between three separate funding streams (the Metro Targeted Stream, the Metro Community Stream and the Regional Urban Stream);
 - create a second Technical Review Committee, which would assume responsibility for the Regional Urban Stream (responsibility for the two metropolitan based streams will remain with the original Committee);
 - mandate Water Company Managing Directors to approve research and development topics to be considered in the Metro Targeted Stream; and
 - provide for the management of VWT Funds in accordance with Schedule 2.
- F. The Participants agreed to enter into an Agreement to Amend the original Joint Venture Agreement on or about March 2005 in order to implement the changes described in Recital E.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

Accounts means, for a period, a statement of financial performance and statement of cash flows for that period, and a statement of financial position as at the end of that period, together with any notes to them and any statement or report (including any auditors' report) that is required by applicable law to be prepared in relation to them.

Application means an application for Funding in relation to a Project.

Applicant means a person who makes an Application.

Auditor-General means the Auditor-General of Victoria.

Business Day means a day that is not a Saturday, Sunday or public holiday in Victoria.

Chairperson means the chairperson of the Management Committee.

Commencement Date means the date of this document.

Conditions means the conditions specified in the Water Companies' Statements of Obligation.

Corporations Act means the *Corporations Act 2001* (Cth).

Default Notice means a notice under clause 15.1.

Defaulting Participant means a Participant which commits, or becomes subject of, an Event of Default.

DSE means the Department of Sustainability and Environment.

Dispute Notice means a notice in writing regarding a dispute arising out of this document or the Joint Venture containing particulars of the matter in dispute.

Event of Default means the event described in clause 15.1.

Financial Contributions means the financial contributions to the Joint Venture by the Water Companies under clause 5.2 and by DSE on behalf of the regional urban Victorian community and (if any) the VWT under clause 5.3.

Financial Year means:

- (a) subject to paragraph (b), each successive 12 month period ending 30 June; and
- (b) the period from 1 July (immediately preceding the Termination Date) to the Termination Date.

Fund means a fund to be known as the Smart Water Fund which will be established and administered by the Manager on behalf of Participants in accordance with this document.

Funding means money granted to an Applicant who has been selected in accordance with this document.

Funding Agreement means an agreement for the grant of Funding entered into between an Applicant and the Manager on behalf of the Participants.

Guidelines means the guidelines for the grant of Funding set out in Schedule 1, as amended by the Management Committee from time to time.

Independent Assessment Panel means the independent assessment panel established under clause 10.

Intellectual Property means all copyright and neighbouring rights, all rights in relation to inventions including but not limited to patents and patent applications, modification or improvements to inventions, plant breeders rights, registered and unregistered trade marks, service marks, domain names and business names, registered and unregistered designs, rights in relation to trade secrets, know-how and other confidential information, and all data produced in connection with a Project, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Joint Venture means the unincorporated joint venture between the Participants established by this document.

Joint Venture Assets has the meaning given to it in clause 4.1.

Joint Venture Bank Account means the bank account established under clause 2.3(c).

Joint Venture Expenses means all costs and expenses properly incurred by the Joint Venture or any Participant or any person acting at the direction of the Joint Venture and in the operation of the Fund or any of the streams described in clause 5.5, including any cost or expense incurred by a Participant prior to the Commencement Date for the purpose of establishing the Joint Venture.

Manager means SEW or any other Water Company appointed by the Management Committee under clause 11.1(b).

Management Committee means the management committee appointed by the Participants under clause 7.

Member means a member of the Management Committee appointed by a Participant under clause 7.2 (or his or her alternate appointed under clause 7.9).

Metro Community Project means a community based project benefiting the greater metropolitan area of Melbourne relating to or involving environmentally sustainable water projects that is funded from the Metro Community Stream.

Metro Community Stream means the proportion of the Fund used to fund community based projects benefiting the greater metropolitan area of Melbourne with

an emphasis on high priority research and development areas for environmentally sustainable water projects.

Metro Targeted Project means a project benefiting the greater metropolitan area of Melbourne relating to or involving environmentally sustainable water projects that is funded from the Metro Targeted Stream.

Metro Targeted Stream means the proportion of the Fund used to fund specific research and development areas for environmentally sustainable water projects.

Metro TRC means the committee established under clause 8.

Metro TRC Member means a member of the Metro TRC appointed under clause 8.2.

Minister means the Victorian Minister for Water.

Non-Defaulting Participant means, where an Event of Default has occurred, a Participant other than the Defaulting Participant.

Participating Interest means, in relation to a Participant, the proportionate Financial Contribution of the Participant in the Joint Venture.

Project means a Metro Targeted Project, a Metro Community Project, a Regional Urban Project or a VWT Project.

Regional TRC means the committee established under clause 9.1.

Regional TRC Member means a member of the Regional TRC appointed under clause 9.2.

Regional Urban Project means a project benefiting urban regional Victoria relating to or involving environmentally sustainable water projects that is funded from the Regional Urban Stream.

Regional Urban Stream means the proportion of the Fund used to fund sustainable water projects benefiting urban regional Victoria.

RUWA means Regional Urban Water Authority, as defined in s4A of the *Water Industry Act 1994* (Vic).

RUWA Members means Members appointed to the Management Committee under clause 7.3.

Statewide (VWT) TRC means the committee established under clause 2.1 of Schedule 2.

TRCs means the Metro TRC, the Regional TRC and the Statewide (VWT) TRC.

Termination means the termination of this document under clauses 2.2 or 16.1.

Termination Date means the date on which Termination occurs.

TRC Chairperson means the chairperson of the Metro TRC, the Regional TRC and the Statewide (VWT) TRC.

Variation Date means the date of the Agreement to Amend referred to in Recital F.

VWT means the Victorian Water Trust.

VWT Advisory Council means the advisory council established under Part 14A of the *Water Act* 1989.

VWT Funds has the meaning given in clause 1.1 of Schedule 2.

VWT Guidelines means the guidelines for the grant of VWT Funds set out in clause 1.5 of Schedule 2, as amended by the Management Committee from time to time.

VWT Project means a project conducted within Victoria and benefiting Victoria that investigates technologies and processes relating to demand management, supplementation and substitution of potable water with fit-for-purpose alternatives, that is undertaken by professional researchers and funded using VWT Funds.

Water Companies means SEW, CWW, YVW and MWC and each is a **Water Company**.

1.2 Rules for interpreting this document

Headings are for convenience only and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a Participant to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that Participant;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural and vice versa.
- (c) A word which suggests one gender includes the other gender.
- (d) If a word is defined, another part of speech has a corresponding meaning.

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- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) The word "**agreement**" includes an undertaking or other binding arrangement or understanding, whether or not in writing.
 - (g) Words defined in the "GST law" (as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) have the same meaning when used in clauses 1.2(h) and 1.2(i), 3.7 and 21.6.
 - (h) If a person is a member of a GST group, references to GST which the person must pay and to input tax credits to which the person is entitled include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.
 - (i) If a person is notionally liable to pay GST or is liable to pay an amount which is treated as GST under the GST Law, references to GST which the person must pay extend to any notional liability of the person to pay GST and references to an input tax credit extend to any notional input tax credit to which the person is entitled.

1.3 Business Days

If the day on or by which a person must do something under this document is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

2. ESTABLISHMENT OF THE JOINT VENTURE

2.1 Purpose of the Joint Venture

- (a) The Participants agree to establish the Joint Venture under the terms of this document.
- (b) The principal purpose of the Joint Venture is to establish the Fund to provide Funding for Projects. Applications will be received by the Participants, reviewed by the applicable TRC and (where applicable) approved by the Independent Assessment Panel. After approval by the Independent Assessment Panel, the Manager on behalf of the Participants will enter into Funding Agreements with successful Applicants.

