

**Works Contract
(under \$50k) –
contract party**

**Contract ID: insert
contract number**

PREPARED BY BECK LEGAL
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ACKNOWLEDGEMENT FORM

Acknowledgments of the Contractor and the Authority

1. The Contractor acknowledges and agrees to be bound by the terms and conditions of the Agreement herein contained as evidenced by execution hereunder:

(If Contractor is a company) –

.....
Name of Entity (include ABN/ACN)

.....
Name of Director/s

.....
Name of Director/s

.....
Signature of Director/Secretary

.....
Signature of Director/Secretary

(If Contractor is an individual) –

.....
Name of individual

.....
Name of witness

.....
Signature of individual

.....
Signature of witness

.....
Usual Address of individual

.....
Address of witness

2. The Authority acknowledges and agrees to be bound by the terms and conditions of the Agreement herein contained as evidenced by execution hereunder:

SIGNED, SEALED AND DELIVERED BY an)
authorised representative of **NORTH CENTRAL**)
CATCHMENT MANAGEMENT AUTHORITY in
the presence of:

.....
Print Name of Authorised Representative:

Name of Witness:

SCHEDULE

- Item 1 Authority**
NORTH CENTRAL CATCHMENT MANAGEMENT AUTHORITY (ABN 73 937 058 422)
c/- 628-634 Midland Highway, Huntly, VIC 3551
- Item 2 Contractor**
[Insert Contractor]
of [Insert Address]
- Item 3 Authority's Nominated Representative**
Insert Contractor
of [Insert Address]
- Item 4 Contractor's Nominated Representative**
Insert Contractor
of [Insert Address]
- Item 5 Services**
Insert trade]
- Item 6 Insurance Required**
- (a) **Level of Public Liability insurance required:** Not applicable OR level of cover required
 - (b) **Level of Professional Indemnity insurance required:** Not applicable OR level of cover required
 - (c) **Level of Workers Compensation Insurance required:** Not applicable OR level of cover required

THIS AGREEMENT is made on the day of 2016.

BETWEEN

THE INDIVIDUAL OR ENTITY SPECIFIED IN ITEM 1 OF THE SCHEDULE

(Authority)

AND

THE INDIVIDUAL OR ENTITY SPECIFIED IN ITEM 2 OF THE SCHEDULE

(Contractor)

BACKGROUND

- A. The Authority has the responsibility of managing and maintaining various parcels of land in the State.
- B. The Contractor is in the business of providing the Services.
- C. The Authority wishes to engage the Contractor on a non-exclusive basis from time to time to provide the Services upon the terms and conditions as contained in this Agreement.
- D. The Authority will pay the Contractor the Agreed Fees as agreed to by the parties prior to any Individual Engagement.

TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

Unless specified otherwise, words and phrases beginning with a capital letter in this Agreement have the following meaning:

Additional Provisions means the additional provisions set out in the Fee Schedule (if any).

Agreed Fees has the meaning given to that term pursuant to clause 8.1 of this Agreement.

Agreement means this agreement comprising of the terms and conditions, Schedules and any Annexures.

Annexure means an annexure to this Agreement.

Authority's Nominated Representative means the individual(s) specified in Item 3 of the Schedule.

Building Laws means all laws governing the Services and includes without limitation the *Building Act 1993* (Vic), the Building Code of Australia, and any regulations, orders, declarations or any subordinate legislation or instruments in force under them and applicable Australian Standards.

Claim means a claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Confidential Information means any information, statements, contracts, agreements, specifications, formulations, technology, drawings, reports, accounts, assessments, knowledge, information concerning the affairs of the Authority, details of any customer, customer records or suppliers of the Authority, information which by its nature or by the circumstances of its disclosure, is or would reasonably be expected to be regarded as confidential or information at any time disclosed (whether in writing or orally) or which is taken by any provision of this Agreement to be confidential information or which the discloser makes the recipient aware is considered by the discloser to be confidential and proprietary.

Consideration has the meaning given to that term pursuant to clause 9.1 of this Agreement.

Contract Intellectual Property means any and all Intellectual Property Rights incorporated or comprised in any materials created by or on behalf of the Contractor in the course of providing the Services, except any Intellectual Property Rights in Data or the Other Contract Documents prepared by the Authority.

Contractor's Nominated Representative means the individual(s) specified in Item 4 of the Schedule.

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

Data means any data, datasets or databases created by or on behalf of the Contractor in the course of providing the Services.

