



NORTH CENTRAL
Catchment Management Authority

- and -

[Consultant]

AGREEMENT FOR CONSULTANCY

TO UNDERTAKE THE

EOI

Contract: **[Contract Number]**

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AGREEMENT FOR PROFESSIONAL SERVICES OR CONSULTANCY

THIS AGREEMENT is made the XX day of XXX 20XX

BETWEEN

North Central Catchment Management Authority of 628-634 Midland Highway, Huntly, Victoria 3551 ABN 73 937 058 422 (the "Authority")

AND

[Contractor] [Contractors Address], ABN:

WHEREAS

- A. The Authority has called for quotes for the provision of Project Services;
- B. The Contractor has offered to supply such Project Services and the Authority and the Contractor have agreed upon the provision of the Project Services upon the terms and conditions contained in this Agreement.

IT IS AGREED

1. *Interpretation*

- 1.1 In this Agreement unless the context otherwise requires:

Agreement means this agreement and includes the Schedules and any annexures or documents incorporated by reference;

Authority means the Authority of the State named in the description of the Parties at the commencement of this document and any reference to the Authority shall be read and construed as a reference to the Crown in right of the State of Victoria;

Authority's Representative means the person nominated in Item (iv) of Schedule 1 who shall represent the Authority for the purposes of this Agreement or such other person who may subsequently be appointed in writing by the Authority and notified to the Contractor;

Business Day means a day (not being a Saturday, Sunday or a public holiday) on which Australian banks (as defined in Section 9 of the Corporations Act) are open for general banking business in the Melbourne metropolitan area.

Claims includes actions, proceedings, suits, causes of action, arbitrations, verdicts and judgements either at law or in equity however it arises and whether it is present or future, fixed or ascertained, actual or contingent under a statute, debts, dues, demands, claims of any nature, costs and expenses.

Commencement Date means the date so identified in Item (vi) of Schedule 1;

Completion Date means the date so identified in Item (vi) of Schedule 1;

Conflict of Interest means any conflict of interest including directly or indirectly engaging, participating or being involved in, or associated with, any activity or relationship, or obtaining any interest or benefit, that actually or potentially conflicts with, or may be perceived to actually or potentially conflict with the performance of any Services to be provided by the Contractor

pursuant to the terms of this Agreement as assessed from a fair objective and independent manner and in the best interests of the Authority.

Contractor means the person so named in the description of the Parties at the commencement of this document;

Contractor's Representative means the person appointed by the Contractor to represent the Contractor for the purposes of this Agreement and so identified in Item (i) of Schedule 1 or such person as may subsequently be appointed by the Contractor and notified to the Authority in writing;

Contractor's Staff means the persons named in Item (vii) of Schedule 1 as the professional staff who will provide the Project Services or such persons who the Authority's Representative shall otherwise agree may be engaged in the provision of the Project Services;

Control means a power or control that is direct or indirect or that is, or can be, exercised as a result of, by means of or by the revocation or breach of a trust, an agreement, a practice, or any combination of them, whether or not they are enforceable. It does not matter whether the power or control is express or implied, formal or informal, exercisable alone or jointly with someone else;

Coordinating Consultant Brief means the document included in the Request for Tender which describes the Project Services to be performed by the Contractor;

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

Fixed Project Fee means a fixed lump sum fee payable to the Contractor for the provision of the Project Services under clause 8 and Schedule 3;

Force Majeure means an act of god, fire, storm, flood, earthquake, explosion, epidemic, war, substance, insurrection or civil disorder or military operations or act of terrorism, expropriation, strikes, lockouts or other industrial disputes or any kind not relating solely to the party affected, and any other event which is not within the reasonable control of the party affected (which in the case of the Contractor includes reasonable control of its sub-contractors) but does not include any act or omission of the other party to this Agreement.

Funding means the provision of Funds;

Funding Agreement means an agreement as entered into by the Authority and the Funding Body for the provision of Funding;

Funding Body means any such statutory, regulatory or such other organisation responsible for providing any provision of Funding to the Authority.

Funds means any sum of money to be provided by the Funding Body to the Authority in accordance with the terms of any Funding Agreement.

GST means any goods and services tax imposed by the GST Law.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* as amended or replaced from time to time, any associated legislation, e.g. any legislation that imposes GST, and any regulations, to the extent they relate to any such legislation.

Information means all information or data however held, stored or recorded including drawings, plans, specifications, calculations reports, models, concepts, source codes, files, computerised data, photographic recordings, audio or audio visual recordings;

Insolvency Event means:

- (a) In relation to a body corporate, a liquidation or winding up, the appointment of a controller, administrator, receiver, manager or similar insolvency administrator to a party or any substantial part of its assets or the entering into a scheme or arrangement with creditors or the occurrence of any event that has a substantially similar effect to any of these events;
- (b) In relation to an individual, becoming bankrupt or entering into a scheme or arrangement with creditors or the occurrence of any event that has a substantially similar effect to any of these events; or
- (c) In relation to a trust, the making of an application or order in any court for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court under its control or the occurrence of any event that has a substantially similar effect to any of these events.

Intellectual Property includes (without limitation) all intellectual property rights such as;

- (a) patents, know how, copyright, design, semi conductor or circuit layout rights, trademarks, service mark, trade secrets, data, Confidential Information, business or company names or other proprietary rights; and
- (b) any application or right to apply for registration on any of the rights referred to in (a)

Liquidated Damages means the amount as set out in Item (viii) of Schedule 1 and referred to in clause 5.

Performance Standards means the standards set out in Schedule 4;

Personal Information has the same meaning as it has in Section 6 of the Privacy Act.

Privacy Act means the *Privacy Act 1988 (Cth)*.

Project Brief means the document included in the Request for Tenders which describes overall management and structure of the Project.

Project Fees means the fees payable to the Contractor by way of Tendered Rates, or a Fixed Project Fee;

Project Fee Cap means the maximum fee payable to the Contractor for the provision of the Project Services under clause 8 and identified in Schedule 3;

Project Intellectual Property means Intellectual Property that is created in the course of carrying out or otherwise in connection with the Project Services;

Project Services means the services described in Schedule 2, the Coordinating Consultant Brief and the Project Brief, which are to be performed by the Contractor in accordance with this Agreement;

Records includes documents, information and data stored by any means and all copies and extracts of the same.