2.2 Commencement Date and Duration

The Joint Venture commences on the Commencement Date and will continue until the Termination Date.

2.3 Obligations on Commencement Date

On the Commencement Date:

- (a) the Participants must ensure the Joint Venture commences operating in accordance with this document;
- (b) each Participant must make the payments required of it under clause 5.2 or 5.3, as and when required under those clauses;
- (c) the Manager must, in accordance with its power under clause 11.2(e), open a separate interest-bearing account (**Joint Venture Bank Account**) at the Commonwealth Bank, or other investment agency, as approved by the Management Committee from time to time, which will be used solely for the purposes of the Joint Venture; and
- (d) the Participants must establish the Management Committee under clause 7.

2A VICTORIAN WATER TRUST

The provisions of Schedule 2 apply in relation to the VWT. To the extent of any inconsistency between the provisions of Schedule 2 and the provisions of this Agreement insofar as they relate to the VWT, the provisions of Schedule 2 prevail.

3. RELATIONSHIP OF PARTICIPANTS

3.1 Unincorporated joint venturers

The relationship of the Participants is one of unincorporated joint venturers.

3.2 No partnership or agency

Nothing in this document is to be treated as creating a partnership and, except as specifically provided in this document, no Participant may act as agent of or in any way bind another Participant to any obligation.

3.3 Tenants in common

The Participants agree that it is not their intention to receive any money or own any Joint Venture Assets as joint tenants but only as tenants in common in proportion to their respective Participating Interests.

3.4 Assets made available by Participants

- (a) Subject to clause 12.1, the Participants may make available rights or assets to be used in the Joint Venture on terms acceptable to all Participants.
- (b) Unless the Participants agree, any right or asset owned by a Participant made available for use in the Joint Venture is not taken to be a Joint Venture Asset.

3.5 Several Liability

- (a) The liability of the Participants for all obligations, debts and liabilities of the Joint Venture is in all respects several only, in accordance with their respective Participating Interests and, for the purposes of this clause only, all

Participants (including DSE) are deemed to have an equal Participating Interest.

- (b) Clause 3.5(a) applies, as between the Participants, even if the Participants are jointly liable regarding any matter arising out of the Joint Venture.

3.6 Separate accounting

Each Participant is separately responsible for its own accounting records required by law or for its own management purposes.

3.7 Separate tax obligations

No Participant is responsible for any other Participant's obligations under the income tax laws of Australia or of any other applicable jurisdiction or for any other Participant's obligations under the GST Law.

3.8 No partition

The Participants must not take any action for partition or sale of any of the Joint Venture Assets.

4. JOINT VENTURE ASSETS AND PARTICIPATING INTERESTS

4.1 Joint Venture Assets

- (a) From the Commencement Date, the assets of the Joint Venture (**Joint Venture Assets**) are:
- (i) the benefits of and rights under the Funding Agreements;
 - (ii) the Financial Contributions made under clause 5, including those which are refunded to the Joint Venture under a Funding Agreement;
 - (iii) the Intellectual Property referred to in clause 12.2; and
 - (iv) all other property and assets of any kind created or acquired for the purposes of the Joint Venture or in the course of the activities of the Joint Venture, excluding property owned by a Participant made available to the Joint Venture under clause 3.4 and excluding Intellectual Property and rights to that Intellectual Property referred to in clause 12.1 or clause 12.3.
- (b) The Joint Venture Assets can only be used for the purposes of the Joint Venture and any separate use of any Joint Venture Asset by a Participant must be approved by the Management Committee on such terms as may be agreed by the relevant Participant and the Management Committee.

5. FINANCIAL MATTERS

5.1 Funding

- (a) Subject to clauses 5.2 and 5.3, each Participant must pay Financial Contributions to the Joint Venture when directed to do so by the Management Committee.

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- (b) No Participant is required to make Financial Contributions totalling more than \$4 million from the Variation Date to the Termination Date.

5.2 Financial Contributions from the Water Companies

- (a) The obligation of each Water Company to make Financial Contributions ceases on the date on which:
 - (i) all obligations to make payments to any Applicant under any Funding Agreement have been fully satisfied; and
 - (ii) all Joint Venture Expenses have been fully paid in accordance with clause 5.6.
- (b) The Management Committee must only require the Water Companies to make Financial Contributions on an equal basis, that is, in the same amounts and at the same time.

5.3 Financial Contributions from DSE

- (a) From the Variation Date, DSE is required to make Financial Contributions of \$1 million each Financial Year on behalf of the regional urban Victorian communities. The obligation of DSE to make Financial Contributions ceases on 30 June 2008. DSE must make each yearly payment by 30 May or as otherwise agreed by the Management Committee.
- (b) DSE is required to make Financial Contributions in accordance with Schedule 2.

5.4 Payments into Joint Venture Bank Account

Each Participant must pay its Financial Contributions into the Joint Venture Bank Account.

5.5 Streams

- (a) Participants acknowledge that the Fund will, from the Variation Date, consist of three streams:
 - (i) the Metro Targeted Stream;
 - (ii) the Metro Community Stream; and
 - (iii) the Regional Urban Stream.
- (b) The Financial Contribution of DSE under clause 5.3(a) will be allocated to the Regional Urban Stream.
- (c) The Financial Contributions of the Water Companies will be divided between the Metro Targeted Stream and the Metro Community Stream in accordance with a recommendation of the Management Committee and the Metro TRC under clauses 7.5 (g) and 8.3(c) which is approved by the Managing Directors of the Water Companies.

5.6 Joint Venture Expenses

- (a) Joint Venture Expenses are to be paid from the Joint Venture Bank Account.
- (b) Any Participant who incurs or pays any Joint Venture Expense is to be reimbursed from the Joint Venture Bank Account upon production of appropriate receipts or records evidencing the Joint Venture Expense.
- (c) Where feasible, Joint Venture Expenses that are directly attributable to the Regional Urban Stream must be accounted for separately and are to be deducted from that Stream.

5.7 In kind support

- (a) The Participants acknowledge that Participants will, from time to time, be required to provide in kind support to the Fund, such as making staff available to provide advice or assistance to the Fund, the Management Committee or a TRC, on request from the Manager.
- (b) DSE is also required to use its best endeavours to procure in kind support from RUWAs when required to on request from the Manager.

6. WARRANTIES AND INDEMNITIES

6.1 Warranties by each Participant

Each Participant warrants as at the date of this document to the others that:

- (a) except in the case of MWC and DSE, it is incorporated under the Corporations Act;
- (b) it has obtained all necessary consents to enable it to execute this document;
- (c) by executing this document, the document will be enforceable on the Participant in accordance with its terms;
- (d) it has not relied on any undertaking, conduct or representation from, or on behalf of, any other Participant, except as set out in this document; and
- (e) it is able to pay its debts as and when they fall due.

6.2 Indemnity for failure to perform

Each Participant indemnifies and will keep indemnified each other Participant from any loss or liability suffered or caused by its breach of this document.

7. MANAGEMENT COMMITTEE

7.1 Management Committee to be established

The Participants must establish a Management Committee to manage the Joint Venture.

7.2 Appointment of Members

On the Commencement Date, each Participant must appoint one of its employees to be a member (together known as the **Members**) to the Management Committee by notice in writing to the other Participants, stating the full name and address of the Member and an address for the service of notices on the Member. A Participant may at any time replace its appointed Member to the Management Committee by notice in writing to the other Participants.

