

Dated: Day, Month, 2019

SPATIAL INFORMATION SYSTEMS RESEARCH LTD

and

<CONSULTANT ORGANISATION NAME>

CONSULTANCY AGREEMENT

FRANCIS ABOURIZK LIGHTOWLERS

Commercial & Technology Lawyers
Level 16

14 114 William Street
MELBOURNE VIC 3000

Tel: (03) 9642 2252

Fax: (03) 9642 2272

Email: fal@fal-lawyers.com.au

www.fal-lawyers.com.au

THIS CONSULTANCY AGREEMENT is made the day of

BETWEEN

SPATIAL INFORMATION SYSTEMS RESEARCH LIMITED (ABN 49 139 387 232)
of registered address c/- Francis Abourizk Lightowlers, Level 14, 114 William Street,
Melbourne Vic 3000 (“**SISRL**”)

AND

CONSULTANT (ABN XX XXX XXX XX), of <ADDRESS> (“**CONSULTANT**”)

RECITALS

- A. Spatial Information Systems Research Limited, trading name “FrontierSI,” intends to engage CONSULTANT to carry out the Consultancy as set out under this Agreement.
- B. FrontierSI is a research centre with a focus on high impact cross-sectoral (government-private-research) user-driven Australian and New Zealand collaborations in spatial science. FrontierSI has expertise in spatial information technologies and is the owner or licensee of certain spatial information intellectual property rights.
- C. CONSULTANT will carry out the Consultancy on the terms and conditions of this Agreement.

IT IS AGREED

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, the following definitions will apply except where the context otherwise requires:

“**Agreement**” means this agreement (including the Recitals and the Schedule) and any amendment made to it in accordance with clause 15.4;

“**Business Day**” means any day other than a Saturday or Sunday or any gazetted public holiday in the jurisdiction specified in Item 10 of the Schedule;

“**Chance Discoveries**” means discoveries, inventions and other forms of Intellectual Property Rights (other than copyright in any subject matter comprising the Deliverables) arising from the carrying out of the Consultancy;

“**SISRL Contributions**” means any contributions to be made by SISRL to enable CONSULTANT to carry out the Consultancy as described in Item 7 of the Schedule;

“**Commencement Date**” means the commencement date of the Consultancy specified in Item 1 of the Schedule;

“**Completion Date**” means the completion date of the Consultancy specified in Item 2 of the Schedule;

“**Confidential Information**” means all know-how, financial information and other commercially valuable information in whatever form including unpatented inventions, trade secrets, formulae, discoveries, works, improvements,

innovations, ideas, concepts, graphs, drawings, designs, biological materials, samples, devices, models and other materials of whatever description and howsoever documented, recorded or disclosed, which a Party claims as confidential to itself or to a third party to whom it owes a duty of confidentiality and which is within its control. The following are exceptions to such information:

- (a) information which is already in the public domain;
- (b) information which becomes part of the public domain otherwise than as a result of an unauthorised disclosure by the recipient Party or its representatives;
- (c) information which is or becomes available to the recipient Party from a third party lawfully in possession of such information and who has the lawful power to disclose such information to the recipient Party on a non-confidential basis;
- (d) information which is rightfully known by the recipient party (as shown by its written record) prior to the date of disclosure to it hereunder; or
- (e) information which is independently developed by an employee of the recipient Party who has no knowledge of the disclosure under this Agreement;

“Consultancy” means the consultancy services described in Item 3 of the Schedule;

“Deliverables” means the deliverables specified in Item 4 of the Schedule;

“Fee” means the fee specified in Item 6 of the Schedule;

“Intellectual Property Rights” means the statutory and other rights in respect of patents, designs, circuit layouts, copyrights, confidential information and all other intellectual property rights defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967;

“Parties” means the parties to this Agreement and their respective successors and permitted assigns, and **“Party”** means either one of them;

“SISRL Background IP” means the technologies and Intellectual Property Rights (if any) detailed in Item 7 of the Schedule;

“SISRL Technology” means all Chance Discoveries, SISRL Background IP and any improvements made by to the SISRL Background IP during the term of this Agreement.

1.2 In this Agreement, unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) a reference to a clause, Schedule or Recital is a reference, respectively, to a clause of, schedule to or recital of this Agreement; and

- (c) a reference to a statute or regulation includes an amendment or re-enactment to that legislation and includes subordinate legislation in force under it;
- (d) the singular includes the plural and vice versa;
- (e) a reference to a gender includes reference to every gender;
- (f) a provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision; and
- (g) the rights, obligations, representations, warranties and indemnities of a Party are given, undertaken, made or offered (as the case may be) jointly and separately by each of the parties who together constitute that Party under this Agreement and each of the rights, obligations, representations, warranties and indemnities of that Party is to be read accordingly.