Related Persons means a party's representative, officers, employees, agents and contractors.

Relevant Legislation means:

- (a) any Act, regulation, rule, ordinance, proclamation, by-law or similar statutory instrument, whether of the Commonwealth, State, local or other duly constituted authority;
- (b) the rules and regulations of any relevant authority and all public bodies and companies whose property or rights are or may be affected in any way by the Project Services.

Request for Tenders means the document issued by the Authority seeking tenders for the provision of the Project Services which document is incorporated into Schedule 2 to this Agreement;

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

Tax Invoice has the same meaning given to that term in the GST Act.

Tender means the Contractor's response to the Request for Tenders which response is incorporated into Schedule 2 to this Agreement (otherwise referring to the submitted 'Proposal')

Tendered Rates means the Contractor's rates for the provision of the Project Services which rates are set out in Schedule 3;

Term means the term of this Agreement from the Commencement Date to the Completion Date or such further period as the parties may mutually agree to in writing.

- 1.2 A recital, schedule, annexure or a description of the parties forms part of this Agreement.
- 1.3 In this Agreement unless a contrary intention appears words importing a gender include any other gender and words in the singular include the plural and vice versa.
- 1.4 In this Agreement unless a contrary intention appears a reference to:
 - (a) "dollars" or "\$" is a reference to the lawful currency of Australia;
 - (b) any legislation shall include any Act of Parliament and any subordinate legislation, rule, regulation, order or instrument made thereunder and shall include any statutory modification, substitution or re-enactment of such legislation;
 - (c) an individual or person includes a corporation, partnership, joint venture, association, governments, local government authorities and agencies;
 - (d) a recital, clause, schedule or annexure is a reference to a recital, clause, schedule or annexure to this Agreement; and
 - (e) a party to this Agreement includes the executors, administrators, successors and permitted assigns of that party.
- 1.5 Clause headings in this Agreement are for convenience of reference only and have no effect in limiting or extending the language of the provisions to which they refer.
- 1.6 In this Agreement if a word is defined cognate words and phrases have corresponding definitions.
- 1.7 If a party to this Agreement consists of more than one person those persons shall be jointly and severally bound under this Agreement.
- 1.8 This Agreement shall be subject to and construed in accordance with the laws of the State of Victoria.

2. *Entire Agreement*

This Agreement constitutes the entire agreement between the Authority and the Contractor in relation to the Project Services and any previous correspondence is expressly excluded. The Authority and the Contractor declare that there are no extraneous agreements, representations or undertakings either express or implied, which affect this Agreement.

3. *Inconsistency*

Where there is a variation or inconsistency between provisions of the Schedules to this Agreement and the provisions of clauses 1 to 34 of this Agreement the provisions of clauses 1 to 34 shall prevail.

4. *Commencement and Completion*

4.1 The Contractor shall commence the Project Services on the Commencement Date and complete the Project Services by the Completion Date.

4.2 Time shall be of the essence in the provision of the Project Services.

5. *Liquidated Damages*

If the Contractor fails to -

- (a) complete the provision of Project Services by the Completion Date; or
- (b) fails to meet any specified delivery date nominated in Schedule 2;

liquidated damages at the rate specified in Item (viii) of Schedule 1 shall be paid by the Contractor to the Authority. The Parties agree that the liquidated damages specified constitute a fair and reasonable pre-estimate of the loss that will be suffered by the Authority.

6. *The Project Services*

6.1 The Contractor shall provide the Project Services, which shall conform to the Performance Standards and meet all other requirements set out in Schedule 2 and the Project Brief.

6.2 In addition to complying with the other provisions of this Agreement the Contractor shall comply with all statements or representations as to its performance or the provision of the Project Services contained in the Tender.

6.3 The Contractor shall carry out its obligations and duties and provide the Project Services in order to complete the provision of the Project Services to the reasonable satisfaction of the Authority's Representative and shall exercise all due care skill and judgement and work diligently, effectively and to a high standard and at all times act in accordance with the applicable professional standards, principles and practices.

6.4 The Contractor shall observe and comply with all Relevant Legislation.

6.5 The Contractor shall have regard to such requirements as may be conveyed to it by the Authority's Representative and shall comply with all reasonable directions of the Authority's Representative.

6.6 The Contractor shall permit the Authority's Representative to enquire of, to confer with and counsel the Contractor, the Contractor's staff and its employees engaged in the provision of the Project Services, and shall do all that is within its power to facilitate any and all appropriate enquiries, conferences and counselling.

- 6.7 The Contractor shall provide the Authority's Representative at intervals of approximately thirty (30) days with written reports as to the progress of the Project Services.
- 6.8 The Contractor shall ensure that it and any person employed or engaged to work on the Project Services does not:
- 6.8.1 engage in unethical work practices; or
 - 6.8.2 engage employees or subcontracted workers upon terms and conditions that will not meet industrial standards generally applicable in Victoria.
- 6.9 The Contractor shall supply to the Authority's Representative such information as to the progress of the Project Services as he may from time to time reasonably require.

7. Variation of Project Services

- 7.1 The Contractor must not amend or vary the Project Services without the prior written approval of the Authority's Representative.
- 7.2 If the Contractor wishes to amend or vary any aspect of the Project Services, it may submit a proposal to the Authority's Representative detailing the nature of the proposed amendment or variation and explaining why this amendment or variation is necessary.
- 7.3 The Authority's Representative may, in the Authority's Representative absolute discretion, approve or reject any proposed amendment or variation to the Project Services.

8. Fee for Project Services

- 8.1 The Authority will pay the Project Fees to the Contractor for the provision of the Project Services satisfactorily provided in accordance with this Agreement.
- 8.2 The Tendered Rates are fixed for the Term.
- 8.3 If a Fixed Project Fee is specified in Schedule 3 the Project Fees shall be that fixed lump sum fee. Payment at the Tendered Rates may also be subject to a Project Fee Cap and, if so, Project Fees shall not exceed that Project Fee Cap.
- 8.4 Progress payments will only apply if specified in Schedule 3 and will only be made in accordance with that Schedule.