Fee Schedule means the fee schedule attached to this Agreement which is to be agreed to by the parties prior to any Individual Engagement.

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.

Individual Engagement has the meaning given to that term pursuant to clause 2.1 of this Agreement.

Insolvency Event means:

- (a) in the case of an individual:
 - (i) the committing of an act of bankruptcy in respect of the individual within the meaning of section 40 of the *Bankruptcy Act 1966* (Cth);
 - (ii) the signing of an authority by the individual under Part X of the *Bankruptcy Act 1966* (Cth); or
 - (iii) the making of a sequestration order in respect of the estate of the individual within the meaning of the *Bankruptcy Act 1966* (Cth);
- (b) in the case of a corporation:
 - (i) the appointment of a controller (as defined in the Corporations Act) or similar officer to the property or any substantial part of the property of the corporation;
 - (ii) the appointment of or the passing of a resolution to appoint an administrator or liquidator or the taking of any steps to appoint an administrator or liquidator or to pass a resolution to appoint an administrator or liquidator;
 - (iii) the passing of a resolution to enter into any agreement, arrangement, composition or compromise with or, assignment for the benefit of, its creditors or any class of them;

- (iv) the making of a winding up order by a court;
 - (v) the corporation being taken, under section 459F of the Corporations Act, to have failed to comply with a statutory demand;
 - (vi) the presumption of insolvency by a court under section 459C of the Corporations Act;
 - (vii) the passing of a resolution for winding up under Part 5.5 of the Corporations Act; or
 - (viii) in respect of a Part 5.7 body as defined in the Corporations Act, the commencement of a winding up under Part 5.7 of the Corporations Act in respect of that body; and
- (c) in the case of a trust:
- (i) the making of an application or order in any court for:
 - A. accounts to be taken in respect of the trust; or
 - B. any property of the trust to be brought into court or administered by the court under its control;
 - (ii) the occurrence of any event which would bring any part of the trust fund under the control of any court;
 - (iii) where the trustee is an individual, paragraph (a) will apply; and
 - (iv) where the trustee is a corporation, paragraph (b) will apply.

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

Invoice means a tax invoice under section 29-70 of the GST Act.

Item means an item in the Schedule to this Agreement.

Latent Conditions means physical conditions on the Site, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably be anticipated by the Contractor at the date of the Individual Engagement if the Contractor had:

- (a) examined all information made available in writing by the Authority to the Contractor;
- (b) examined all information relevant to the risks, contingencies and other circumstances having an effect on the Individual Engagement and obtainable by making reasonable inquiries; and
- (c) inspected the Site and its surroundings.

Laws means all laws including the Building Laws, rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by-laws, rules, regulatory principles and requirements, statutory rules of an industry body, statutory mandatory codes of conduct, writs, orders, injunctions, judgments, and Australian generally accepted accounting principles.

Other Contract Documents means any other contract document provided by the Authority to the Contractor, as listed in the attached Fee Schedule.

Performance Standards means those performance standards as specified and contained within the Other Contract Documents together with those standards as

expressed or implied by Law.

Pre-Existing Intellectual Property means any and all Intellectual Property Rights in any works, items or systems which are the property of either party and which existed in substantially the same form and with substantially the same contents prior to the commencement of the provision of the Services.

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

Related Parties has the meaning given in section 228 of the Corporations Act.

Required Documentation and Materials means the documentation and materials which the Contractor must produce to the Authority to achieve completion of the Individual Engagement as specified in the Fee Schedule.

Safety Legislation means any legislation covering work health and safety, environmental protection and dangerous goods safety that is applicable to the Individual Engagement.

Security of Payment Act means the *Building and Construction Industry Security of Payment Act 2002* (Vic).

Services means the services specified in Item 5 of the Schedule.

Site means the site listed in the Fee Schedule in which the Contractor will perform the Services for the Individual Engagement.

Specified Completion Date means the date identified in the Fee Schedule, being the agreed completion date of the Individual Engagement.

Supply has the meaning given in section 9.10 of the GST Law.

Tax means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by Law or by a governmental agency, together with any related interest, penalty, fine or other charge.

Workers mean any individual (whether employee or subcontractor) commissioned by the Contractor to provide the Services for any Individual Engagement.