2. CONSULTANCY

CONSULTANT will carry out the Consultancy from the Commencement Date until the Completion Date.

3. SISRL CONTRIBUTIONS

SISRL will provide CONSULTANT with the SISRL Contributions and the SISRL Background IP.

4. FEE

SISRL will pay CONSULTANT the Fee in the manner and at the times specified in Item 6 of the Schedule.

5. DELIVERABLES

5.1 CONSULTANT will deliver the Deliverables to the SISRL by the date specified in Item 5 of the Schedule.

5.2 SISRL will own the Deliverables, including the Intellectual Property Rights in the Deliverables.

5.3 CONSULTANT will do all acts and sign all documents necessary to vest the Deliverables in SISRL in accordance with clause 5.2.

6. SISRL TECHNOLOGY

6.1 Chance Discoveries

Any Chance Discoveries are owned by SISRL and (other than in accordance with this clause 6) CONSULTANT has no rights in relation thereto.

6.2 SISRL Background IP

SISRL will retain ownership and exclusive rights including Intellectual Property Rights in, and to, SISRL Background IP (including, without limitation, the rights of use of such SISRL Background IP).

6.3 **Limited licence to use SISRL Technology**

SISRL grants CONSULTANT a non-exclusive and royalty-free licence to use the SISRL Technology to the extent necessary (but not otherwise) for CONSULTANT to deliver the Deliverables subject at all times to CONSULTANT complying with its obligations under this Agreement. This licence expires on the Completion Date or on the earlier termination of this Agreement.

7. **CONFIDENTIALITY**

7.1 Each Party will treat the terms of this Agreement and all Confidential Information disclosed by the other Party as confidential and will not, without the prior written consent of the other Party, disclose or permit the same to be disclosed to any third person.

7.2 It will be the responsibility of a Party to ensure that its employees, officers and agents comply with the obligations of confidentiality imposed upon it by this clause 7 as if personally bound by such obligations.

8. **USE OF NAME AND LOGO**

Neither Party will use the name or logo of the other Party without having obtained the other Party's prior written consent.

9. **INDEMNITY**

9.1 CONSULTANT releases, indemnifies and holds harmless and will continue to release, indemnify and hold harmless SISRL, its officers, employees, subcontractors and agents from and against all actions, claims, proceedings or demands (including those brought by third parties) which may be brought against it or them, whether at common law, in equity or pursuant to statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property) and any infringement of copyright, patents, trade marks, designs or other intellectual property rights, howsoever arising out of:

- (a) CONSULTANT's conduct of the Consultancy, including delivery of the Deliverables;
- (b) a breach of this Agreement by CONSULTANT; and
- (c) any unlawful or negligent act or omission of CONSULTANT, its officers, employees, agents or representatives,

and from and against all damages, costs and expenses incurred in defending or settling any such claim, proceeding or demand.

9.2 SISRL releases, indemnifies and holds harmless and will continue to release, indemnify and hold harmless CONSULTANT, its officers, employees, subcontractors and agents from and against all actions, claims, proceedings or demands (including those brought by third parties) which may be brought against it or them, whether at common law, in equity or pursuant to statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property) and any infringement of copyright, patents, trade marks, designs or other intellectual property rights, howsoever arising out of:

- (a) a breach of this Agreement by SISRL; and
- (b) any unlawful or negligent act or omission of SISRL, its officers, employees, agents or representatives,

and from and against all damages, costs and expenses incurred in defending or settling any such claim, proceeding or damage.

9.3 A Party's obligation to indemnify the other Party and its officers, employees, subcontractors and agent set out in clause 9.1 or 9.2 is a continuing obligation separate and independent of a Party's other obligations.

9.4 The liability of a Party to indemnify the other Party under this clause 9 will be reduced having regard to the extent to which the latter Party contributed to the liability, loss, damage, cost or expense (including reasonable legal fees properly incurred) in respect of which it seeks indemnity.

10. INSURANCE

CONSULTANT will obtain and maintain adequate insurance in respect of its performance of the Consultancy including, without limitation, the insurance specified in Item 8 of the Schedule.