9. Delay

- 9.1 The Contractor must complete the Project Services in accordance with clause 4 of this Agreement and must take all necessary reasonable steps to minimise any possible delay in completion of the Project Services.
- 9.2 If the Contractor becomes aware that it will be delayed in progressing or completing the Project Services in accordance with this Agreement, the Contractor must immediately notify the Authority's Representative in writing of the cause and nature of the delay. The Contractor is to detail in the notice the steps it will take to contain the delay and the anticipated duration of the delay.
- 9.3 In the event of a delay which exceeds a period of thirty (30) Business Days, the Authority (acting reasonably) may:
- 9.3.1 notify the Contractor in writing of a period of extension to complete the Project Services and vary this Agreement accordingly;

- 9.3.2 notify the Contractor in writing of a reduction in the scope of the Project Services and any adjustment to the Project Fees for the Contractor to complete the reduced Project and vary this Agreement accordingly; or
- 9.3.3 terminate this Agreement under clause 21 or take such other steps as are available under this Agreement.
- 9.4 Subject to the Authority's actions taken under clause 9.3 and subject to clauses 9.3.2 and 21 of this Agreement, the Contractor is required to comply with the time frame for progressing and completing the Project Services as set out in this Agreement.

10. Invoicing and Payment

- 10.1 Subject to the terms of this Agreement and the Contractor complying with all terms and conditions as contained in this Agreement, and in particular, the Authority Representative being satisfied in the Authority's absolute discretion that each part or all of the relevant Project Services have been completed in accordance with the terms of this Agreement and to the satisfaction of the Authority, the Authority will pay the progress payment as achieved in accordance with schedule 3 and in accordance with the terms of this Agreement.
- 10.2 The Contractor shall give to the Authority's Representative an invoice in respect of the Project Services as soon as practicable after, and, in any event, within seven (7) Business Days of the completion of the delivery of the Project Services.
- 10.3 Where Schedule 3 provides for progress payments invoices for such payments may be submitted in arrears in accordance with the payment provision set out in the Schedule.
- 10.4 The Contractor must provide to the Authority a correctly rendered Tax Invoice, of which any such Tax Invoice shall also specify the following: -
 - (a) the Authority's reference number;
 - (b) the Fee due to the Contractor and the basis for its calculation;
 - (c) the date of delivery of the Project Services to which the invoice relates;
 - (d) a description (including quantity) of the Project Services delivered;
 - (e) the Contractor's address for payment;
 - (f) together with such other information as may be required from time to time by the Authority;

the Contractor must ensure that any Tax Invoice will meet the requirements as set out under the GST Law.

- 10.5 All invoices shall be certified for payment by the Authority's Representative prior to payment. No invoice shall be certified for payment unless the Authority's Representative is satisfied that the Project Services for which payment is sought have been satisfactorily completed.
- 10.6 Subject to certification under clause 10.5, the Authority shall pay the Project Fees to the Contractor within thirty (30) Business Days of the receipt of the invoice.
- 10.7 Payment of an invoice is not:
 - (a) evidence or an admission that the Project Services have been provided in accordance with the Project Brief;

- (b) evidence of the value of the specific Project Services;
 - (c) an admission that the Project Services invoiced were satisfactorily performed or expenses properly incurred;
 - (d) an admission of liability; or
 - (e) acceptance or approval of the Contractor's performance;
- but must be taken only as payment on account.

10.8 The Contractor is required to provide an Australian Business Number (**ABN**) and will not be entitled to any payment pursuant to any Tax Invoice until an ABN is supplied to the Authority.

11. Contractor's Warranties

The Contractor hereby warrants that-

- (a) the Project Services shall to the extent reasonably practicable be carried out personally by the Contractor's Staff;
- (b) the Project Services shall be carried out with all due care and skill and in accordance with applicable professional standards, principles and practices;
- (c) it has the accreditation or membership of professional or other bodies in relation to the provision of the services as set out in its Tender for the provision of the Project Services and that it will use its best endeavours to maintain such accreditation or membership during the Term; and.
- (d) it has established, and will comply with and maintain during the Term the quality assurance arrangements set out in Schedule 2.

12. Records

12.1 The Contractor must establish and maintain proper books of account of all transactions relating to the Project Services and operating records necessary to afford a correct and complete record and explanation of all expenditure by the Contractor in completing the Project Services, including:

- (a) proper books of account;
- (b) disbursement records;
- (c) full and proper record of the Project Services provided;
- (d) number of hours worked by all employees, sub-contractors and contractors.

Such records must be maintained in accordance with accounting principles generally applied in commercial practice and to an auditable standard, as required by any Relevant Legislation, and retained for a period of no less than 7 years after the end of the Expiration Date.

12.2 The Contractor shall upon such request being made by the Authority's Representative prepare such reports, assessments, documentation or provide such other information in the format as required by the Authority which shall include such information as required by the Authority including:-

- 12.2.1 information regarding the progress the Contractor has made towards achieving the Project Services;

- 12.2.2 accounts for the use of funds as paid to the Contractor by the Authority;
 - 12.2.3 a description of all such works and outcomes to date in delivering the Project Services;
 - 12.2.4 any issues, opportunities or lessons that are raised in relation to delivery of the Project Services; and
 - 12.2.5 such other information as may be requested from time to time by the Authority.
- 12.3 The Contractor represents and warrants that all reports provided to the Authority under this clause 12.2 (**Reports**) will be to the best of the Contractor's knowledge, accurate, complete and comprehensive in relation to all matters relevant to the Report and will not contain information that is misleading in any respect.