1.2. Interpretation

In this Agreement unless specified to the contrary:

- (a) the Background, the Schedule, the Execution Page and the Annexures (if any) are each incorporated in and form part of this Agreement;
- (b) a reference to the singular includes the plural and vice versa;
- (c) a reference to a given gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have corresponding meaning;
- (e) use of the word including and similar expressions are not, nor are they to be interpreted as, words of limitation;
- (f) a reference to a person includes a natural person, a company or other entities recognised by Law;
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (h) a reference to writing includes any mode of reproducing words, figures or symbols in tangible and permanently visible form and includes fax transmission;
- (i) a reference to Australia dollars, dollars \$, A\$, \$A or AUD is a reference to the lawful currency of the Commonwealth of Australia;

- (j) all references to parties are to the parties to this Agreement;
- (k) where any obligation is imposed on, or any benefit enures for, two or more persons, the obligation binds or enures for the benefit of (as the case may be) those persons jointly and each of them severally;
- (l) a reference to time is to local time in the capital city of Victoria;
- (m) a reference to State means the state of Victoria, Australia;
- (n) words or phrases to find in the Corporations Act as at the date of this Agreement have the corresponding meaning;
- (o) a party includes the successors and permitted transferees and assigns and if a party is a natural person, includes executors and legal personal representatives;
- (p) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislation or legislative provision substituted for, that legislation or legislative provision; and
- (q) a reference to any governmental or statutory body includes any body which replaces, succeeds to the relevant powers and functions of, or which serves substantially the same purposes or objects as such body.

1.3. **Compliance with Law**

- (a) This Agreement is to be interpreted so that it complies with all applicable State Laws and if any provisions does not comply then it must be read down so as to give it as much effect as possible.
- (b) If it is not possible to give that provision any effect at all, however, then it is to be severed from this Agreement in which case the remainder of this Agreement will continue to have full force and effect.

1.4. **Index and Headings**

The index and any headings are for ease of reference only and do not affect the interpretation of this Agreement.

2. SCOPE

- 2.1. The Authority may from time to time engage the Contractor to provide the Services (**Individual Engagement**).
- 2.2. The Contractor agrees that when engaged by the Authority to provide the Services, it shall provide the Services on the terms and conditions of this Agreement.
- 2.3. The Contractor acknowledges that the Contractor's right to be engaged is on a non-exclusive basis and that the Authority makes no representations or warranties as to the frequency or level of potential Individual Engagements.

3. TERM

The terms and conditions of this Agreement will be binding on the parties for every Individual Engagement and shall continue until such time the Agreement is terminated in accordance with clause 17 of this Agreement.

4. PLACE AND MANNER OF PROVIDING SERVICES

- 4.1. The Contractor shall provide the Services for every Individual Engagement at the Site or such place or places which the Authority may from time to time direct whether orally or in writing.

- 4.2. The Contractor shall provide the Services in accordance with such directions and specifications as the Authority advises, whether orally or in writing, from time to time.
- 4.3. The Contractor shall provide the Services which shall conform to the Performance Standards.
- 4.4. The Contractor shall provide the Services in accordance with all Laws, statutory requirements and regulations.
- 4.5. The Contractor agrees that time is of the essence in the performance of the Individual Engagement and accordingly, in the event that the Contractor fails to perform any of its obligations on or before Specified Completion Date, then the Authority reserves the right to terminate this Agreement in accordance with clause 17 of this Agreement.

5. **PERFORMANCE OF SERVICES**

- 5.1. The Contractor agrees to perform and complete the Services:
 - (a) in accordance with this Agreement including without limitation the Other Contract Documents as may be varied pursuant to this Agreement;
 - (b) in a manner which is fit for the proper purpose of the Services;
 - (c) so as to ensure compliance with all Building Laws, Safety Legislation and all other Laws and requirements of any authority or government agency having jurisdiction over the Services;
 - (d) using good quality, proper and workmanlike construction practices; and
 - (e) in accordance with all directions given by the Authority's Nominated Representative from time to time.

6. **PRIVACY**

- 6.1. The Contractor acknowledges that the Authority is an organisation bound by the provisions of the Privacy Act.
- 6.2. The Contractor acknowledges and agrees to be bound by the Australian Privacy Principles under the Privacy Act and any applicable code of practice as referred to in section 14 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.
- 6.3. 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 Australian Privacy Principles under the Privacy Act as amended from time to time.
- 6.4. For the purposes of this clause 6, reference to **Australian Privacy Principles** has the same meaning given to that term in the Privacy Act.

7. **SERVICE FEES**

Prior to every Individual Engagement, the Authority and the Contractor will agree on the fees which are to be payable by the Authority to the Contractor, determined in accordance with clause 8 of this Agreement.