7.3 Appointment of Additional Members

On the Variation Date, DSE must advise the Participants of two employees of the RUWAs that will have been nominated by the RUWAs and selected by DSE to be appointed as Members, stating the full name and address of the Member and an address for the service of notices on the Member.

The Members appointed under this clause 7.3 shall become Members from the date DSE gives written notice. DSE may at any time notify the Participants in writing that the RUWAs have nominated an alternative person or persons to act as Members, and the alternative person will become a Member on the date of that notice.

7.4 Appointment of Manager as a Member

On and from the Variation Date, the Manager will be a Member although he or she will not have any voting rights.

7.5 Functions and duties of the Management Committee

The Management Committee will have full and complete power to determine all matters relating to the conduct of the Joint Venture (except where any such determination would be inconsistent with this document) including, without limitation:

- (a) appointment and removal of the Manager and the terms of the appointment of the Manager;
- (b) amendment of the Guidelines and the VWT Guidelines;
- (c) adoption of accounting policies and approval of the Accounts of the Joint Venture for each Financial Year prepared by the Manager;
- (d) authorisation of the opening and operation of the Joint Venture Bank Account;
- (e) authorising the investment of monies from the Joint Venture Bank Account in accordance with prudent management processes and recovering those invested monies as and when they are required in order to fulfil the Fund's obligations under a Funding Agreement;
- (f) together with the Metro TRC, make recommendations to the Managing Directors of the Water Companies in relation to targeted research and development topics for the Metro Targeted Stream for environmentally sustainable water projects; and
- (g) together with the Metro TRC, make recommendations to the Managing Directors of the Water Companies on the split of the Financial Contributions

made by the Water Companies under clause 5.2 between the Metro Community Stream and the Metro Targeted Stream.

7.6 Members able to bind appointing Participant

- (a) Subject to clause 7.6(b), a Member's vote will be binding on the Participant appointing him or her.
- (b) A Member may not bind the Participant appointing him or her to any action which is contrary to this document.

7.7 Voting Rights

There will be equal voting rights for all Members, including the RUWA representatives appointed under clause 7.3.

7.8 Voting Majorities

- (a) Decisions of the Management Committee must be by majority vote. In the event of equality of vote, the Chairperson has the casting vote.
- (b) For the avoidance of doubt, removal and replacement of the Manager requires a majority decision of the Management Committee.

7.9 Alternates

A Participant must appoint an alternate to act in the place of its appointed Member.

7.10 Chairperson

- (a) The Chairperson of the Management Committee is the Member appointed by DSE to represent DSE (and for the avoidance of doubt, the RUWA Members appointed by DSE under clause 7.3 cannot act as Chairperson).
- (b) The Chairperson must act as chairperson of all meetings of the Management Committee.

7.11 Quorum

- (a) A quorum for a meeting of the Management Committee is one Member appointed by each Participant, or as otherwise agreed by the Participants, and a quorum must be present for the whole of the meeting.
- (b) A quorum does not lapse if a Member is prohibited by law or this document from being present at all or part of a Management Committee meeting.

7.12 Decisions of the Management Committee

Decisions of the Management Committee may be made by either:

- (a) a resolution passed at a meeting (at which each Member has one vote in relation to any proposed resolution); or

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- (b) a resolution made in any form agreed to by the Management Committee, so long as the resolution is tabled at, and entered into the minutes of, the next meeting of the Management Committee.

7.13 Meetings

- (a) A meeting of the Management Committee must be held at a frequency agreed by all Participants.
- (b) A Participant, a Member or the Manager may call a special meeting of the Management Committee at any time.

7.14 Notice and agenda for meetings

- (a) The Manager must use reasonable endeavours to prepare and send to each Member a copy of the proposed agenda, including appropriate supplementary information, for every meeting of the Management Committee, together with notice of the date, time and place of the meeting, at least 7 Business Days before the date of the meeting or as otherwise agreed by the Management Committee.
- (b) A Participant or a Member may place items on the agenda of any meeting by written notice (including appropriate supplementary information) to the Manager not less than 5 Business Days before the date of the meeting or as otherwise agreed by the Management Committee.

7.15 Minutes of meetings

- (a) The Manager must prepare written minutes of each meeting and provide these to each Member within 10 Business Days after the meeting. The minutes must include details of each resolution passed.
- (b) If a Member disapproves of or disagrees with the minutes, he or she must give notice to the Manager requesting the matter be an agenda item for resolution at the next meeting of the Management Committee.
- (c) Minutes of Management Committee meetings are taken to be approved if no notice of disapproval is received by the Manager prior to the next Management Committee meeting.

7.16 Mode of meeting

The manner in which a meeting shall be conducted will be agreed by the Management Committee on a case-by-case basis.

8. METRO TECHNICAL REVIEW COMMITTEE

8.1 Metro Technical Review Committee

The Management Committee must establish a sub-committee known as the metro technical review committee (**Metro TRC**) to consider Applications in relation to Metro Targeted Projects and Metro Community Projects.

8.2 Appointment of Metro TRC Members

- (a) As soon as practicable after the Commencement Date, each Participant must appoint one of its employees to be a member of the Metro TRC (together known as the **Metro TRC Members**) by notice in writing to the other Participants, stating the full name and address of the Metro TRC Member and an address for the service of notices on the Metro TRC Member. A Participant may at any time replace its appointed Metro TRC Member to the Metro TRC by notice in writing to the other Participants.
- (b) The Manager will be a Metro TRC Member although she or he will not have any voting rights.
- (c) The Chair of the Metro TRC will be the Metro TRC Member representing DSE.

8.3 Functions and duties of the Metro TRC

The functions and duties of the Metro TRC are:

- (a) to consider Applications for Funding in relation to Metro Community Projects and to recommend to the Independent Assessment Panel which Applications should receive Funding, in accordance with the Guidelines contained in Schedule 1 (and in making such a recommendation give due consideration to any approvals given by the Managing Directors of the Water Companies made in response to a recommendation under clause 8.3(c));
- (b) together with the Management Committee, make recommendations to the Managing Directors of the Water Companies in relation to targeted research and development topics for the Metro Targeted Stream for environmentally sustainable water projects;
- (c) together with the Management Committee, make recommendations to the Managing Directors of the Water Companies on the split of the Financial Contributions of the Water Companies between the Metro Community Stream and the Metro Targeted Stream;
- (d) to consider Applications for Funding in relation to Metro Targeted Projects and to recommend to the Independent Assessment Panel which Applications should receive Funding, (and in making such a recommendation give due consideration to any approvals given by the Managing Directors of the Water Companies made in response to a recommendation under clauses 8.3(b) and 8.3(c)); and
- (e) any other function or duty determined by the Management Committee.

8.4 Consideration of Applications

- (a) The Metro TRC must meet to consider Applications made under 8.3(a) and 8.3(d) and provided to it by the Manager.
- (b) Within a reasonable period after the meeting at which the Applications provided to the Metro TRC have been considered, the Metro TRC must determine shortlists of recommended Applications to receive Funding from the Metro Targeted Stream and the Metro Community Stream in accordance

with the Guidelines contained in Schedule 1 and provide the shortlists to the Manager. The shortlists may contain recommendations on the terms and conditions of Funding.

8.5 Procedure for meetings of the Metro TRC

Clauses 7.6 to 7.16 apply to meetings of the Metro TRC as though a reference to the Management Committee is a reference to the Metro TRC, a reference to a Member is a reference to a Metro TRC Member and a reference to the Chairperson is a reference to the Metro TRC Chairperson.