11. TERMINATION

11.1 SISRL may terminate this Agreement by providing CONSULTANT with written notice on the happening of any of the following events:

- (a) if CONSULTANT commits or allows to be committed a breach of any of the obligations contained in this Agreement and on its part to be performed or observed, and does not within 30 days of receipt of notice in writing from CONSULTANT make good the breach (where such breach is capable of remedy);
- (b) if CONSULTANT is the subject of winding up or liquidation proceedings, whether voluntary or compulsory, otherwise than for the purpose of and followed by, a reconstruction, amalgamation or reorganisation;
- (c) if CONSULTANT has become insolvent, bankrupt or is subject to the appointment of a mortgagee, a receiver or manager or an inspector to investigate its affairs, enters into any arrangement or composition with its creditors generally, or is unable to pay its debts as and when they become due;
- (d) if execution is levied on all or any part of the assets of CONSULTANT, provided that it is not a breach of this Agreement if the execution is contested in good faith or if within 7 days after it is levied payment is made in full to the judgment creditor in question of all amounts owing to such judgment creditor; or
- (e) if there is a material negative change in respect of CONSULTANT's expertise relevant to its capacity to undertake the Consultancy,

such termination to be effective immediately upon receipt of the abovementioned written notice.

11.2 SISRL may terminate this Agreement by providing 20 Business Days' notice to the CONSULTANT should SISRL believe that the Services are no longer necessary for any reason.

11.3 CONSULTANT may terminate this Agreement by providing SISRL with written notice on the happening of any of the following events:

- (a) if SISRL commits or allows to be committed a breach of any of the obligations contained in this Agreement and on its part to be performed or observed, and does not within 14 days of receipt of notice in writing from CONSULTANT make good the breach (where such breach is capable of remedy);
- (b) if SISRL is the subject of winding up or liquidation proceedings, whether voluntary or compulsory, otherwise than for the purpose of and followed by, a reconstruction, amalgamation or reorganisation;
- (c) if SISRL has become insolvent, bankrupt or is subject to the appointment of a mortgagee, a receiver or manager or an inspector to investigate its affairs, enters into any arrangement or composition with its creditors generally, or is unable to pay its debts as and when they become due;
- (d) if execution is levied on all or any part of the assets of SISRL, provided that it is not a breach of this Agreement if the execution is contested in good faith or within 7 days after it is levied, payment is made in full to the judgment creditor in question of all amounts owing to such judgment creditor; or
- (e) if there is a material negative change in respect of SISRL's operations, resources or expertise relevant to its capacity to undertake the Consultancy,

such termination to be effective immediately upon receipt of the abovementioned written notice.

11.4 On termination of this Agreement under this clause 11:

- (a) all copies of the Deliverables, reports and other materials prepared by CONSULTANT under the Consultancy or any documents and other materials provided by SISRL to CONSULTANT for the purposes of the Consultancy must be immediately delivered to SISRL and CONSULTANT must not retain any copies of them in any form;
- (b) all rights and licences granted to CONSULTANT under this Agreement cease and CONSULTANT must immediately cease all use of the SISRL Technology.

11.5 Termination of this Agreement:

- (a) is without prejudice to the rights of SISRL to sue for and recover any fees, monies or payments then due and to the rights of SISRL in respect of any previous breach of any of the provisions of this Agreement; and
- (b) does not relieve the Parties of their respective obligations of confidentiality, insurance and indemnity contained in this Agreement.

12. RESOLUTION OF DISPUTES

- 12.1 If a dispute arises between the Parties (the "Dispute"), the Parties agree to negotiate in good faith to resolve the Dispute and will refer resolution of the Dispute to their chief executive officers, or their nominees.
- 12.2 If the Dispute has not been resolved by negotiation within a reasonable time then either Party may refer the Dispute to mediation and will do so before initiating proceedings in a court to resolve the Dispute. A Dispute which is referred to mediation will be referred to the Australian Commercial Dispute Centre Limited ("ACDC") and be conducted in accordance with the ACDC Mediation Guidelines and will be heard by one conciliator appointed under the relevant rules in the jurisdiction set out in Item 10 of the Schedule.
- 12.3 If the Dispute has not been resolved within sixty (60) days of referral to ACDC either Party is free to initiate proceedings in a court.
- 12.4 Nothing in this clause will prevent a Party from seeking interlocutory relief through courts of appropriate jurisdiction.

13. NOTICES

- 13.1 Any notice, demand or other communication required to be given or made in writing under this Agreement will be deemed duly given or made if delivered or sent by prepaid post or facsimile transmission to the attention of the contact person and to the address specified in Item 9 of the Schedule.
- 13.2 Either Party may change its nominated contact person, address or facsimile transmission number for the purposes of this Agreement by giving notice of such change to the other Party within thirty (30) days of the change.
- 13.3 Any notice or other communication will be deemed to have been received by the Party to which it was sent:
- (a) in the case of hand delivery, upon the date of such delivery;
 - (b) in the case of prepaid post within Australia, on the third day next following the date of dispatch; or
 - (c) in the case of facsimile transmission, at the time of transmission, provided that, following the transmission, the sender receives a transmission confirmation report unless in any such case it would be deemed to have been received on a day which is not a Business Day, or after 5 p.m. on such a Business Day, in which event it will be deemed to have been received on the next such Business Day.