8. PAYMENT OF SERVICE FEES

- 8.1. The Contractor shall Invoice the Authority at the completion of the Individual Engagement or as otherwise agreed to by the parties at the fixed amount specified in the Fee Schedule (**Agreed Fees**).
- 8.2. The Authority will pay the Agreed Fees within thirty (30) days of receipt of the Invoice into the bank account nominated by the Contractor.
- 8.3. The Contractor agrees and acknowledges that payment of an Invoice pursuant to this clause 8 is not:
- (a) evidence or an admission that the Services have been provided in accordance with the standards set out at clause 16 or in accordance with the other terms and conditions as set out in this Agreement;
 - (b) an admission that the Services Invoiced were satisfactorily performed or that expenses properly incurred;
 - (c) an admission of liability; or
 - (d) acceptance or approval of the Contractor's performance in carrying out the Services.
- 8.4. If it is determined in the absolute discretion of the Authority that any component of the Services have not been provided by the Contractor in accordance with the terms and conditions of this Agreement then the Authority shall be entitled to:
- (a) demand refund for part or all of any payment made pursuant to any Invoice notwithstanding that the Invoice may have been submitted by the Contractor and reconciled and approved by the Authority; or
 - (b) offset such amount from any future Invoices rendered by the Contractor in accordance with terms and conditions of this Agreement.
- 8.5. In the event that the Authority makes a demand for the refund of any payment made to the Contractor pursuant to clause 8.4(a) then for the purposes of this provision upon such demand being made then this shall be deemed to be a debt due and payable to the Authority. Upon such demand being made then the Contractor agrees as evidenced by execution of this Agreement to make payment of this debt within twenty (20) days from the date in which such demand is made.
- 8.6. Time shall be of the essence of the Contractor's obligations hereunder to the Authority.
- 8.7. The Contractor agrees and acknowledges that the obligations of the Contractor as set out in this clause 8 shall continue to apply after termination of this Agreement, whereby the Contractor acknowledges that the Authority will have the right to make such demand for the refund of any payment made to the Contractor pursuant to this clause 8 notwithstanding that this Agreement or Individual Engagement may have terminated.

9. TAXES

- 9.1. Any consideration or amount payable under this Agreement, including any non-monetary consideration as reduced in accordance with clause 9.3 if required (**Consideration**) is exclusive of GST.
- 9.2. If GST is or becomes payable on a Supply as defined in the GST Law made under or

in connection with this Agreement, an additional amount is payable by the party providing Consideration for the Supply equal to the amount of GST payable on that Supply as calculated by the party making the Supply in accordance with the GST Law.

- 9.3. Despite any other provision in this Agreement, if an amount payable under or in connection with this Agreement (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise, the amount payable must be reduced by the amount of any input tax credit (as defined in the GST Law) to which that party, or a Related Party, is entitled in respect of that amount incurred.

10. NON-DISCLOSURE

- 10.1. Subject to clause 10.2, neither party shall disclose the terms of this Agreement to any third party.
- 10.2. Any information supplied by the Authority or any of its employees or agents to the Contractor or by the Contractor to the Authority shall be treated as Confidential Information and shall not be disclosed to any other person or form unless the Authority or the Contractor respectively consents to such disclosure.
- 10.3. The parties agree that disclosure of the terms of this Agreement shall not constitute a breach of this clause 10:
- (a) when such disclosure is required by Law;
 - (b) when such disclosure is required by a third party in the process of the Authority negotiating a works contract with such third party; and
 - (c) when such disclosure is made in the provision of either party seeking advice from their professional advisors.
- 10.4. The provisions of this clause 10 will survive the expiration or earlier termination of this Agreement.

11. INSURANCE

- 11.1. Prior to performing the Services under any Individual Engagement, the Contractor must effect and maintain the policies of insurance with a reputable insurer covering the insurances identified in Item 6 of the Schedule.
- 11.2. The Contractor must, on request from the Authority at any time during or prior to an Individual Engagement, promptly produce a certificate of currency on all the policies required by this clause 11 of the Agreement.
- 11.3. The provisions of this clause 11 will survive the expiration or earlier termination of this Agreement.

12. DIRECTIONS

- 12.1. The Authority's Nominated Representative will give directions and carry out all its other functions under this Agreement as the agent of the Authority. The Contractor must comply with any instruction or other direction given by the Authority's Nominated Representative. Except where this Agreement otherwise provides, the Authority's Nominated Representative may give a direction orally but will as soon as practicable confirm it in writing.
- 12.2. The Contractor's Nominated Representative must be present at the Site at all times reasonably required by the Authority. A direction is deemed to be given to the Contractor if it is given to the Contractor's Nominated Representative. The

Contractor's Nominated Representative shall be authorised to act on behalf of the Contractor.