8.6 Metro TRC Members able to bind appointing Participant

- (a) Subject to clause 8.6(b) a Metro TRC Member's vote will be binding on the Participant appointing him or her.
- (b) A Metro TRC Member may not bind the Participant appointing him or her to any action which is contrary to this document or which results in or requires an amendment to this document.

8.7 Voting Majorities

Decisions of the Metro TRC must be by majority vote. In the event of equality of vote, the Metro TRC Chairperson will have the casting vote.

8.8 Advisers

Advisers to the Metro TRC Members, as approved by the Metro TRC and the Manager, will be entitled to attend Metro TRC meetings to provide advice to the Metro TRC Member retaining them or to the Metro TRC as a whole and the reasonable costs of the advisers (other than advisers who are employees of a Participant) will be treated as Joint Venture Expenses.

8.9 Copy of Applications

The proposed agenda for meetings of the Metro TRC must include a copy of each Application to be considered under clause 8.4.

9. REGIONAL TECHNICAL REVIEW COMMITTEE

9.1 Regional Technical Review Committee

The Management Committee must establish a sub-committee known as the regional technical review committee (**Regional TRC**) to consider Applications in relation to Regional Urban Projects.

9.2 Appointment of Regional TRC Members

- (a) As soon as practicable after the Variation Date, DSE must advise the Participants of up to two DSE representatives and four employees of the RUWAs that will have been nominated by the RUWAs and selected by DSE to be appointed as Regional TRC Members (together known as the **Regional TRC Members**), stating the full name and address of the Member and an address for the service of notices on the Member. DSE may at any time

replace the appointed Regional TRC Members to the Regional TRC by notice in writing to the other Participants.

The Members appointed under this clause 9.2 shall become Regional TRC Members from the date DSE gives written notice. DSE may at any time notify the Participants in writing that the RUWAs have nominated an alternative person or persons to act as Regional TRC Members, and the alternative person will become a Regional TRC Member on the date of that notice.

- (b) The Manager will be the fifth Regional TRC Member although she or he will not have any voting rights.
- (c) The Chair, and sixth member, of the Regional TRC will be a Regional TRC Member representing DSE and will be the same representative as appointed as DSE's representative to the Metro TRC.

9.3 Functions and duties of the Regional TRC

The function and duty of the Regional TRC is to consider Applications in relation to Regional Urban Projects and to recommend to the Independent Assessment Panel which Applications should receive Funding, in accordance with the Guidelines, and any other function or duty determined by the Management Committee.

9.4 Consideration of Applications

- (a) The Regional TRC must meet to consider Applications provided to it by the Manager, in accordance with the Guidelines contained in Schedule 1.
- (b) Within a reasonable period after the meeting at which the Applications provided to the Regional TRC have been considered, the Regional TRC must determine a shortlist of recommended Applications to receive Funding from the Regional Urban Stream and provide the shortlist to the Manager. The shortlist may contain recommendations on the terms and conditions of Funding.

9.5 Procedure for meetings of the Regional TRC

Clauses 7.6 to 7.16 apply to meetings of the Regional TRC as though a reference to the Management Committee is a reference to the Regional TRC, a reference to a Member is a reference to a Regional TRC Member and a reference to the Chairperson is a reference to the Regional TRC Chairperson.

9.6 Voting Majorities

Decisions of the Regional TRC must be by majority vote. In the event of equality of vote, the Regional TRC Chairperson will have the casting vote.

9.7 Advisers

Advisers to the Regional TRC Members, as approved by the Regional TRC and the Manager, will be entitled to attend Regional TRC meetings to provide advice to the Regional TRC Member retaining them or to the Regional TRC as a whole and the reasonable costs of the advisers (other than advisers who are employees of a Participant) will be treated as Joint Venture Expenses.

9.8 Copy of Applications

The proposed agenda for meetings of the Regional TRC must include a copy of each Application to be considered under clause 9.4.

10. INDEPENDENT ASSESSMENT PANEL

10.1 Establishment of Independent Assessment Panel

- (a) As soon as practicable after the Commencement Date, the Management Committee must recommend to the Minister a list of at least 4 appropriately qualified and experienced persons from which the Minister must approve a minimum of 4 and a maximum of 6 nominees to form the Independent Assessment Panel to carry out the functions and duties specified in clause 10.2.
- (b) The persons who will act as members of the Independent Assessment Panel must be independent of the Participants and the Minister and must not work for, consult to or have any direct or indirect interest in the Joint Venture.
- (c) If a person ceases for any reason to be a member of the Independent Assessment Panel, the Management Committee must recommend to the Minister one or more appropriately qualified and experienced persons from which the Minister must approve one person to replace that member.
- (d) Despite any provision of this document, the Independent Assessment Panel will not represent the Joint Venture or the interests of any or all of the Participants or the Minister, but is established for the purposes stated in clause 10.2. For the avoidance of doubt, decisions of the Independent Assessment Panel are not to be considered to be decisions of the Management Committee or any of the Participants.
- (e) The members of the Independent Assessment Panel will be appointed in accordance with the terms of any letter of appointment by the Minister and will be paid a fee in accordance with the Guidelines for the Appointment and Remuneration of Part-Time Non-Executive Directors of State Government Boards and Members of Statutory Bodies and Advisory Committees, which fees are to be treated as Joint Venture Expenses.

10.2 Functions and duties of the Independent Assessment Panel

The functions and duties of the Independent Assessment Panel will be to:

- (a) consider the shortlists of Applications determined by the Metro TRC under clause 8.4(b) and the Regional TRC under clause 9.4(b) and provided to it by the Manager and, applying the Guidelines contained in Schedule 1, either approve or reject each Application recommended by the relevant TRC (on the terms and conditions recommended by the relevant TRC);
- (b) any additional functions or duties referred to in Schedule 2; and
- (c) where requested to do so pursuant to a Funding Agreement, appoint an expert (which may be one of its own members) to resolve a dispute in relation to that Funding Agreement.

10.3 Procedures of the Independent Assessment Panel

The procedures for meetings and decisions of the Independent Assessment Panel will be determined by the Independent Assessment Panel.

10.4 Independent Assessment Panel Decisions

- (a) The Participants must use their best endeavours to ensure that the Independent Assessment Panel promptly notifies the Manager of its decisions under clause 10.2.
- (b) The Manager on behalf of the Participants must negotiate, enter into and administer a Funding Agreement with an Applicant who has been approved by the Independent Assessment Panel, consistent with the terms and conditions recommended by the relevant TRC and approved by the Independent Assessment Panel.

10.5 Advisers

Advisers to the Independent Assessment Panel agreed by the Independent Assessment Panel, the Manager and the TRC Chairperson will be entitled to attend meetings of the Independent Assessment Panel to provide advice and the reasonable costs of the advisers will be treated as Joint Venture Expenses.

10.6 Removal of Members of the Independent Assessment Panel

Members of the Independent Assessment Panel may be removed:

- (a) by the Minister; or
- (b) by the Participants in consultation with, and with the approval of, the Minister.

10.7 Right to Attend

The TRC Chairperson and a representative nominated by the Manager may attend and participate in meetings of the Independent Assessment Panel. For avoidance of doubt, neither the TRC Chairperson nor the Manager's representative will have any voting rights or rights to participate in decision making of the Independent Assessment Panel.

11. MANAGER

11.1 Appointment of Manager

- (a) The Participants appoint SEW as the manager of the Joint Venture.
- (b) The Management Committee may, in accordance with clause 7.5(a) remove the Manager and appoint another Participant to act as the Manager.
- (c) Each Participant severally appoints the Manager as its agent in the conduct of the Joint Venture and to perform the duties imposed on the Manager under this document.