14. GST

- 14.1 When any consideration (whether expressed in money or otherwise) becomes due in respect of a Taxable Supply by CONSULTANT, CONSULTANT will provide SISRL with a Tax Invoice and any other documentation required under the GST Law.
- 14.2 If GST is applicable to a Supply made under this Agreement, then, to the extent that the consideration for the relevant Supply is not stated in the Schedule to include an amount in respect of GST, CONSULTANT may increase the

consideration by the applicable amount of GST and the SISRL will pay that increased amount.

14.3 If the GST on a Taxable Supply is varied pursuant to any change in legislation, the consideration payable under this Agreement will be increased or decreased to reflect that variation of the GST.

14.4 For the purposes of this clause 14, GST, GST Law, Input Tax Credit, Supply, Tax Invoice and Taxable Supply have the meanings attributed to those terms in A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time.

15. GENERAL

15.1 Governing Law

This Agreement is governed by the laws of the place named in Item 10 of the Schedule and each Party submits to the jurisdiction of the courts of that State and their courts of appeal.

15.2 Severability

Any illegal or invalid provision of this Agreement will be severable and all other provisions will remain in full force and effect.

15.3 Waiver

Any failure by a Party to compel performance by the other Party of any of the terms or conditions of this Agreement will not constitute a waiver of those terms or conditions, nor will it affect or impair the right to enforce those rights at a later time or to pursue remedies for any breach of those terms or conditions. A waiver of any right under this Agreement will be in writing.

15.4 Amendment

This Agreement may only be amended by a written instrument signed by each of CONSULTANT and SISRL.

15.5 Entire Agreement

This Agreement contains the whole of the agreement between CONSULTANT and SISRL with respect to its subject matter and supersedes any and all other representations or statements by either Party whether oral or in writing and whether made prior or subsequent to the date of this Agreement.

15.6 Relationship

Each Party enters this Agreement as an independent contractor and nothing in this Agreement will create any other relationship between them.

15.7 Force Majeure

A Party will not be liable for any failure to carry out its obligations under this Agreement where such failure is due to any cause beyond the reasonable control of that Party.

15.8 Assignment

A Party will not assign its rights under this Agreement without the prior written consent of the other Party.

15.9 Further Assurance

Each Party agrees to do all acts, including the signing of documentation, necessary or desirable to give effect to this Agreement.

15.10 No Authority

Neither Party may enter into any agreement or incur any liabilities on behalf of the other Party without that other Party's prior written consent and may not represent to any person that it has any authority to do so.

15.11 Payments in Australian Currency

Unless the other Party consents in writing or as otherwise specified in the Schedule, any payments that are required to be paid under this Agreement will be paid in Australian currency.

15.12 Counterparts

This Agreement may be executed in any number of counterparts.

15.13 Costs and Expenses

Each Party will bear its own costs and expenses in relation to the negotiation, preparation, execution, delivery and completion of this Agreement and any other related documentation.

15.14 Survival

Clauses 7, 8, 9, 10, 11, 12 and 15 survive expiration or earlier termination of this Agreement.

EXECUTED BY THE PARTIES AS AN AGREEMENT

Signed for and on behalf of)
SPATIAL INFORMATION SYSTEMS)
RESEARCH LTD)
by)
.....)
Director)
and)
.....)
Director / Secretary)
))
) Date:

Signed for and on behalf of)
CONSULTANT)
by)
.....)
Sole Director/ Company Secretary/Director)
.....)
.....)
.....)
Witness/ Director)
))
) Date:

SCHEDULE

Item 1 **Commencement Date**

Item 2 **Completion Date**

Item 3 **Consultancy**

Item 4 **Deliverables**

Item 5 **Date of Delivery of Deliverables**

Item 6 **Fee**

Item 7 **SISRL Contributions and SISRL Background IP**

SISRL Contributions

SISRL Background IP

Item 8 **Insurance**

CONSULTANT will effect and maintain adequate insurance to cover its activities under this Agreement and to indemnify itself against any loss or damage which it may suffer or cause, including professional indemnity, product liability and third party liability insurance.

CONSULTANT will, upon the request of SISRL, produce evidence of the currency of the above insurance policies.

CONSULTANT will comply with the terms of such insurance policies.

CONSULTANT's obligations in respect of insurance survive expiration or earlier termination of this Agreement for a period of six (6) years from the date of expiry or early termination.

Item 9 **Notices**

CONSULTANT

Contact Name

t
Address

Attention:

Telephone:

Facsimile:

Email:

SISRL

Graeme Kernich

Po Box 672
Carlton South, Vic 3053

Attention:

Telephone: 8344-9200

Email:
gkernich@crCSI.com.au

Item 10 **Governing Law**

Victoria, Australia