- 12.3. All notices, requests, demands, consents, approvals, agreements or other communications required to be made by the Contractor under or in connection with the Agreement shall be in writing and must be given to either the Contractor or the Contractor's Nominated Representative.

13. MATERIALS AND WORKMANSHIP

- 13.1. All materials and standards of workmanship shall be in conformity with the requirements of this Agreement, of a kind which are suitable for the proper purpose of the Services, of good quality and free from defects.
- 13.2. Any materials not otherwise specified shall be new and materials not otherwise specified shall be in accordance with applicable Australian Standards.
- 13.3. All workmanship shall be in accordance with all relevant Laws.
- 13.4. At any time the Authority may direct, any materials or work provided under this Agreement shall be tested. The Contractor shall provide such assistance and samples and make accessible for testing such parts of the Services as may be required. On completion of the tests the Contractor shall make good the affected Services.
- 13.5. Should the Authority consider that the quality of work or materials is not in accordance with the requirements of this Agreement then the Authority may direct the Contractor to remove, dismantle, re-execute, replace and/or rebuild any such work or materials or to make good any defect and the Contractor shall, at its own cost, comply with any such directions.
- 13.6. The Contractor warrants that all materials and goods supplied by it under this Agreement will at all times be free of all liens, Claims and other encumbrances whatsoever and the Contractor shall hold the Authority harmless against any and all Claims by persons furnishing labour, equipment, services and materials in connection with the performance of this Agreement.

14. EQUIPMENT

Except to the extent that this Agreement otherwise specifies, and except as otherwise provided on the Site by the Authority, the Contractor must provide at its own cost and expense all labour, materials, tools, implements, construction facilities, temporary services and plant and everything necessary for the proper carrying out of the Services.

15. PROTECTION OF THIRD PARTIES AND PROPERTY

- 15.1. If the Contractor or the Workers damage property, including but not limited to other work of the Authority upon the Site or to public utilities and services or to other property on or adjacent to the Site, the Contractor shall promptly make good the damage and shall pay any necessary compensation to the persons affected.
- 15.2. The Contractor is solely responsible for the care of the Services until the Specified Completion Date.
- 15.3. If loss or damage occurs to the works completed as a result of the Services prior to the Specified Completion Date, the Contractor shall rectify the loss or damage.

- 15.4. If urgent action is necessary to protect or rectify damage to the works completed as a result of the Services or other property and the Contractor fails to take the necessary action, in addition to any other remedies of the Authority, the Authority may take the necessary action, and the reasonable cost incurred by the Authority in doing so shall be a debt due and payable by the Contractor to the Authority.
- 15.5. The Contractor indemnifies, and shall keep the Authority indemnified against any liability, loss, Claim or proceeding for personal injury to or death of any person or for injury, loss or damage to any property arising from the performance of the Services and for any other loss or damage incurred by the Authority arising from any act, default or omission of the Contractor.

16. WARRANTIES

- 16.1. The Contractor warrants that:
- (a) it will carry out all Services according to proper professional and industry standards and in accordance with the Performance Standards;
 - (b) it will comply with all reasonable directions of the Authority;
 - (c) it will appoint Workers to carry out the Services with the appropriate qualifications and experience;
 - (d) to the best of its ability, it will ensure that the Workers complete the Services according to proper and industry standards;
 - (e) it will regularly consult with the Authority during and prior to any Individual Engagement;
 - (f) it will comply with its respective insurance requirements described in clause 11 of this Agreement;
 - (g) it shall comply with all relevant Safety Legislation;
 - (h) it will ensure, to the best of its ability, that it and the Workers do not engage in unethical work practices; and
 - (i) it has the accreditation or membership of professional or other bodies in relation to the provision of the Services and that it will use its best endeavours to maintain such accreditation or membership prior to entering into any Individual Engagement.
- 16.2. Both parties warrant that:
- (a) they have the right, power and authority to enter into and perform their respective obligations in accordance with the Agreement;
 - (b) at the time of entering into this Agreement, they are not the subject of an Insolvency Event;
 - (c) they will negotiate in good faith when negotiating the Agreed Fees prior to any Individual Engagement;
 - (d) subject to clause 10.3 of this Agreement, they will treat as Confidential Information all information provided by the other party;
 - (e) all corporate and other necessary action has been taken by each of them to authorise the signing and performance of the Agreement;
 - (f) all information supplied is true and correct and does not contain any misleading or material errors; and
 - (g) this Agreement is valid and legally binding on them in accordance with the terms and conditions of this Agreement.