11.2 Functions and duties of the Manager

Subject to clause 11.3, the Manager must carry out the following functions on behalf of the Participants in accordance with all directions and instructions given by the Management Committee:

- (a) observing and complying with the policies established and the directives issued by the Management Committee;
- (b) carrying out all acts, including compliance with all laws and contractual obligations, and entering into all agreements necessary for the purposes of the Joint Venture, including entering Funding Agreements on behalf of the Participants;
- (c) acting as spokesperson for the Joint Venture and as the sole contact (to the exclusion of the Participants) for all dealings with third parties;
- (d) the allocation of all resources and assets (including the appointment, management and control of all personnel) made available by the Participants to the Joint Venture;
- (e) opening and operating the Joint Venture Bank Account and arranging for payment of Joint Venture Expenses from the Joint Venture Bank Account under clause 5.6;
- (f) carrying out instructions issued by the Managing Committee in relation to the investment of monies under clause 7.5(e);
- (g) providing a comprehensive management report to the Management Committee on a monthly basis including Accounts of the Joint Venture for the previous month and for the year to date, information regarding progress of the Joint Venture, amendments to any Funding Agreement and any progress and performance of the Funding Agreements, and regarding any key events, planning and projections, areas of concern and utilisation of resources;
- (h) preparing Accounts of the Joint Venture for each Financial Year;
- (i) keeping true and accurate books and records for the Joint Venture and permitting at all reasonable times their inspection and examination by the Participants;
- (j) receiving Applications and respond to enquiries made by Applicants;
- (k) subject to clause 10.4(b), negotiating the terms of Funding Agreements with successful Applicants;
- (l) subject to clause 10.4(b), administering and making decisions under Funding Agreements and monitoring the progress of Projects and performance under the Funding Agreements; and
- (m) any other functions or duties requested by the Management Committee.

11.3 Limitation on powers of Manager

The Manager must not pledge the credit of or incur any obligation on behalf of any Participant other than as expressly provided in this document.

11.4 Manager's Costs

- (a) Upon production of appropriate receipts or records, the Manager will be reimbursed from the Joint Venture Bank Account for:
 - (i) all expenses incurred by the Manager in performing the Manager's role; and
 - (ii) the Manager's labour costs incurred in performing the Manager's role, at rates to be agreed by the Manager and the Management Committee.
- (b) Amounts paid to the Manager under clause 11.4(a) are Joint Venture Expenses.

11.5 Indemnity

The Participants indemnify the Manager and hold the Manager harmless against any loss, damage, claim or liability incurred by the Manager while acting on behalf of the Participants within the scope of its actual or ostensible authority.

11.6 Resignation

The Manager may resign, on 4 weeks written notice to the Management Committee, in which case the Management Committee must appoint one of the other Water Companies to be the new Manager.

12. INTELLECTUAL PROPERTY

12.1 Intellectual Property made available by a Participant

If a Participant makes available any of its Intellectual Property for use in the Joint Venture:

- (a) all rights to the Intellectual Property will remain the property of the Participant making it available;
- (b) the other Participants must not use the Intellectual Property for any purpose other than for the purposes of the Joint Venture; and
- (c) if the Participant owning the Intellectual Property ceases to be a Participant, the other Participants must return the Intellectual Property and any record or copy of it to the Participant owning it.

12.2 Intellectual Property developed during the Joint Venture

If any Intellectual Property is created or developed by the Participants in the conduct of the Joint Venture, such Intellectual Property will be a Joint Venture Asset owned equally by all Participants and must only be used for the purposes of the Joint Venture.

12.3 Intellectual Property developed under a Funding Agreement

- (a) If any Intellectual Property is created or developed by an Applicant under a Funding Agreement and the Funding Agreement provides that DSE owns or has a licence to use that Intellectual Property, DSE grants to each of the Water Companies, and each of the Water Companies accept, an irrevocable, perpetual, royalty-free, non-exclusive licence to exploit that Intellectual Property.
- (b) Despite any other provision of this document, unless the Participants otherwise agree unanimously in writing, this clause 12.3 survives Termination.

13. TRANSFER OF INTEREST

A Participant must not transfer, create any encumbrance over, sell, assign, transfer, deal with, lease, dispose of, or declare itself a trustee of or otherwise alienate or do any other thing under which any legal or equitable interest is or may be created or become vested in any other person in respect of all or any of its rights under this document.

14. AUDIT OF ACCOUNTS

The Participants agree that the Accounts of the Joint Venture for each Financial Year will be externally audited by the Auditor-General.

15. DEFAULT

15.1 Events of Default

A Participant will commit an Event of Default if it fails to comply with any of its obligations under this document and does not remedy that failure within 10 Business Days of receiving notice from a Non-Defaulting Participant to remedy the failure.

15.2 Consequences of Default

- (a) If an Event of Default occurs then, without any action on the part of any Participant, the Defaulting Participant's Participating Interest is automatically suspended.
- (b) The Management Committee must, within 5 Business Days after the occurrence of the Event of Default, meet to discuss the Event of Default.
- (c) If they have not resolved within 10 Business Days how to proceed, the Management Committee must refer the Event of Default to dispute resolution under clause 20.

16. TERMINATION

16.1 Termination of this document

This document terminates on the date on which all obligations under any Funding Agreement have been fully performed (including the payment of all money owing by any Applicant to the Participants).

16.2 Consequences of Termination

Upon Termination, subject to clauses 12.3, 16.3, 16.4, 18.2 and 21.5(a), this document is at an end as to its future operation except for the enforcement of any right or claim which arises on, or has arisen before, Termination.

16.3 Assets to be realised on Termination

- (a) On Termination, the Manager is appointed as agent for the Participants to realise all the Joint Venture Assets (other than Intellectual Property referred to in clause 12.2 which will be dealt with in accordance with clause 16.4) and, subject to clause 16.3(b), to distribute the proceeds of the realisation to the Participants in proportion to their Participating Interests.
- (b) Prior to the distribution of the proceeds of the realisation of the Joint Venture Assets, the Manager must pay from the proceeds:
 - (i) all liabilities of the Joint Venture including the cost of any Joint Venture Expense payable to a Participant under clause 5.6(b) and any amounts payable to the Manager under clause 11.4; and
 - (ii) before paying the rest to each Participant, deduct from that Participant's entitlement any amounts (including Financial Contributions) owing by that Participant under this document.
- (c) Despite any other provision of this document, unless the Participants otherwise agree unanimously in writing, this clause 16.4 survives Termination.

16.4 Intellectual Property rights on Termination

- (a) Upon Termination, any Intellectual Property referred to in clause 12.2 will be transferred automatically to DSE and DSE shall grant to each of the Water Companies an irrevocable, perpetual, royalty-free, non-exclusive licence to exploit that Intellectual Property.
- (b) Despite any other provision of this document, unless the Participants otherwise agree unanimously in writing, this clause 16.4 survives Termination.

17. STAMP DUTY

All stamp duty, registration or other fees or charges payable in respect of this document or transactions contemplated by this document are to be treated as Joint Venture Expenses.

18. CONFIDENTIALITY

18.1 Information about Participants

The Participants must not disclose or allow to be disclosed or use or allow to be used any confidential information of any other Participant (other than information regarding the Joint Venture) except with the consent of that Participant.

18.2 Clause 18 survives Termination

Despite any other provision of this document, unless the Participants otherwise agree unanimously in writing, this clause 18 survives Termination.

19. AMENDMENT

This document can only be amended, supplemented, replaced or novated by another document signed by the Participants.

20. DISPUTE RESOLUTION

20.1 Reference to mediation

Any dispute or difference unable to be resolved under this Agreement, including without limitation a dispute involving an Event of Default under clause 15 may be referred to a mediator to be agreed upon by the Participants, and if the Participants fail to agree to a mediator any Participant may request the Chairman of the Victorian Bar Council, 205 William Street Melbourne, to appoint a barrister as mediator to resolve any outstanding differences.

20.2 Mediator to act as mediator, not arbitrator

The person appointed under clause 20.1 shall act as a mediator, not an arbitrator.

20.3 Information to mediator

The person appointed mediator will, within 14 days of the appointment, request each of the Participants to provide written submissions including any material relevant to the dispute or difference, and may take any such other steps as to acquaint themselves as they think fit in order to fully understand the facts of the dispute.

20.4 Decision of the mediator

- (a) The person appointed mediator shall within a period of thirty days from receipt of the written submissions advise the parties in writing of their decision in relation to how to resolve the dispute or difference.
- (b) In the case of a dispute or difference involving an Event of Default, if agreed by the Participants prior to the mediator's decision, the mediator may have full power to distribute the Defaulting Participant's Participating Interest as he or she thinks fit.

20.5 Decision of mediator binding

The decision of the person appointed mediator shall be final and binding on the Participants.

20.6 Costs of the mediation

The cost of the appointment of the person under this clause 20 to act as mediator shall be borne equally by the Participants.

21. GENERAL

21.1 Governing law

- (a) This document is governed by the law in force in Victoria.
- (b) Each Participant submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

21.2 Giving effect to this document

Each Participant must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other Participant may reasonably require to give full effect to this document.

21.3 Waiver of rights

A right may only be waived in writing, signed by the Participant giving the waiver, and:

- (a) no other conduct of a Participant (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

21.4 Operation of this document

- (a) This document contains the entire agreement between the Participants about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

21.5 Operation of indemnities

- (a) Each indemnity in this document survives Termination.
- (b) A Participant may recover a payment under an indemnity in this document before it makes the payment.

21.6 GST

- (a) Amounts payable under or in connection with this document are exclusive of GST.
- (b) If a supply under or in connection with this document by a party (the **Payee**) to the other party (the **Payer**) is a taxable supply then the Payer must pay to the Payee (without deduction or set-off) an additional amount (the **Additional Amount**) determined by multiplying the amount payable in respect of the supply by the prevailing GST rate as specified in the GST Law.
- (c) The Payer must pay each Additional Amount at the same time as the amount payable for the supply referable to it or upon demand by the Payee (whichever is the earliest), provided that the Payee has issued and provided the Payer with a valid tax invoice.
- (d) If an Additional Amount is paid in respect of a supply, and that supply is later determined not to be a taxable supply, that Additional Amount must be refunded to the Payer along with a valid adjustment note.
- (e) If a Participant has a claim under or in connection with this document for a cost on which that Participant had paid GST, the amount payable is to be determined by reference to clause 21.6(b), taking into account any input tax credits the Participant may have been entitled to in respect of any GST paid.
- (f) If a payment to satisfy a claim or a right to claim under or in connection with this document (for example, for misleading or deceptive conduct or for misrepresentation or for a breach of any warranty or for indemnity or for reimbursement of any expense) gives rise to a liability to pay GST, the Payer must pay, and indemnify the Payee against the amount of that GST.
- (g) If a Participant has a claim under or in connection with this document whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

21.7 Consents

Where this document contemplates that a Participant may agree or consent to something (however it is described), the Participant may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,
- (c) unless this document expressly contemplates otherwise.

21.8 Inconsistency with other documents

If this document is inconsistent with any other document or agreement between the Participants, this document prevails to the extent of the inconsistency.

21.9 Counterparts

This document may be executed in counterparts.

EXECUTED as an agreement.

EXECUTED by SOUTH EAST WATER LTD:

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by CITY WEST WATER LTD:

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by YARRA VALLEY WATER LTD:

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by MELBOURNE WATER CORPORATION:

Signature of director

Signature of director/secretary

Name

Name

SIGNED by **LYNDSAY NEILSON** for and
on behalf of the **STATE OF VICTORIA** in
the presence of:

Signature of witness

Name

SCHEDULE 1
Smart Water Fund Guidelines

Fund Guidelines

October 2004

Smart Water Fund Guidelines

1. Introduction

City West Water, South East Water, Yarra Valley Water and Melbourne Water together with the Department of Sustainability and Environment jointly operate the Smart Water Fund. Applications will be evaluated to ensure that they deliver sustainable environmental, social and economic benefits. Committees of representatives from City West Water, South East Water, Yarra Valley Water, Melbourne Water, regional urban water authorities together with the Department of Sustainability and Environment comprise either the Metropolitan or Regional 'Technical Review Committees' (TRC's). The TRCs will assess the suitability of applications and draw on expert advice as required and forward suitable applications to the 'Independent Assessment Panel' (IAP) for approval.

The IAP is comprised of an independent panel of community / expert representatives and their task is to assess the applications and approve funding by the Smart Water Fund. The IAP members will be well able to assess applications, having been selected on the basis of having proven skills in environmental sustainability, community development and empowerment, urban planning, local government and resource management.

Applications for the Metro Community Stream and the Regional Urban Stream will be assessed in accordance with these guidelines to ensure that projects demonstrate environmental sustainability, community benefit, and commercial viability. Applications for the Metro Targeted Stream will be assessed for alignment with Water Company approved targeted research and development topics, these guidelines and with regard to a probity and governance review by the IAP.

Successful applicants will be required to enter into a Funding Agreement detailing all funding obligations and conditions, including special conditions depending on the nature of the funded project and the applicant.

Applicants will be required to provide evidence of the successful delivery of project milestones in order for the Manager to issue grant payments.

An Evaluation Report in accordance with the Funding Agreement, including (if required) an independently prepared report detailing the total cost of the project and how the Smart Water funds have been used, must be submitted to the Fund on completion of the project. Where appropriate and in accordance with the Funding Agreement applicants are expected to complete and return to the Smart Water Fund, Progress Reports (including a Final Evaluation Report).

If the project has not commenced one year after the offer of the grant, the offer will be reviewed and may be withdrawn.

2. Guiding Principles

- (a) The Smart Water Fund will seek to provide seed funding to stimulate 'learning by doing' projects for the Metro Community Stream and the Regional Urban Stream.
- (b) Dependent on the stream, applications will be sought for projects that benefit the area serviced by CWW, SEW, YVW and MWC or regional urban Victoria.
- (c) Funds will be provided for innovative environmentally sustainable water projects and may include water recycling, biosolids management, water saving and other water projects.
- (d) Funds may be provided to projects receiving funding from other sources.
- (e) Funds' allocation will be determined on a project-by-project basis.

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- (f) Where commercial gain is likely for the Applicant or where the Applicant could undertake the project as part of normal business and appropriate environmental practice, dollar for dollar matching from the Applicant will be well regarded by the Fund.
 - (g) The Fund will look more favourably on innovative projects that provide sustainability leadership in the community / industry and will look less favourably on the projects which represent a capital works program which would/should occur as part of the “business as usual” practice of the Applicant.
 - (h) Communications and Consultation- It is important that the projects have well-developed and structured communication, consultation and education programs in place. The benefits will be to increase public awareness and acceptance, which in turn can lead to greater adoption of the project outcomes.
 - (i) Environmental and Health Benefits - It is important that projects support the community's expectation that water recycling be undertaken in a way that maintains Victoria's high environmental and public health standards.
 - (j) Projects should aim to be completed within 3 years of receiving funds.
 - (k) The asset ownership and full responsibility of any project that receives funding remains solely with the Applicant from the project's commencement to decommissioning. i.e. 'cradle to grave'.
 - (l) Applications will be selected to provide not only broad geographic coverage but diversity of community / business sectors eg. residential, commercial, industrial, municipal, open space, sports grounds.

3. Eligibility

- (a) Any person including individual, corporation or organisation can apply for funding from the Metro Community Stream or the Regional Urban Stream provided that:
 - i. they can demonstrate a benefit to either metro Melbourne or to regional urban Victoria (dependent on which Stream), and
 - ii. the project demonstrates sustainable water management practices including the utilisation of recycled water and/or biosolids and/or or saving water.
- (b) Any professional research body can apply for funding from the Metro Targeted Stream provided that:
 - i. their application addresses the requirements of the relevant project brief; and
 - ii. they have the relevant experience/qualifications to undertake the project.
- (c) Consideration will also be given to whether a proposed project advances the objectives of the Smart Water Fund and government policy (in particular the Government's White Paper on water reform entitled “Our Water Our Future”).

4. Ineligibility

- (a) Projects that are ineligible for funding through the Smart Water Fund include those projects:
 - i. With a time line greater than three years;

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- ii. Seeking funding to upgrade an existing process with available technology & known outcomes;
 - iii. Not meeting statutory approvals and permits;
 - iv. Inconsistent with Government policy objectives; and,
 - v. That are not related to environmentally sustainable water projects.
- (b) A Fund Participant cannot apply for funding in its own right but may participate as a supplementary sponsor to a project.

5. General Matters

- (a) Applications will be assessed in accordance with all elements of these Guidelines.
- (b) Approval of grants is conditional to the Applicant agreeing to co-operate with an audit of compliance for granted funds to ensure adherence to terms and conditions.
- (c) The allocation of funds is to be auditable and the Applicant will need to demonstrate that funds provided have been used for the agreed purpose.
- (d) Application for funding is to be made using the Smart Water Fund Application Form. Forms are available via post or the Smart Water Fund's web site.
- (e) Applications must be signed by an individual or an approved officer from the applying organisation.
- (f) Applications must be lodged with the Smart Water Fund by the nominated closing date and time.
- (g) Letters notifying Applicants of their approval (or rejection) will be sent by the Manager.
- (h) Smart Water Fund resourcing is limited and specific rejection feedback will not be provided to unsuccessful applicants.
- (i) The ability of the person or organisation to manage and complete the project must be demonstrated, as well as the ability to manage and operate the resultant product or service from commencement to completion and/or decommissioning.
- (j) Successful Applicants will be required to enter into a Funding Agreement detailing all funding obligations, including special conditions depending on the nature of the funded project.
- (k) The quality of the proposal in terms of its aims, content, rationale and originality will be considered as part of the evaluation process.
- (l) Evidence will be sought to show the Applicant demonstrates that it;
 - i. has appropriately qualified and experienced people
 - ii. has sound planning arrangements
 - iii. has appropriate management programs in place
 - iv. has the necessary resources

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- v. has sound financial administration, including a careful consideration of the costs involved and necessary income required to complete, operate and maintain the project from commencement to completion and/or decommissioning. i.e. 'cradle to grave
 - vi. has adequate project monitoring methods
- (m) Financial Assessment Criteria will be used to aid the evaluation process and are contained in Smart Water Form SWF-001 following.
 - (n) Environmental Assessment Criteria will be used to aid the evaluation process and are contained in Smart Water Form SWF-002 following.
 - (o) Community Assessment Criteria will be used to aid the evaluation process and are contained in Smart Water Form SWF-003 following.

SWF 001 Financial Criteria

No.	Financial Criteria for Approval	Technical Review Committee/ Independent Assessment Panel's Comments
1.	<p>In relation to Metro Community Projects, preference will be given to projects seeking funding in the range \$50,000 to \$500,000.</p> <p>In relation to Regional Urban Projects, preference will be given to projects seeking funding in the range \$10,000 to \$100,000.</p>	
2.	<p>Preference will be given to projects that for the funding requested achieve, or have the potential to achieve through research and development (innovation), the highest long-term benefits in terms of:</p> <ul style="list-style-type: none"> • Water use reduction (ML); • Water recycling (ML); or • Biosolids reduction or use (tonnes) 	
3.	<p>Preference will be given to projects with the higher rate of return over the project's life (eg ML of water saved per \$ requested of the SWF).</p>	
4.	<p>Preference will be given to projects that demonstrate sound and equitable funding arrangements.</p>	
5.	<p>Applicants must be able to demonstrate (through its organisation and personnel) an ability to:</p> <ul style="list-style-type: none"> • Meet appropriate timelines; • Comply with planning and regulatory requirements; and • Advance Government policy and regulatory development. (eg. meeting any strategic objectives outlined by the White Paper). 	

SWF 002 Environmental Criteria

No.	Environmental Criteria for Approval	Technical Review Committee/ Independent Assessment Panel's Comments
1.	Preference will be given to projects that can demonstrate a reduction in the ecological footprint compared to the status quo.	
2.	Preference will be given to projects that address these issues: <ul style="list-style-type: none"> • High returning uses that provide substantial employment and multiplier benefits; • Decentralised treatment; or • Private sector uses. 	
3.	Preference will be given to projects that demonstrate efficient and effective water use.	
4.	Preference will be given to projects that can be shown to result in sustainable environmental outcomes in the broader sense, for example, sustainable land management.	

SWF 003 Community Criteria

No.	Community Criteria for Approval	Technical Review Committee/ Independent Assessment Panel's Comments
1.	Preference will be given to projects that have the support from local communities.	
2.	Preference will be given to projects that demonstrate joint and cooperative effort between the community and industry	
3.	Preference will be given to projects with a commitment to educational and demonstrational capacity, and those that do not constrain further applications through, for example, ownership of intellectual property.	
4.	Preference will be given to projects that introduce innovation to the industry sector and that have the capability to be migrated to other sites and / or other industry sectors	
5.	Preference will be given to projects that address typical types of issues in the industry, recreation and domestic segments relating to resource reuse, and minimisation of waste.	

SCHEDULE 2

1. VICTORIAN WATER TRUST

1.1. Funds

Through the Victorian Water Trust (**VWT**), from the Variation Date up to 30 June 2006, DSE may provide an additional sum of up to \$2,000,000 (**VWT Funds**) into the Joint Venture Bank Account to be managed in accordance with this Schedule.

1.2. VWT Funds in addition to contributions made under clause 5.3(a)

For the avoidance of doubt, the funds provided by DSE through this Schedule will apply in addition to the contributions made by DSE to the Fund on behalf of the regional urban Victorian communities under clause 5.3(a).

1.3. Purpose of VWT Contribution

The VWT Funds will be used to provide Funding for VWT Projects. Applications will be received by the Smart Water Fund, reviewed by the Statewide (VWT) TRC and approved by the Independent Assessment Panel. After approval by the Independent Assessment Panel, the Manager on behalf of the VWT will enter into Funding Agreements with successful Applicants.

1.4. Role of the VWT and the Fund

- (a) The VWT Advisory Council will set the strategic direction of priority research topics to be targeted for funding of VWT Projects by the VWT Funds and convey those strategic directions to the Manager.
- (b) The Manager will be responsible for creation and distribution of application forms and supporting material, processing of Applications for Funding from the VWT Funds, management of Funding Agreements with successful Applicants for the duration of the Funding Agreement, including management of reporting requirements, and advertising in relation to the availability of the VWT Funds for funding VWT Projects in accordance with this Schedule.
- (c) The Manager will provide copies of all Applications for Funding from the VWT Funds to the members of the Statewide (VWT) TRC.
- (d) The Statewide (VWT) TRC will evaluate Applications provided to it under paragraph (c) above in accordance with the Guidelines and the VWT Guidelines, and will provide a shortlist of Applications to the Independent Assessment Panel.
- (e) The Independent Assessment Panel will consider the shortlist of Applications for VWT Funds provided by the Statewide (VWT) TRC in accordance with the Guidelines and the VWT Guidelines, and will notify the Manager of its decisions. The other functions, duties and procedures of the Independent Assessment Panel are described in clause 10 of the Joint Venture Agreement.
- (f) The Fund will be permitted to recover the costs of performing the functions and services described in paragraph 1.4 (b) of this schedule, but will not be permitted to charge a fee in relation to any such functions for services.

(g) The costs of performing the functions and services described in paragraph 1.4 (b) of this schedule including the average overhead costs and specific cost recovery for items directly attributable to the VWT will be recovered as a Joint Venture Expense, but from the VWT Funds as determined by the Manager and approved by the Management Committee.

1.5. The VWT Guidelines

(a) The VWT Guidelines are as follows:

1. High priority will be given to Applications for Funding for projects that:
 - a. advance the objectives of the Victorian Water Trust
 - b. include robust analysis and project costing (whole of life costing)
 - c. offer highly effective leverage and investment by stakeholders
 - d. facilitate joint ventures and partnerships
 - e. represent a significant advance in sustainable water management above and beyond core business
 - f. demonstrate a clear public benefit commensurate with the level of investment
 - g. take a holistic approach to sustainable water resource management (eg. whole of water cycle)
 - h. demonstrate project readiness and deliverability including sound project plans, resourcing, risk and project management arrangements
 - i. include a sound project monitoring and reporting framework, including ability to measure project outcomes against objectives and milestones
 - m. address water use within urban, commercial or industrial contexts
2. Low priority will be given to Applications for Funding for projects that:
 - a. focus on biosolids reduction or use (tonnes)
 - b. request retrospective funding, where projects have been completed or have commenced construction prior to receiving funding approval
 - c. require ongoing funding from the VWT once completed
 - d. are projects, or parts thereof, which in the normal course of events are clearly the core business of local or state government authorities, or which would be expected to be financed and/or delivered by the private sector
 - e. investigate water use in agricultural systems
 - f. investigate the health of rivers or wetlands.
3. No preference will be given to Applications for Funding for a project on the basis of that project addressing decentralized treatment.

(b) The VWT Guidelines may be amended by the Management Committee in accordance with clause 7.5(b) of this Agreement.

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- (c) For the purposes of the evaluation of Applications for VWT Funds by the Statewide (VWT) TRC under clause 1.4(d) above and the Independent Assessment Panel under clause 1.4(e) above, where any inconsistencies arise between the Guidelines and the VWT Guidelines, the VWT Guidelines will prevail.

1.6. Agency

The Manager will act as an agent for DSE in relation to entering into VWT Funding Agreements and in executing any other activity necessary to support the delivery of the VWT Funds in accordance with paragraph 1.4(b) of this Schedule.

1.7. General

For the avoidance of doubt, clauses 1 (Interpretation), 2 (Establishment of the Joint Venture) (excluding provisions in relation to the Termination Date), 6 (Warranties and Indemnities), 7 (Management Committee), 10 (Independent Assessment Panel), 11 (Manager), 12 (Intellectual Property), 13 (Transfer of Interest), 14 (Audit of Accounts), 15 (Default), 17 (Stamp Duty), 18 (Confidentiality), 19 (Amendment), 20 (Dispute Resolution) and 21 (General) in the main body of the Joint Venture Agreement apply equally to Schedule 2.

1.8. Termination

- (a) This Schedule terminates on the date on which all obligations under any Funding Agreement involving VWT Funds have been fully performed. The Termination Date for the remainder of the Joint Venture Agreement does not apply to Schedule 2.
- (b) Upon termination of Schedule 2, the Manager will deduct from the VWT Funds any amounts owing by DSE under Schedule 2, before paying any remaining VWT Funds or proceeds from VWT Funds to DSE.
- (c) For the avoidance of doubt, clause 16.4 'Intellectual Property rights on Termination' applies to Schedule 2.

2. STATEWIDE (VWT) TECHNICAL REVIEW COMMITTEE

2.1. Statewide (VWT) Technical Review Committee

The Management Committee must establish a sub-committee known as the Statewide (VWT) technical review committee (**Statewide (VWT) TRC**) to consider Applications in relation to research projects seeking VWT Funds.

2.2. Appointment of Statewide (VWT) TRC Members

As soon as practicable after the Variation Date, DSE must advise the Participants in writing of one representative of the RUWAs, one representative of the Water Companies, one representative of DSE regional offices and one representative of the Victorian Water Trust selected by DSE to be appointed as Statewide (VWT) TRC Members (together known as the **Statewide (VWT) TRC Members**), stating the full name and address of the Member and an address for the service of notices on the Member.

The persons selected by DSE and under this clause 2.2 shall become Statewide (VWT) TRC Members from the date DSE gives written notice to the Participants in accordance with the previous paragraph.

DSE may at any time replace the appointed Statewide (VWT) TRC Members to the Statewide (VWT) TRC by notice in writing to the other Participants.

The Manager will be the fifth Statewide (VWT) TRC Member although she or he will not have any voting rights.

The Chair, and sixth member, of the Statewide (VWT) TRC will be a Statewide (VWT) TRC Member representing DSE and will be the same representative as appointed as the TRC Chairperson.

2.3. Functions and duties of the Statewide (VWT) TRC

The functions and duties of the Statewide (VWT) TRC are:

- (a) to consider Applications seeking Funding for VWT Projects from VWT Funds and to recommend to the Independent Assessment Panel which Applications should receive Funding, in accordance with the Guidelines and the VWT Guidelines, and in making such recommendation give due consideration to any approvals given by the VWT Advisory Council for setting the strategic direction of priority research topics to be targeted for project funding by the VWT Funds under clause 1.4 (a) of this schedule; and
- (b) any other function or duty determined by the Management Committee.

2.4. Consideration of Applications

The Statewide (VWT) TRC must meet to consider Applications made under Schedule 2 provided to it by the Manager.

Within a reasonable period after the meeting at which the Applications provided to the Statewide (VWT) TRC have been considered, the Statewide (VWT) TRC must determine shortlists of recommended Applications for Funding from VWT Funds in accordance with the Guidelines and in making such recommendation give due consideration to any approvals given by the VWT Advisory Council for setting the strategic direction of priority research topics to be targeted for project funding by the VWT Funds under clause 1.4 (a) of this schedule and provide the shortlists to the Manager. The shortlists may contain recommendations on the terms and conditions of Funding.

2.5. Voting Majorities

Decisions of the Statewide (VWT) TRC must be by majority vote. In the event of equality of vote, the Statewide (VWT) TRC Chairperson will have the casting vote.

2.6. Advisers

Advisers to the Statewide (VWT) TRC Members, as approved by the Statewide (VWT) TRC and the Manager, will be entitled to attend Statewide (VWT) TRC meetings to provide advice to the Statewide (VWT) TRC Member retaining them or to the Statewide (VWT) TRC as a whole and the reasonable costs of the advisers will be treated as Joint Venture Expenses which are to be reimbursed in accordance with clause 5.6 of this Agreement, but from the VWT Funds.

2.7. Copy of Applications

The proposed agenda for meetings of the Statewide (VWT) TRC must include a copy of each Application to be considered under this Schedule.