13. Inspection of Records and Audit

- 13.1 The Contractor must give the Authority's Representative, or a third party nominated by the Authority's Representative (including an auditor appointed by the Authority), access to the information referred to in clause 11, or in any other clause of this Agreement, to enable the Authority's Representative or the third party to:
- 13.1.1 determine whether the Contractor is complying with all of its obligations under this Agreement;
 - 13.1.2 determine the accuracy of the Contractor's reports, invoices and financial statements in relation to the performance of the Project and the receipt, custody and expenditure of Project Fees under this Agreement; and
 - 13.1.3 ascertain any other matters reasonably considered by the Authority's Representative or the third party to be relevant to the performance of the Contractor's obligations under this Agreement,
- and that is sufficient for the Authority to undertake an audit of the finances and Project-related activities of the Contractor.
- 13.2 If requested by the Authority's Representative or an auditor appointed by the Authority, the Contractor must provide to the Authority's Representative documentation evidencing costs, losses or expenses incurred by the Contractor in undertaking the Project, or part of the Project, as soon as possible and in any event within 5 Business Days of receiving such a request.
- 13.3 The Contractor must participate cooperatively in audits of this Agreement for the purpose of ensuring that this Agreement is being properly performed and the Project Services properly administered.
- 13.4 Each party must bear its own costs arising from any audits required or implemented under the Agreement.
- 13.5 This clause 13 applies for the Term and for a period of 7 years from the date of the expiration or termination of this Agreement.
- 13.6 The rights of the Authority under this Agreement are in addition to any power, right or entitlement that any of those persons may have under any Relevant Legislation.
- 13.7 If at any time during this Agreement it is determined by the Authority or any independent auditor acting on behalf of the Authority that the Consultant has expended, transferred or committed any amount of Project Fees as paid by the Authority to the Contractor in breach of this Agreement, the Contractor is liable to repay to the Authority the amount of money so spent and the Authority

may recover that money from the Contractor as a debt due to the Authority. Without limitation, recovery by the Authority under this clause may include offsetting the repayment amount against any future payments required to be made pursuant to schedule 3 under this Agreement or under any other arrangement between the parties.

14. Contractor's Staff

- 14.1 The Project Services shall be provided by the Contractor's Staff. Where the Contractor's Staff are unable to undertake work in respect of the Project Services, the Contractor shall notify the Authority's Representative immediately. The Contractor shall, if so requested by the Authority's Representative, provide replacement staff to the reasonable satisfaction of the Authority's Representative, at no additional charge and at the earliest opportunity.
- 14.2 Notwithstanding clause 14.1 the Contractor is both responsible and liable for all obligations as set out under the terms of this Agreement.

15. Confidentiality and Security

- 15.1 The Authority will treat as confidential all information provided to it in the Tender.
- 15.2 All Information provided to the Contractor by or on behalf of the Authority under this Agreement shall be treated as confidential by the Contractor. In clause 13 this information is referred to as "Confidential Information".
- 15.3 The Contractor agrees that the Contractor or its employees, agents, directors, partners, shareholders or consultants shall not disclose to any person, any Confidential Information or documentation relating to the Authority or the affairs of others which may have come to its or their knowledge as a result of this Agreement or performance of the Project Services and shall take all necessary precautions to prevent unauthorised access to such information or documentation.
- 15.4 All Confidential Information shall remain the property of the Authority and shall (where possible) be returned to the Authority's Representative at completion of the Project Services or upon the expiration or termination of this Agreement.
- 15.5 The Confidential Information supplied to the Contractor under this Agreement shall be used only for the provision of the Project Services or as directed by the Authority's Representative and shall not be used for any other purpose.
- 15.6 The Contractor shall not divulge any information regarding the nature or progress of the Project Services or give any publicity concerning the Project Services except with the written consent of the Authority's Representative.
- 15.7 The Contractor acknowledges that the Authority shall be entitled (in addition to any entitlement to damages) to an injunction or other equitable relief with respect to any actual or threatened breach by the Contractor of this clause 13 and without the need on the part of the Authority to prove any special damage.
- 15.8 The Contractor shall require all of the Contractor's Staff or any other person to whom Confidential Information shall be disclosed to execute a Deed of Confidentiality in or to the form of Schedule 4 at the cost of the Contractor. Such Deeds of Confidentiality shall be made available to the Authority at the request of the Authority's Representative or other authorised representative of the Authority.
- 15.9 The Contractor's and the Authority's obligations under this clause 15 shall not extend to:
- (a) information already in the public domain other than due to a breach of this Agreement;
or

- (b) any disclosure required by law.

16. Privacy

- 16.1 The Contractor acknowledges that the Authority is an organisation bound by the provisions of the Privacy Act.
- 16.2 The Contractor acknowledges and agrees to be bound by the Information Privacy Principles under the Privacy Act and any applicable code of practice as referred to in section 17 of the Privacy Act with respect to any act done, or practice engaged in, by the Contractor for the purposes of this Agreement in the same way to the same extent as if the act done, or practice engaged in, had been directly done or engaged in by the Authority.
- 16.3 Without limiting the generality of clause 12, in relation to the collection, management, holding, use, quality, accuracy, disclosure or transfer of any information, the Contractor shall comply with:-
 - (a) the Privacy Act; and
 - (b) the Information Privacy Principles under the Privacy Act as amended from time to time.

17. Conflict of Interest

- 17.1 The Contractor warrants that, to the best of its knowledge and belief after due inquiry as at the date of this Agreement, they have no Conflict of Interest except where a full written disclosure has been made to the Authority's Representative and prior written permission has been obtained from the Authority's Representative which permission may be given, or withheld, by the Authority's Representative in his or her absolute discretion.
- 17.2 During the term of this Agreement the Contractor must take all reasonable steps to avoid having any Conflict of Interest except where a full written disclosure has been made to the Authority's Representative and prior written permission has been obtained from the Authority's Representative which permission may be given, or withheld, by the Authority's Representative, in his or her absolute discretion.

18. Waiver

- 18.1 No right or obligation under this Agreement shall be deemed to be waived except upon written acknowledgment signed by each party.
- 18.2 A waiver by the Authority will not prejudice any of its rights in respect of any subsequent breach of this Agreement by the Contractor.
- 18.3 Subject to clause 18.1, any failure by the Authority to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by the Authority to the Contractor, is not to be construed as a waiver of its rights under this Agreement.

19. Intellectual Property

19.1 Warranties by the Contractor

- 19.1.1 The Contractor warrants that it is entitled to use any Intellectual Property, which may be used by it in connection with the supply of Project Services under this Agreement.
- 19.1.2 The Contractor hereby acknowledges the Authority's right, title and interest in and to the Authority's Intellectual Property and the Contractor hereby agrees to take all

reasonable steps to ensure the protection and continuance of that right, title and interest in or to the Intellectual Property and, without limiting the generality of the foregoing, the Contractor agrees as follows:

- (a) not to represent itself as the owner or having any right, title or interest in the Authority's Intellectual Property or any part thereof except as otherwise agreed to in writing by the Authority;
- (b) not to use or allow the use of the Intellectual Property or any part thereof in a manner which is likely to lead to confusion or is contrary to or conflicts with or in any way damages the right, title or interest of the Authority in the Intellectual Property;
- (c) where Intellectual Property of the Authority is referred to or used by the Contractor, to clearly indicate ownership of such Intellectual Property by the Authority;
- (d) to execute Intellectual Property licences or other agreements including software licences or trade mark user agreements as may be reasonably required by the Authority from time to time;
- (e) to ensure that any third party enters into Intellectual Property licences or sub-licences as may be required by the Authority from time to time;
- (f) not to seek to register any of the Intellectual Property or intellectual property similar to the Intellectual Property of the Authority;
- (g) to conduct its business operations and activities at all times in a manner consistent with the preservation and protection of the Intellectual Property and good reputation of the Authority;
- (h) to obtain the Authority's prior written consent to any use of the Authority's Intellectual Property other than for use under this Agreement.

19.2 Indemnity by Contractor

- 19.2.1 The Contractor indemnifies and will at all times keep the Authority indemnified against any Claim for or liability to pay compensation or damages and costs or expenses arising out of or in respect of any breach of any third party's Intellectual Property rights relating to the provision of services under the Agreement.
- 19.2.2 The Contractor must immediately notify the Authority of any claim, demand threat or notice of Proceedings against the Contractor relating to any Product or any Intellectual Property (**the Proceedings**).
- 19.2.3 The Authority may, in its absolute discretion take over the conduct or handling of the Proceedings and the Contractor will indemnify the Authority against any liability for costs relating thereto from the date the Authority elects to take over the Proceedings. In the event that the Authority takes over the conduct or handling of the Proceedings, the Contractor will be entitled to proceeds and shall be liable for any award of damages resulting from the Proceedings. The Contractor hereby appoints the Authority its attorney to do in the Contractor's name all such acts, matters and things which it thinks fit in respect of the conduct of the Proceedings and the Contractor shall furnish the Authority with all assistance and information as the Authority may request.

19.3 Intellectual Property Rights and Ownership.

- 19.3.1 The Intellectual Property rights otherwise held by the parties shall remain the Intellectual Property of the respective parties (**Pre- Existing Intellectual Property Rights**). For the purposes of this Agreement Pre-Existing Intellectual Property Rights in respect of a party means Intellectual Property Rights owned by that party which are in existence at the date of this Agreement or come into existence after the date of this Agreement otherwise than in connection with this Agreement.
- 19.3.2 The Contractor acknowledges that all output produced directly or indirectly from the work or services the subject of this Agreement shall become and remain the sole property and Intellectual Property of the Authority and shall be freely available for the Authority to use in its absolute discretion in any of its decision making processes or any of its subsequent projects or approvals or works, reporting requirements and/or as the basis for follow-on consultancies.
- 19.3.3 All such output shall be provided to the Authority by the Contractor in such forms or formats as the Authority shall reasonably require and without fetter or restriction by password or code or otherwise.
- 19.3.4 Each of the parties grants to the other party a non-exclusive, royalty fee, non transferrable Licence to use Pre-existing Intellectual Property Rights for the sole purpose of providing the services pursuant to this Agreement (**Licence**). The parties agree and acknowledge that this Licence shall be revoked immediately upon completion of the Project Services pursuant to this Agreement or in the event that the Agreement is otherwise terminated.

20. Moral Rights

The Contractor must procure from any of the Contractor's staff, contractor's, employees or agents that produce or contribute to the production of any document any Moral Rights consents required by the Authority.

- 20.1 The Contractor must ensure that any consent it obtains pursuant to this clause 20 is given genuinely and is not obtained by duress or as a result of a false or misleading statement.
- 20.2 The Contractor's obligations pursuant to this clause 20 survive the suspension, expiration or termination of this Agreement.

21. Termination

- 21.1 The Authority may at any time, by giving written notice to the Contractor, terminate the provision of the Project Services and the Contractor shall on receipt of such notice immediately cease all work under the Agreement and take all appropriate action to mitigate any loss or prevent further costs being incurred with respect to the provision of the relevant Project Services. The Authority shall pay the reasonable fees and expenses of the Contractor (based upon the Tendered Rates) for all work satisfactorily performed by the Contractor in accordance with the terminated Project Services but not any loss of prospective profits. In no circumstances shall the fees payable for terminated Project Services exceed the fees that would have been paid had the relevant Project Services been completed.
- 21.2 The Authority may terminate this Agreement without penalty and with immediate effect by written notice to the Contractor if the Contractor:
- (i) commits a material breach of any of its obligations under this Agreement, and if such breach is capable of remedy, the Contractor does not remedy the breach within five (5) Business Days after the date on which written notice of the breach is provided by the Authority (or such other period as is agreed between the parties);
 - (ii) or any of its Related Persons commits a fraudulent act or omission;

- (iii) subcontracts the provision of any part of the Project Services without the consent of Authority;
- (iv) assigns its rights or obligations under this Agreement without the consent of the Authority;
- (v) is the subject of an Insolvency Event;
- (vi) undergoes a Change in Control without the Authority's prior written approval;
- (vii) fails to commence the Project Services to a material extent within thirty (30) Business Days of the Commencement Date;
- (viii) substantially alters the nature of its business such that its ability to provide the Project Services in accordance with this Agreement is materially adversely affected;
- (ix) if the Funding Agreement is terminated or suspended for any reason whatsoever or otherwise expires;

21.3 If this Agreement is terminated for any reason by Authority then:

termination however caused does not affect any accrued rights or remedies in which the Authority possess pursuant to the term of this Agreement, at law or pursuant to any Relevant Legislation;

the Contractor must, at its own cost, immediately deliver or render a faithful account to the Authority's Representative listing all of the Authority's Intellectual Property, Confidential Information and all other information and equipment in the Contractor's power, possession or control belonging to the Authority;

the Contractor is not entitled in contract, tort, or otherwise to any payment or compensation as a result of the termination of the Contractor engagement.

21.4 If the Authority terminates this Agreement in accordance with clause 21.2 then the Contractor is liable for and indemnifies the Authority against any loss of whatever nature incurred by the Authority in engaging others to complete the provision of the Project Services (as the case may be) and any other loss suffered by the Authority as a result of the termination.

21.5 If a purported termination for cause by the Authority under clause 21.2 is determined by a competent authority not to be a proper termination for cause, then that termination by the Authority will be deemed to be a termination for convenience under clause 21.1 which termination has effect from the date of the notice of termination.

22. Force Majeure

22.1 If a Force Majeure event affects the Contractor, or the Contractor's employees, agents, sub-contractors, officers or such other third parties in which the Contractor is responsible for so as to preclude the Contractor partially or wholly from complying with its obligations pursuant to the terms of this Agreement then:-

- (a) as soon as reasonably practicable after that Force Majeure event arises, the Contractor must notify the Authority of the Force Majeure event, stating specifically the obligations under the terms of the Agreement in which the Contractor is precluded from performing together with the expected duration of the delay arising directly out of the Force Majeure event (**Affected Obligation**);

- (b) the Contractor's obligation to perform the obligations affected by the Force Majeure event will, be suspended for the duration of the actual delay arising out of the Force Majeure event; and
 - (c) the Authority's obligation to perform any of its obligations, including the obligation to make payment on a Milestone date which are dependent on the Affected Obligations will be suspended until the Contractor resumes performance.
- 22.2 In the event of a Force Majeure event occurring, subject to the Contractor complying with its obligations as set out under this clause 22.2 and its obligations otherwise as set out in this Agreement then this will not be treated as a breach of the Agreement by the Contractor entitling the Authority to terminate in accordance with clause 22.2.
- 22.3 If the Force Majeure event causes delay for more than thirty (30) Business Days, then:-
 - (a) if part of the Project Services is affected by the Force Majeure event such that other aspects of the Project Services can be completed by the Contractor, then the Authority agrees, in consultation with the Contractor to vary the scope of the Project Services such that the balance of the Project Works can be completed by the Contractor;
 - (b) if the Force Majeure event is of such significance that the balance of the Project Services is unable to be completed then the Authority (acting reasonably) may terminate this Agreement upon serving thirty (30) Business Days notice on the Contractor, subject to the Authority paying the Contractor for all reasonable components of the Project Services as completed by the Contractor.

23. Nature of Engagement

- 23.1 The Contractor is engaged as an independent contractor and nothing in this Agreement shall be deemed to constitute the Contractor as an agent or employee of the Authority and the Contractor shall not have any authority to incur and shall not incur any obligation or make or purport to make any representation on behalf of the Authority except with the express written instructions of the Authority.
- 23.2 The Contractor acknowledges that it is the employer of all personnel engaged in the provision of the Project Services, including the Contractor's Staff, and the Contractor shall meet all payment obligations to such personnel and shall pay all statutory taxes, fees, levies or charges applicable with respect to the engagement of or payments made to such personnel. The Contractor shall comply with all reasonable requests for verification of such payment obligations received from the Authority.
- 23.3 The Contractor indemnifies and shall keep the Authority indemnified against:
 - (a) any obligation to make payments to Contractor's Staff and other personnel engaged in the provision of the Project Services, and
 - (b) any obligation to pay any related statutory taxes, fees, levies or charges.

24. Indemnity

- 24.1 The Contractor releases and indemnifies the Authority its servants and agents from and against all damages, costs, expenses, loss or damage which they may incur or sustain and all actions, proceedings, claims and demands whatsoever which may be brought or made against it or them by any person in respect of or by reason of or arising out of:
 - (a) the performance by or on behalf of the Contractor of the Project Services;

- (b) any negligence or other wrongful act or omission of the Contractor or the Contractor's Staff or other employees, or sub-contractors or of any other persons for whose acts or omissions the Contractor is vicariously liable;
 - (c) any negligence or other wrongful act or omission of the Contractor's visitors, invitees or licensees;
 - (d) death, injury, loss of or damage to the Contractor, the Contractor's staff or its other employees, agents, sub-contractors, licensees, invitees or visitors; and
 - (e) any breach of this Agreement by the Contractor.
- 24.2 The Contractor's indemnities are not restricted, limited or waived by an provision of this Agreement with regards to insurance or by any approval of insurance policies
- 24.3 In so far as permitted by law, the Contractors liability to indemnify the Authority will be reduced proportionately to the extent that any act or omission of the Authority, or the employees, agents or other contractors of the Authority contributed to the damages, cost, expense, loss or damage or actions, proceedings, claims or demands.

25. Insurance

25.1 Professional Indemnity Insurance

The Contractor will:-

- (a) maintain professional indemnity insurance or protection to the minimum limit specified in item (v) of Schedule 1 to this Agreement;
- (b) note the Authority as an interested party; and
- (c) maintain such insurance or protection for a minimum period of five (5) years commencing from the Commencement Date of this Agreement.

25.2 Public Liability Insurance

The Contractor will:-

- (a) maintain public risk insurance or protection to the minimum limit specified in item (v) of Schedule 1 to this Agreement together with any such extended period as required by the Authority;
- (b) note the Authority as an interested party; and
- (c) maintain such insurance or protection for a minimum period of five (5) years commencing from the Commencement Date of this Agreement together with any such extended period as required by the Authority.

25.3 Cross Liability

Any insurance required to be effected in accordance with clause 25 shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured and for the purpose of which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

25.4 Proof of Policies

The Authority may require the Contractor to provide proof that the policies of insurance or protection required in clauses 25.1 and 25.2 have been effected and maintained. The Authority may terminate this Agreement if the Contractor does not comply with this clause.

25.5 Other Insurance

Insurance cover required by the Contractor such as motor vehicle insurance and workers compensation insurance for its own employees is the responsibility of the Contractor and not the Authority as may be required by any Relevant Legislation.

25.6 Notification

The Contractor must as soon as practicable notify the Authority in writing if the Contractor becomes aware:

25.6.1 that any of the required insurances are likely to lapse or be cancelled (for any reason); or

25.6.2 of any act, omission or circumstance that arises which would likely prejudice any of the required insurances or the payment of all or any benefits under any of those insurances.

25.7 Superannuation and WorkCover

25.7.1 Without limiting the generality of clause 25.5 or any other such provision as contained in this Agreement, the Contractor must:

- (a) make all superannuation and workcover contributions that it is required to make under any Relevant Legislation;
- (b) if required by the Authority's Representative, produce evidence of all necessary insurances that it has obtained for itself under the provisions of all Relevant Legislation.

25.7.2 The Contractor acknowledges and agrees that the Authority is not liable to pay any superannuation or workcover contributions on the Contractor's behalf in respect of the Contractor's employees or subcontractors, except as may be deemed or required to the contrary by any Relevant Legislation.

26. Severability

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

27. Variation of Agreement

A variation of this Agreement shall only be made by agreement in writing by the parties.

28. Disputes

28.1 Mediation

- (a) If any dispute in relation to this Agreement arises between the Parties any party to the dispute may by notice to the other party (a Dispute Notice) refer the dispute to the Panel

for resolution. The Dispute Notice must specify in reasonable detail the nature of the dispute.

- (b) The Panel in respect of a dispute shall consist of:
 - (i) the Authority's Representative; and
 - (ii) the Contractor's Representative.
- (c) If the dispute is referred to the Panel, the Panel shall meet to resolve the dispute within five (5) Business Days of service of a Dispute Notice and a decision of the Panel shall be binding on the Parties.
- (d) If the Panel does not resolve the dispute within ten (10) Business Days of service of the Dispute Notice either party may refer the dispute for expert determination, as set out in clause 23.2 (**Expert Determination**).

28.2 Expert Determination

- (a) If a dispute is referred for Expert Determination the Panel shall appoint as Expert in relation to that dispute a qualified person considered appropriate by the Panel. If the Panel cannot agree on such appointment within ten (10) Business Days of service of the Dispute Notice the Expert shall be appointed by the President of the Law Institute Victoria.
- (b) The Expert shall fix a time for presentation to the Expert by the Parties of their respective positions and shall inform the Parties accordingly. Unless the Parties otherwise agree the presentation must be no later than five (5) Business Days after the Expert's appointment.
- (c) The Expert must make a determination or finding in respect of the dispute within ten (10) Business Days after the presentation referred to in paragraph 28.2(b).
- (d) Any determination of a dispute by the Expert shall include a determination as to the award of costs.
- (e) Any determination made by the Expert shall be binding on all Parties.
- (f) The Expert shall act as an expert and not an arbitrator.

29. Sub-contracting or Assignment

- 29.1 The Contractor shall not without the prior written approval of the Authority subcontract or assign the performance of any of the Project Services to be provided or any rights or obligations under this Agreement. In giving written approval the Authority may impose such terms and conditions as it thinks fit.
- 29.2 The Contractor shall be fully responsible for carrying out the Project Services notwithstanding that the Contractor has subcontracted or assigned the performance of any part of these Project Services.

30. Employment Policy

- 30.1 The Contractor shall comply with all governing equal opportunity statutory and regulatory provisions as applicable and varied from time to time during the term of this Agreement.
- 30.2 The Contractor and any person engaged in the provision of the Project Services shall not:

- (a) engage in unethical work practices; or
- (b) engage employees or sub-contracted workers upon terms and conditions which are not commensurate with industry standards generally applicable in Victoria.

31. Compliance with Laws

The Contractor shall ensure that in carrying out the Project Services under this Agreement it shall comply with the requirements of Relevant Legislation in any way affecting or applicable to the provision of the Project Services.

32. Surviving Obligations

A provision of this Agreement which can and is intended to operate after its conclusion will remain in full force and effect which include the obligations of the Contractor under clauses 6, 11, 12, 13, 15, 16, 19 and 25 shall survive the termination or expiration of this Agreement.

33. Service of Documents

33.1 All notices and documents required to be delivered or served by one Party to this Agreement on the other may be delivered or served by delivering or sending them by pre-paid post, facsimile, prepaid courier as follows:

- (a) to the Authority at the address which is set out in Item (ii) of Schedule 1
- (b) to the Contractor at the address which is set out in Item (i) of Schedule 1.

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

- (a) in the case of delivery in person, when delivered;
- (b) in the case of delivery by post, two (2) Business Days after the date of posting;
and
- (c) in the case of facsimile transmission, on receipt by the sender of a transmission report from the despatching machine showing the relevant number of pages, the correct destination facsimile machine number and the result of the transmission as satisfactory,

but if the result of the foregoing is that a Notice would be taken to be given or made on a day which is not a normal business day in the place to which the Notice is sent or is later than 4.00 p.m. (local time) it will be taken to have been duly given or made at the commencement of business on the next normal business day in that place.

33.3 The provisions of this clause are in addition to any other mode of service permitted by law.

34. General Conditions

34.1 Further Assurances

Each party will promptly execute all documents and do all things that another party from time to time reasonably requires of it to effect, perfect or complete the terms and conditions of this Agreement and any transaction contemplated by it.

34.2 No Amendments Without Agreement

This Agreement may not be modified, discharged or abandoned unless by a document signed by the parties.

34.3 Counterparts

- (a) This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one and the same instrument.
- (b) This Agreement is not binding on any party unless one or more counterparts have been duly executed by, or on behalf of, each person named as a party to this Agreement.

In witness whereof the Parties have executed this Agreement on the day and year first written above.

Signed by the Chief Executive Officer)
for and on behalf of the **NORTH CENTRAL**)
CATCHMENT MANAGEMENT AUTHORITY) Damian Wells

in the presence of:)

..... (Witness)

..... (Witness Name - print)

Signed by the principals for and on behalf of)
[CONTRACTOR])
in the presence of:)

..... (Principal)

..... (Principal Name - print)

..... (Witness)

..... (Witness Name - print)

SCHEDULE 1
AGREEMENT

Item (i) Name of Contractor:

[Contractor]

Address for service of documents:

[Contractor's Service Address]

Contractor's Representatives:

[Contractor's Representative]

Item (ii) Address for Service:

North Central Catchment Management Authority of 628-634 Midland Highway,
Huntly, Victoria 3551

Item (iii) The Authority is the North Central Catchment Management Authority

Item (iv) The Authority's Representatives shall be the person occupying the position of:
Chief Executive Officer **or** the delegated Project Manager, [P.M.'s Name]
628-634 Midland Highway, Huntly, Victoria 3551
(Ph: (03) 5440 1800 fax (03) 5440 7148)

Item (v) Insurance:

Professional Indemnity	\$5,000,000 per claim
Public Risk	\$10,000,000 per claim

Item (vi) The Commencement Date is [Date].
The Completion Date is [Date].

Item (vii) Contractor's Staff / Agents:
[Contractor's Staff]

Item (viii) Liquated Damages:

SCHEDULE 2
PROJECT SERVICES

The Project Services are described in the following documents (which documents are hereby incorporated into this agreement) namely:

[Insert details of relevant documents]

Deliverable

[Date]

SCHEDULE 3
TENDERED RATES

1. FIXED PROJECT FEE

\$ [Price]

Optional Extra Face to Face Interviews: \$ [Price]

Total Project Fee: \$ [Price]

A simplified schedule for payment of fees, based on a monthly invoice will include:

A fee of \$ [Price] ([Amount]% of the total fee) on acceptance of a report for -

Phase 1: \$ [Price]

A fee of \$ [Price] ([Amount]% of the total fee) on acceptance of a report for -

Phase 2: \$ [Price]

A fee of \$ [Price] ([Amount]% of the total fee) on acceptance of a report for -

Phase 3: \$ [Price]

A fee of \$ [Price] ([Amount]% of the total fee) on acceptance of a report for -

Phase 4: \$ [Price]

A final payment of \$ [Price] ([Amount]% of the total fee) will then be paid on submission and North Central CMA acceptance of the final report: \$[Price]

TOTAL FEE: \$[Price]

Note: Payment of fees must occur in line with presentation of satisfactory progress reports.

2. OTHER COST ITEMS

Additional consultancy to be undertaken only after negotiation with the Authority.

SCHEDULE 4
DEED OF CONFIDENTIALITY

THIS DEED is made on the [Date] day of [Month and Year]

BETWEEN

North Central Catchment Management Authority of 628-634 Midland Highway, Huntly, Victoria 3551
ABN 73 937 058 422 (the "Authority")

AND

[Insert Name, Address and ABN of Contractor] (the "Contractor")

Introduction

- A. The Covenanter is an employee of [Contractor Name] (the "Contractor") which is involved in providing the Project Services defined in a Services Contract between the Authority and the Contractor for the provision of the "Services Contract".
- B. The material to which the Covenanter will have access for the performance of Project Services under the contract is confidential.
- C. The Authority will allow the Covenanter access to this material provided that confidentiality can be maintained and the Covenanter has entered into this Deed in order to acknowledge the conditions under which access to the material will be granted.

It is agreed

- 1. In this Deed unless the context otherwise requires or the contrary intention appears -
 - (a) The singular includes the plural and vice versa and words importing a gender include other genders.
 - (b) Terms importing natural persons include partnerships and bodies corporate.
 - (c) Other grammatical forms of defined words or phrases have corresponding meanings.
 - (d) Where a party comprises two or more persons provisions of this Deed that bind that party shall bind those persons jointly and severally.
 - (e) **"Project Services" means** all the services, which the Covenanter will provide in accordance with the Services Contract between the Authority and the Contractor.
 - (f) **"Material"** means all information of documents and data stored by any means and any information made available to the Covenanter in carrying out the Services.
 - (g) **"Party"** means a party to this Agreement.
 - (h) A reference to a party to this Agreement or any other document or agreement includes its successors and permitted assigns.
- 2. The Covenanter covenants and agrees to treat as secret and confidential all Material to which he has access or which is disclosed to him during the course of carrying out the Project Services.
- 3. The Covenanter covenants and agrees that he shall only use the Material for the purposes of carrying out the Project Services and shall not allow any other person access to the Material.

4. The Covenanter covenants and agrees that he will not copy or reproduce the Material (in whole or in part) without the approval of the Authority and will take all necessary precautions to prevent unauthorised access to or copying of the Material by any other person.
5. The Covenanter acknowledges that the Authority shall be entitled (in addition to any entitlements to damages) to an injunction or other equitable relief with respect to any actual or threatened breach by the Covenanter of this Deed and without the need on the part of the Authority to prove any special damage.
6. This Deed is governed by the Law of Victoria.
7. Any purported variation of a provision of this Deed shall be ineffective unless in writing and executed by the parties.

Executed as a Deed on the date set out at the commencement of this Deed.

SIGNED SEALED and DELIVERED)
 by the **NORTH CENTRAL CATCHMENT MANAGEMENT**)
AUTHORITY

in the presence of:)
 (Witness)
 (Witness Name - print)

Signed by) (Principal)
[CONSULTANT])
 in the presence of:) (Principal Name - print)

..... (Witness)
 (Witness Name - print)

SCHEDULE 5
PERFORMANCE STANDARDS

As per Project Brief, Coordinating Consultant Brief and submitted Tender ('Proposal').

Contract Management:

1. Invoices must be sent by the 15th day of the month. These invoices must be in accordance with Clause 8. At the end of the financial year the Authority has the right to reclaim any salary savings for expending on other activities.
2. Contract variation requests submitted as required (must include analysis of reason for variance and assurance process to prevent further variations) and submitted to the Authority Representative.

Reporting:

3. Copies of all non-onground outputs (e.g. reports, investigations, etc.) are required prior to payment of invoices. These documents must contain reference to the original RCIP project number that it relates to. These must also be submitted to the Authority representative electronically, in source document format (e.g. Word) within 15 days from the end of the quarter. The Authority will not accept PDF versions.

Communication:

4. A Project Plan and Communication Strategy must be developed for each project. The Project Plan template will be endorsed by the Authority's representative.
5. Authority representatives must be notified for meetings at least 3 weeks in advance.
6. Agendas will be issued the week prior to each meeting and will include relevant supporting documentation. Minutes will be distributed within 72 business hours of the meeting.
7. Responding to CMA phone calls, emails and faxes within 48 hours.

Other:

"Insert other standards"