17. TERMINATION

- 17.1. This Agreement shall only be terminated by;
- (a) mutual agreement between the parties;
 - (b) at the expiration of thirty (30) days after the receipt of written notice of termination given by the Authority;
 - (c) if either the Contractor or the Authority fails to rectify any material breach of the terms and conditions of this Agreement within fourteen (14) days of the service on the other of them of a written notice requiring rectification of the breach including where a breach includes failure of the Contractor, in the reasonable opinion of the Authority, to satisfactorily provide the Services; or
 - (d) immediately upon either the Contractor or the Authority being subject to an Insolvency Event.
- 17.2. If this Agreement is terminated in accordance with clause 17.1, then in addition to any rights or remedies in which a party may possess by operation of Law, each party retains any rights, entitlements or remedies which have accrued before termination, except that each party is released from its obligations under this Agreement.
- 17.3. For the purposes of this clause 17, a material breach of this Agreement shall include a breach of clause 2.2, clause 4, clause 5, clause 10, clause 11, clause 12, clause 13, clause 14, clause 15, clause 16, clause 18, clause 26, clause 27, clause 28, clause 29 and clause 36 (**Material Breach**).

18. INTELLECTUAL PROPERTY

- 18.1. The ownership of any Contract Intellectual Property shall vest in the Contractor upon the time of its creation. The Contractor hereby irrevocably and unconditionally grants to the Authority, free of additional charge, a non-exclusive, worldwide, perpetual, transferable licence (including the right to sublicense) to use, reproduce, adapt, modify, publish, distribute and communicate any Contract Intellectual Property for any purpose except commercial exploitation.
- 18.2. All Pre-Existing Intellectual Property used and identified by the parties in connection with the provision of Services or the creation of Contract Intellectual Property remains the property of the parties or its licensors. The Contractor hereby irrevocably and unconditionally grants to the Authority, free of additional charge, a non-exclusive, worldwide licence to use any Pre-Existing Intellectual Property to the extent that it forms part of or is integral to any works or other items created by the Contractor in connection with the provision of Services or the creation of Contract Intellectual Property. The licence granted to the Authority is limited to use of the relevant Pre-Existing Intellectual Property by the Authority for the purposes of the Authority and for no other purpose.
- 18.3. The ownership of data, including any Intellectual Property Rights, shall vest in the Authority upon the time of its creation.
- 18.4. The Contractor warrants that it has or will procure a written consent from all necessary authors to the Authority exercising its rights in the Data or Contract Intellectual Property in a manner that, but for the consent, would otherwise infringe the moral rights of those individuals.

19. INDEMNITY

19.1. The Contractor releases and indemnifies the Authority from and against all Claims, costs or expenses 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 Services;
- (b) any negligence or other wrongful act or omission of the Contractor or the Workers and 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) any Claim made by the Workers for any unpaid amounts arising from the Workers carrying out the Services;
- (e) any damage or destruction to the property (whether it be real or personal property) of the Authority or any third party where the Services are being carried out;
- (f) death, injury, loss of or damage to any Worker; and
- (g) any Material Breach of this Agreement by the Contractor.

19.2. The provisions of this clause 19 will survive the expiration or earlier termination of this Agreement.

19.3. The parties agree that the Authority's rights under this clause 19 are not waived or in any way diminished by any application of insurance proceeds by the relevant insurer for any insurance policy taken out under this Agreement and pursuant to clause 11.

20. COSTS AND EXPENSES

Each party shall pay that party's own costs and expenses in respect of the negotiation, preparation, execution, delivery and stamping of the Agreement and any documents entered into pursuant to or in respect of this Agreement.

21. NOTICES

21.1. A notice required or permitted to be given by one party to another under this Agreement shall be in writing and shall be treated as being duly given and received if it is:

- (a) delivered personally to that other party;
- (b) left at that address of the other party which is specified in Item 3 or Item 4 of the Schedule; or
- (c) sent by pre-paid mail to that other party's address which is specified in Item 3 or Item 4 of the Schedule.

22. FURTHER ASSURANCES

Each party shall sign, execute and deliver all documents and shall ensure that each of its officers, employees and agents sign, execute and deliver all deeds, documents instruments and performs all acts reasonably required of it or them by notice from another party to

effectively carry out and give full effect to the Agreement and the rights and obligations of the parties under it.

23. NO MERGER

The rights and obligations of the parties in respect of agreements, indemnities, covenants and warranties contained in this Agreement shall remain in full force and effect, be continuing agreements, indemnities, covenants and warranties and not be merged or extinguished by or upon termination of or completion of any obligations under, this Agreement.

24. ENTIRE AGREEMENT

24.1. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all previous communications, representations, inducements, undertakings, agreements or arrangements between the parties or their respective officers, employees or agents, including but not limited to any quotes or rates provided at any previous tender or engagement between the parties.

24.2. Each party acknowledges that in entering into this Agreement it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement.

24.3. Nothing in this clause 24 shall limit or exclude any liability for fraud.

24.4. For the avoidance of doubt, the terms and conditions of this Agreement are intended to bind the parties for each Individual Engagement as evidenced by the parties completing the Fee Schedule.

25. VARIATION

The Agreement shall not be varied except by a document in writing signed by the parties.

26. SITE

26.1. The Contractor acknowledges that the Contractor:

- (a) shall not have sole or exclusive possession of or access to any Site;
- (b) must comply with the Authority's requirements for entry to and work upon the Site;
- (c) accepts the risk of all Site conditions (except for any Latent Conditions, if applicable under this Agreement);
- (d) must perform the Services in accordance with the directions of the Authority and in co-operation with all other subcontractors on Site;
- (e) must take all reasonable steps to prevent any pollution or damage to the environment (whether air, land or water) or undue noise or interference with other persons or property caused by reason of the Services;
- (f) is responsible for the delivery to, and for the unloading and storage on Site, of all materials and equipment required for the Services;
- (g) must clean up its work area on a daily basis and dispose of all surplus or waste materials, packaging and other rubbish in the receptacles provided for that purpose by the Authority or otherwise as may be directed from time to time.

time by the Authority; and

- (h) must comply with all Laws, regulations or other requirements or authorities pertaining to the performance of the Services.

26.2. In the event that the Contractor fails to comply with this clause 26 and the Authority incurs costs as a result of such non-compliance, the Authority may set off any such amount it incurs against the Agreed Fees, or recover the amount paid from the Contractor as a debt, due and payable within fourteen (14) days from the date in which the Contractor receives such demand.

27. QUALITY ASSURANCE PROGRAM

27.1. If required by the Authority for any Individual Engagement, the Contractor must effect and maintain a quality assurance program in a form which is to the reasonable satisfaction of the Authority, and if requested, must provide evidence of its compliance with such quality assurance program.

27.2. The Contractor is not relieved of any liability under this Agreement as a result of compliance with its quality assurance program or as a result of anything that the Authority does or fails to do with respect to the quality assurance program, including approval of the quality assurance program or auditing compliance with the quality assurance program.

28. SECURITY OF PAYMENTS ACT

28.1. The Contractor must promptly give the Authority a copy of any notice the Contractor receives from a subcontractor or supplier under the Security of Payment Act.

28.2. If the Authority becomes aware that a Worker or supplier to the Contractor is entitled to suspend work under the Security of Payment Act, the Authority may pay the Worker or supplier such money that is, or may be, owing to the Worker or supplier for work forming part of the work under this Agreement and the Authority may set off the amount paid against the Agreed Fees or recover the amount paid from the Contractor as a debt.

28.3. The Contractor indemnifies the Authority against loss, expense or damage of any nature, including financial loss (including legal fees on an indemnity basis) suffered or incurred by the Authority, arising out of:

- (a) a suspension by a subcontractor or supplier of work, which forms part of the work under the Agreement, under the Security of Payment Act;
- (b) any application made against the Contractor under the Security of Payment Act which relates to the Services; and
- (c) costs incurred in respect of any legal or other tribunal proceedings relating to an application under the Security of Payment Act which relates to the Services,

unless (and only to the extent that) the Claim has been caused by a breach of this Agreement by the Authority.

28.4. If the Contractor suspends the carrying out of work under this Agreement pursuant to the Security of Payment Act, the Contractor will not be entitled to make any Claim for:

- (a) an extension of time to the Specified Completion Date; or

- (b) any Claim suffered or incurred by the Contractor arising out of or in consequence of any delays resulting from the suspension of work.

28.5. If the Authority (or any other person in lieu of the Authority) is required as a result of any action taken under the Security of Payment Act to make a payment to the Contractor or to a Worker or supplier of the Contractor in respect of the Services, any such payment will be deemed to have been paid to the Contractor on account of the Agreed Fees.

28.6. This Agreement does not limit or exclude the operation of, or the rights of either party under, the Security of Payment Act. If any provision of this Agreement would have the effect of excluding, modifying or restricting the operation of the Security of Payment Act, then that provision must be construed so as not to have that effect and, if it cannot be so construed, this Agreement will be interpreted as if the provision was severed without affecting any other provision of the Agreement.

29. WAIVER

The failure, delay, relaxation or indulgence on the part of a party in exercising any power, right or remedy conferred upon that party by this Agreement shall not operate as a waiver of that power, right or remedy, nor shall the exercise or any single or partial exercise of any power, right or remedy preclude any other or further exercise of such power, right or remedy or the exercise of any power, right or remedy under this Agreement.

30. ASSIGNMENT

30.1. The Contractor shall not, at Law or in equity, assign, transfer or otherwise deal with any of its rights or obligations under this Agreement without the prior written consent of the Authority, which consent shall not be unreasonably withheld.

30.2. The Authority may in its absolute discretion, assign, transfer or otherwise deal with any of its rights or obligations under this Agreement without the prior written consent of the Contractor.

31. COUNTERPARTS

This Agreement may be executed in any number of counterparts and all of those counterparts taken together shall constitute one and the same document.

32. TIME OF THE ESSENCE

Time is of the essence of this Agreement in all respects.

33. FORCE MAJEURE

No party shall be liable to pay compensation to any other party nor (unless otherwise expressly agreed) shall it be a ground for termination of the Agreement if a party is unable to comply with its obligations under this Agreement in a timely manner by reason of any cause or circumstance beyond its reasonable control.

34. NO PARTNERSHIP

34.1. The parties agree that:

- (a) the Contractors and the Authority are not partners and are not in an employer/employee relationship and the Contractors, in rendering the Services

and doing other things is at all times an independent person and not doing so as the servant or agent or otherwise acting on behalf of the Authority;

- (b) in the event that the Contractor has any employees or engages any other third party in rendering the Services (including but not limited to the Workers) the Contractor agrees that it is responsible for all Taxes, deductions and payments (if any), superannuation and related expenses;
- (c) the Contractor must not purport to act or hold out that the Contractor is acting as the servant or agent or otherwise on behalf of the Authority in respect of any matter whether in rendering the Services or otherwise; and
- (d) the Contractor must at all times indemnify the Authority in relation to each and all of the matters in this clause 34.

35. GOVERNING LAW

This Agreement shall be constructed in accordance with the Laws of the State of Victoria and the parties hereby submit to the non-exclusive jurisdiction of the courts in Victoria.

36. DISPUTE RESOLUTION

If any dispute or difference arises between the parties to this Agreement in relation to the construction of this Agreement or any matter or thing of any nature arising under or in connection with the Agreement, then that dispute or difference shall, unless resolved within seven (7) days of the date upon which notice of the dispute or difference is given by a party to this Agreement, be referred for mediation to a mediator agreed by the parties within seven (7) days or failing agreement to a mediator appointed by the President of the Law Institute of Victoria.

37. ADDITIONAL PROVISIONS

The parties hereby agree and acknowledge that the Additional Provisions as set out in the Fee Schedule (if any) are to be treated as essential terms for the purposes of this Agreement. In the event of any inconsistency between the Additional Provisions as set out in the Fee Schedule (if any) and the terms and conditions, then the Additional Provisions will prevail to the extent of any such inconsistency.

ACKNOWLEDGMENT

The Contractor acknowledges and agrees that the abovementioned will form the basis for payment of the Individual Engagement pursuant to the terms of the Works Contract:

(If Contractor is a company) –

.....
Name of Entity (include ABN/ACN)

.....
Name of Director/s

.....
Signature of Director/Secretary

.....
Name of Director/s

.....
Signature of Director/Secretary

(If Contractor is an individual) –

.....
Name of individual

.....
Signature of individual

.....
Usual Address of individual

.....
Name of witness

.....
Signature of witness

.....
Address of witness

The Authority acknowledges and agrees that the abovementioned will form the basis for payment of the Individual Engagement pursuant to the terms of the Service Level Agreement:

SIGNED, SEALED AND DELIVERED BY an)
authorised representative of **NORTH CENTRAL**)

CATCHMENT MANAGEMENT AUTHORITY in
the presence of:

.....
Print Name of Authorised Representative:

Name of Witness: