

Refer response to  
Question No. SB2-17



*Building Commission* 

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## Request For Tender

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**Accessible Housing in Australia**

**Australian Building Codes Board**  
and the  
**Building Commission**

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Further assistance regarding the Request for Tender may be obtained from:

Ms Marcelle West, Project Manager, Building Commission on telephone (03) 9285 6346 or  
email: [mwest@buildingcommission.com.au](mailto:mwest@buildingcommission.com.au)

### **Lodgement of Tenders**

**Tenders must be enclosed in a plain envelope endorsed as follows:**

Request for Tender (Accessible Housing in Australia)  
Building Commission  
Level 27 2 Lonsdale Street  
Melbourne Victoria 3000  
Or by email to: [mwest@buildingcommission.com.au](mailto:mwest@buildingcommission.com.au)

**Closing Time and Date: 4:00 pm Thursday 16 December 2004**

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## Part 1 Statement of Work

The Australian Building Codes Board (ABCB) and the Victorian Building Commission (Commission) invite suitably qualified consultants to submit a proposal to research and report on accessible housing in Australia. Accessible housing provides for social and economic inclusion within the community, but in the context of this research, inclusion specifically for people with disabilities.

Broadly, the report will benchmark the supply of accessible housing, advise on whether the supply is sufficient and describe the range of interventions that can be considered by governments and industry to improve the supply if that course is indicated.

### 1. Background

- 1.1 In 1998, the Australian Bureau of Statistics (ABS) found that 19 percent of the population has a disability and that the probability of experiencing a disability increases as people age. The ABS predicts that by 2031 between 31 – 33 percent of the population would be aged over 65.
- 1.2 In this context particular consideration may need to be given to the design and construction of housing to provide for the needs of current and future populations.
- 1.3 Currently Australia does not have nationally coordinated strategies to ensure that there is a stock of accessible housing to meet the current or anticipated demand.
- 1.4 Some local governments through their town planning schemes are pursuing regulation to promote the construction of accessible housing.
- 1.5 Some State and Territory building control administrations are promoting the design of accessible housing or may be contemplating the need for the introduction of uniform regulation within their jurisdictions.
- 1.6 During 2003 the ABCB and the Commission engaged in separate dialogues with the Australian Network for Universal Housing Design in which both organizations recognised the need to further consider access to housing as an emerging policy issue.
- 1.7 In November 2003, the ABCB and the Commission agreed to jointly fund research into accessible housing.

### 2. Objectives

- 2.1 The main objective of the research is to provide an authoritative and comprehensive report that can be used by the Commission, the ABCB, other Australian governments and the building industry to plan for the future supply of accessible housing.

The report will establish a platform of information and data about:

- the current and future community need;
- current supply in the market;
- stakeholder opinions; and
- current initiatives and interventions.

In broad terms the report will identify:

- possible future interventions available to government; and
- design or construction standards that would be expected of intervention outcomes.

2.2 The report will be used to advise governments. It will also be used to inform and support future policy development and consultation with the community and building industry.

### 3. Scope

3.1 The research is being undertaken as an initial response to concerns that current housing construction practices might overlook social and economic imperatives for the inclusion and participation of all people particularly those with disabilities and the elderly. The research will consider inclusion in general terms but will focus on the circumstances of people with disabilities. People of any age may have a disability but as any person ages they are more likely to experience disability. ABS data suggests that many elderly people are living alone at home implying that housing might need to anticipate current and future requirements for functional access.

3.2 The research needs to:

- determine the current supply of accessible housing;
- identify current and future community needs;
- identify any gap between current and future community and occupational needs and current supply;
- identify and analyse current community, building industry, local government, state and Commonwealth Government programs, initiatives and interventions to supply or stimulate the supply of accessible housing;
- identify and analyse the main programs, initiatives and interventions applied internationally to increase supply of accessible housing; and
- identify key policy options or interventions available to government and industry to increase supply, including a broad analysis of the costs and benefits of each option.

3.3 This research will detail factual information as well as community and building industry opinions. It will include sufficient consultation to provide the ABCB and Commission with a reliable understanding of the issues needed to progress the project through subsequent stages.

3.4 The research needs to provide the community and building industry sectors with confidence that the research accurately reflects their views.

3.5 The research will consider the current national housing and demographic position as well as emerging trends.

3.6 The research needs to consider commonly occurring types of disability, the principle issues for inclusion that arise as well as the principle remedial building standards that could be considered to increase supply.

#### **4. Data Collection**

4.1 The research needs to include both qualitative and quantitative data collection and analysis to constitute a robust platform of information and data for the determination of policy options that could be considered by government. At a minimum it is expected data will be collected from:

- Australian Bureau of Statistics
- public housing authorities
- planning authorities
- local governments
- building industry peak bodies
- disability sector peak bodies
- aged sector peak bodies
- community organisations and housing providers
- relevant health and welfare research organisations
- international jurisdictions
- Federal and State governments.

4.2 The research needs to include consultation with government, industry and community organisations. It is expected that the consultation could involve the following techniques - focus groups, telephone interviews and individual face-to-face interviews. The research proposal needs to clearly state how the consultation phase will be undertaken and the provisions made for the various forms of consultation.

#### **5. Deliverables**

5.1 During the conduct of the research the consultant will provide progress reports appropriate to each stage listed in 7.1.

5.2 On completion of the research, the consultant will provide a detailed report including the following areas:

- executive summary;
- population groups characterised by age, gender, types of disability and by other factors considered important to the research, that are affected by inaccessible housing;
- occupational groups that are affected by inaccessible housing;
- housing needs of the affected groups to establish data about the building standards that may need to be applied;
- current market responses and whether the market is capable of meeting the current or projected needs;
- analysis of currently available statistics on the supply and demand for accessible housing, including future projections;
- identification and analysis of current federal, state and local government interventions to improve the supply of accessible housing reporting on the effectiveness of those interventions and the needs that are being met;
- evaluation and reporting on the cost impacts of inaccessible housing to both the community and government;
- policies and strategies that are being pursued internationally and their effectiveness;
- interventions that could be considered by governments and industry to address current and future access needs in Australian housing and the probable costs and benefits of these interventions using a robust cost benefit methodology;

- building standards that could be applied in these interventions;
- relative merits of the most appropriate and viable interventions available to align the supply of accessible housing with the current and future need, with respect to:
  - social and economic costs and benefits;
  - the building industry's capacity to deliver;
  - express community interest and demand and, if appropriate;
  - integration with other key health and welfare policies;
- glossary of terms that are commonly used to provide improved access including "accessible", "visitable", "adaptable" and "universal design";
- final report that details a range of policy options for consideration.

5.2 All reports will be provided to the Commission in electronic format. The use of tables and graphics is encouraged.

5.3 Recommendations must be based on robust evidence and analysis that is justifiable, relevant and reflects building and occupant characteristics in Australia.

## 6. The Commissions Responsibilities

6.1 The Commission's responsibilities in relation to this RFT will be to select the most suitable respondents from the information provided, using the selection criteria outlined in Section 12.

6.2 The Commission will provide input during the project duration, when requested. The active involvement of selected Commission officers within the project team is encouraged.

6.3 The Commission will make payments on completion of each stage of the project, based on the production of deliverables to the complete satisfaction of the Commission.

## 7. Proposed Timetable

7.1 Tenderers should submit a proposed timeline for the completion of the research using the following as a guide.

Stage 1	Detailed methodology including consultation plan and cost benefit methodology	2 weeks from the date the tender is awarded
Stage 2	Supply and demand analysis	2 months from the date the Commission gives approval for this stage to commence
Stage 3	Strategy analysis	2 months from the date the Commission gives approval for this stage to commence
Stage 4	Draft report	1 month from the date the Commission gives approval for this stage to commence
Stage 5	Final report	1 month from the date the Commission gives approval for this stage to commence

It is expected that the contract will commence in January 2005.

## 8. Payment Schedule

8.1 Payments will be made on invoice progressively throughout the term of the project (as outlined below), based on achievement of clearly defined and physically verifiable milestones, to the complete satisfaction of the Commission. The milestone payments will be made as follows:

Completion of Stage 2	Supply and demand analysis	30% payment
Completion of Stage 3	Strategy analysis	30% payment
Completion of Stage 4	Draft report	20% payment
Completion of Stage 5	Final report	20% payment

8.2 The Commission standard terms of payment are 30 days from delivery of services and correctly rendered invoice to the Commission.

8.3 Stages 2, 3 and/or 4 of the project will not commence unless the previous stage (milestone) of the project is successfully completed, to the Commission's satisfaction conveyed in writing.

## 9. Further Information

9.1 Tenderers should direct any questions arising during the preparation of a response to this RFT or requests for clarification in writing to Marcelle West – Project Manager on (03) 9285 6346 or at e-mail: [mwest@buildingcommission.com.au](mailto:mwest@buildingcommission.com.au).

9.2 The Commission reserves the right to circulate questions and answers to all other Tenderers without disclosing the source of the questions or revealing the substance of a proposed tender.

## Part 2 Evaluation

### 10. Purpose

10.1 This part outlines the selection process and specifies the minimum tender requirements to be addressed by tenderers.

### 11. Proposal Content

11.1 Name and address of the organisation.

11.2 Tenderers should clearly outline their understanding of the issues of national consistency with respect to building regulation and the Building Code of Australia.

11.3 Tenderers should outline details on how the project will be approached and undertaken, including details of the proposed methodology. This information should be provided to the degree necessary to enable the Commission to determine, the tenderer's knowledge of relevant issues, and understanding of the requirements of this research project.

11.4 Tenderers are required to provide details of relevant projects that demonstrate their experience in undertaking research on housing and/or matters related to access to the built environment. The information provided must include:

- (i) the organisation(s) for whom such work was undertaken;
- (ii) the nature of the tasks encompassed by the project including experience in undertaking qualitative analysis;
- (iii) the contact officer (name, position, and contact details) within each of the listed organisations;
- (iv) an outline of the achieved benefits to the organisation resulting from the service delivery.

11.5 Tenders are to provide details of their capacity to undertake a project of similar scope, size and complexity of this nature including:

- (i) the extent to which the tenderer's own resources, will be utilised to deliver the services required, versus resources provided by sub-contractor;
- (ii) the extent to which the tenderer's own resources are readily available given concurrent project activity being undertaken by the respondent; and
- (iii) provide details of the responsibilities and skills/experience profile of the tenderer's personnel to be used.

11.6 Tenderers are to advise of any formal quality certification held that would be utilised to deliver the research.

11.7 Tenderers are to provide details of current professional indemnity, public liability and other relevant insurance coverage.



## 12. Selection Criteria

12.1 Proposals will be assessed according to the criteria outlined below. Accordingly, tenderers are encouraged to address the selection criteria:

- (i) previous performance in comparable projects;
- (ii) demonstrated relevant experience, qualifications and skills of personnel to be involved in the project;
- (iii) demonstrated understanding of the project, including knowledge of the logistical and organisational issues; and
- (iv) demonstrated experience in undertaking housing and/or access related research;
- (v) the content and quality of the research plan/methodology detailed in the tender submission.

Value for money will be considered across each of the above criteria.

## **Part 3      Conditions of Tender**

### **13. Request for Tender**

#### **13.1 Purpose**

**13.2** By this RFT, the Building Commission (Commission) seeks Tenders on the terms and conditions of the RFT to supply to the Commission services including goods described in the RFT.

### **14. Disclaimer**

**14.1** The issue of the RFT does not in any way commit or otherwise obliges the Commission to proceed with all or any part of this tendering process.

### **15. Deadline for Lodgement of Proposals**

**15.1** Written Tenders will be received until 4pm local time at the Building Commission on 16 December 2004 (the 'Closing Time') at the address shown in Clause 17.1.

### **16. Place for Lodgement of Proposals**

**16.1** Proposals are to be addressed as follows and lodged at the Building Commission:

Request for Tender (Accessible Housing in Australia)  
Building Commission  
Level 27  
2 Lonsdale Street  
Melbourne VIC 3001

### **17. Delivery Method**

**17.1** Subject to 18.2 tenders must be delivered by hand to the Building Commission by the closing time.

**17.2** Tenders may be sent by e-mail to [mwest@buildingcommission.com.au](mailto:mwest@buildingcommission.com.au) provided the tenderer contacts the Commission project officer by telephone immediately before sending the e-mail.

**17.3** Tenders must ensure that the Tender submitted by e-mail are followed up by hard copies of the Tender, subject to 19.1.

### **18. Copies of Proposal**

**18.1** The original and two copies of the Tender are to be lodged in single-sided A4 loose-leaf format. The original is to be marked as the original and each copy sequentially marked with a copy number. In the event of a discrepancy between any copy and the original, the original takes precedence.

18.2 The Commission may copy the tender documents, as it requires for the purposes of this RFT.

## 19. Definition of a Late Proposal

19.1 Any proposal is late if it is lodged with the Commission after the nominated deadline for the lodgement of proposals.

## 20. Extension of Deadline

20.1 Tenders received after the Closing Time will be registered as late. The decision to include a late Tender will be made by the Commission in its absolute discretion.

20.2 The decision to consider a late Tender or exclude it from consideration will be based on the circumstances surrounding the submission and the receipt of the late Tender. An important issue is whether the Tenderer concerned is likely to have had an opportunity to obtain some unfair advantage from late submission.

## 21. Communication with Tenderers

21.1 The Commission reserves the right, at its absolute discretion, to engage in any discussions with, or seek clarification on any matter from, any tenderer at any stage.

21.2 The Commission reserves the right, at its absolute discretion, to short-list tenders and seek further information from those tenderers. In the event of a short-list being compiled by the Commission, tenderers not on the short-list shall be advised of that as soon as practicable.

## 22. Ownership of Proposal Documents

22.1 All proposal documents will become the property of the Commission. The Commission will not disclose your confidential information unless those details are already in the public domain, disclosure is required by law, or agreement is given for their release.

## 23. No Contract

23.1 The Commission is not bound contractually or in any other way to any tenderer to this RFT. The Commission is not liable for any costs of compensation in relation to the consideration of this RFT or any Tender by the Tenderers to this RFT whether or not the Commission terminates, varies or suspends the RFT process or takes any other action permitted under this RFT.

## 24. Execution of Formal Agreement

24.1 Nothing in the Request for Tender or your proposal constitutes a contract with the Commission. The Commission intends that no contract will be formed until the Commission signs a formal contract with the successful tenderer.

24.2 The Commission will require the execution of a formal contract and the successful tenderer shall, within seven (7) days after being required in writing by the Commission so to do, execute such a contract based on the Draft Form of Consultancy/Service Contract Agreement, appended at Part 4 of this document. This draft form of contract has been attached as a guide for tenderers only. The Commission reserves the right to vary the terms and conditions.

24.3 The Commission is required to enter into contract only with legal entities or legally recognised relationships eg. companies, partnerships.

## 25. Consortium Tenders

25.1 A Consortium may submit a Tender on the basis that the prime Contractor will take full responsibility. The Tender must provide full details of proposed prime Contractor and sub-contractors.

## 26. Subcontracts

26.1 Tenderers are advised that the Conditions of Contract require that the Contractor does not subcontract the whole of its obligation under the Contract but may, with the prior consent of the Commission subcontract part of its obligation.

26.2 Tenderers must provide names and addresses of proposed sub-contractors and details of their involvement in the project.

## 27. Preparation of Tenders

27.1 Tenders are made on the basis that each tenderer acknowledges that:

- a. it has examined the RFT;
- b. the RFT specifies the Commission's rights in respect of the RFT and the tenderer agrees that the Commission may exercise its rights set out in the RFT in respect of the RFT process;
- c. it sought and examined all necessary information which is obtainable by making reasonable enquires relevant to the Commission's requirement including the risks and other circumstances which may affect a Tender;
- d. in lodging its Tender it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of the Commission other than any statement, warranty or representation contained in the RFT;
- e. it did not use the improper assistance of Commission employees;
- f. it satisfied itself as to the correctness and sufficiency of its Tender;
- g. it is responsible for all expenses relating to its involvement in the RFT including:
  - i. preparation and lodgement of its Tender;
  - ii. any subsequent negotiations; and
  - iii. any other action or response in relation to this RFT;

- h. The Commission is not responsible for any costs or expenses incurred by the Tenderer or any other person in responding to or taking any other action in relation to this RFT; and
- i. the Tenderer will comply with the rules set out in this RFT.

27.2 Should a tenderer find any discrepancy, error or omission in the tender documents, the Commission should be notified in writing thereof, on or before the date and time of closing of tenders.

## 28. Conflict Of Interest

28.1 A tenderer must state any circumstances or relationships that constitute or may constitute a conflict or potential conflict of interest in respect of this RFT or the tenderer's obligations under any resulting Contract if the tenderer is ultimately awarded a Contract by the Commission.

## 29. Confidentiality and Freedom of Information

29.1 Information forming part of a tender submitted in response to this RFT shall be treated as commercial in confidence to the extent requested by a Tenderer, and thus protected from disclosure subject to any legal obligations on the Commission to disclose such information.

29.2 Tenderers should be aware that the Commission is subject to the operation of the *Freedom of Information Act 1982*, which allows public access to government documents. If this is of concern, the *Act* provides avenues for submissions to be made that particular information about the business, commercial or financial affairs of an entity or undertaking not be disclosed.

## 30. Government Guidelines and Legislation

30.1 The Commission requires suppliers to comply with their obligations, if any, under the following guidelines and legislation:

- a. Affirmative Action
  - i. *Affirmative Action (Employment Opportunity for Women) Act 1986*.
  - ii. Information about the legislation can be obtained from the Affirmative Action Agency.
- b. Disability Discrimination
  - i. *Commonwealth Disability Discrimination Act 1992*.
  - ii. Information about the legislation can be obtained from the Publicity Officer, Human Rights and Equal Opportunity Commission.
- c. Occupational Health and Safety
  - i. *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

In the preparation and submission of their tender responses, tenderers shall ensure that they comply with the relevant State policies.

## **31. Evaluation and Selection**

- 31.1** Tenderers are advised to provide detailed responses against each element contained in Part 2. Proposals will be assessed for overall best value for money for the Commission. The Commission does not have to accept the lowest-priced proposal.
- 31.2** The Commission reserves the right to set priorities and weight the assessment criteria or vary those priorities or weighting at its absolute discretion.
- 31.3** The Commission reserves the right to make available to advisers and third parties a copy of any tenderer's proposals or part of the proposals for evaluation purposes only.
- 31.4** Tenderers may be shortlisted and inspections of samples sought.
- 31.5** The Commission may conduct inspections of the short listed tenderers' facilities during the Tender evaluation phase, or prior to appointment of the preferred tenderer or shortlist of tenderers.
- 31.6** Additionally, the Commission may interview key personnel of the proposed contract team and customers for whom the tenderer has previously carried out work, to assess the similarity of the work to the Commission's requirements, and to obtain independent assessments of the tenderer's performance.
- 31.7** The Commission may accept all, or part of a proposal, or may accept none of the proposals.

## **32. Clarification of Tenders**

- 32.1** During evaluation of the Tender process the Commission reserves the right to seek clarification from and to enter into discussions with any or all of the tenderers in relation to their Tender to provide the Services.
- 32.2** The Commission may require a tenderer to submit additional information to allow further consideration of its Tender before that Tender is further considered, despite any other requirements of the RFT.

## **33. Right to Conduct Security, Probity and Financial Checks**

- 33.1** The Commission in its absolute discretion reserves the right to conduct such security, probity and financial checks, on tenderers for the purpose of evaluating responses to this RFT or any other stage of Tendering process for the Services described in this RFT, as it deems necessary.

## **34. Probity Obligations**

- 34.1** If a tenderer is found to have made false or misleading claims or statements, or obtains confidential information, or receives improper assistance, the Commission reserves the right to reject at any time any Tender lodged by or on behalf of the tenderer.
- 34.2** Each tenderer and its officers, employees, agents and advisers must not engage in any collusive Tendering, anti-competitive conduct or other similar conduct with any other tenderer or any other person in relation to the preparation or lodgement of Tenders.

### **35. Notification of the Preferred Tenderers**

- 35.1** A Tender will not be deemed to have been provisionally accepted unless and until notice in writing for and on behalf of the Commission of such acceptance is given to the tenderer. Provisional acceptance of a Tender does not give rise to a contract; a contract is only formed if and when the Commission and the preferred tenderer sign a formal contract.

### **36. Disclosure of Information**

- 36.1** No tenderer shall furnish any information, make any statement or issue any document or other written or printed material concerning the acceptance of any proposal in response to this Request For Tender for publication in any of the media without the prior written approval of the Commission.

### **37. Advice to Unsuccessful Tenderers**

- 37.1** The Commission will notify each unsuccessful tenderer that its Tender has not been accepted no later than a week after the signing of the Contract, or the end of the tender process, whichever is the later.

## **Part 4      Draft Form of Consultancy/Service Contract**

Unless you expressly state otherwise, you are taken to agree or comply with the Conditions of Tender and Deed.

**See Attachment A for Standard Form of Contract**



## Part 5 Tenderer's Details

To be completed by all Tenderers and lodged with proposals.

Company Name: \_\_\_\_\_

ACN: \_\_\_\_\_

**Or**

If a Partnership, the Trading name (if any) and full name of the Partners:

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or:

If a Sole Trader, Trading Name (if any) and the full name of the Trader:

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### Contact for Liaison and Notices:

Mr/Mrs/Ms/Dr \_\_\_\_\_

Postal Address \_\_\_\_\_

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Telephone (\_\_\_\_) \_\_\_\_\_

Facsimile (\_\_\_\_) \_\_\_\_\_

E-Mail \_\_\_\_\_

**ATTACHMENT A - STANDARD CONSULTANCY CONTRACT**

**Building Commission**  
**and**  
**[insert name of Contractor]**

**[Insert type of Contract, i.e. Project description]**  
**Agreement**

**Building Commission**  
**Level 27, Casselden Place**  
**2 Lonsdale Street**  
**Melbourne Vic 3000**

**V1/2002**

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**[Insert type of Contract]  
Agreement**

**Parties:** **BUILDING COMMISSION** being a body corporate established under the *Building Act 1993 (Vic)* of Level 27, Casselden Place, 2 Lonsdale Street, Melbourne ("**BC**");

And

**The Contractor named in Item 1 of Schedule 1 ("Contractor").**

- Recitals:**
- A. BC has requested the Contractor to perform the Services specified in this Agreement.
  - B. The Contractor has agreed to perform the Services in accordance with the terms and conditions in this Agreement

**The Agreement:**

This agreement is made up of the following parts:

1. Schedule 1 - Details
2. Schedule 2 - Fee Structure
3. Schedule 3 - Confidentiality Undertaking
4. Schedule 4 - Operative Provisions
5. Schedule 5 - Project Brief and Proposal
6. Schedule 6 - Project Schedule

**("Agreement").**

**Execution Page**

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Date of Agreement:            /    / 2002

**THE OFFICIAL SEAL OF THE BUILDING COMMISSION** was affixed in the presence of: )  
)  
)  
)  
)

.....  
Signature of authorised person

.....  
Witness

**SIGNED** by XXXXXXXXXXXX as authorised representative for the **BUILDING COMMISSION** a body corporate established under the *Building Act 1993* in the presence of: )  
)  
)  
)  
)

.....  
By executing this Agreement the signatory warrants that the signatory is duly authorised to execute this Agreement on behalf of BC

.....  
Signature of witness

.....  
Name of witness (block letters)

**THE COMMON SEAL of .....** Pty Ltd / Limited (ACN .....) was affixed in accordance with its constitution in the presence of: )  
)  
)  
)

.....  
Signature of Director

.....  
Signature of Director/Company Commissioner

.....  
Name of Director (block letters)

.....  
Name of Director/Company Commissioner (block letters)

**SIGNED** by **XXXXXXXXXX** as authorised representative for **XXXXXXXXXXXX Pty Ltd / Limited (ACN .....**) in the presence of:

)  
)  
)

.....  
By executing this Agreement the signatory warrants that the signatory is duly authorised to execute this Agreement on behalf of **XXXXXXXXXX**

.....  
Signature of witness

.....  
Name of witness (block letters)

**SIGNED** by **XXXXXXXXXX** as authorised representative for and on behalf of all the partners trading as **XXXXXXXXXXXX** in the presence of:

)  
)  
)

.....  
By executing this Agreement the signatory warrants that the signatory is duly authorised to execute this Agreement on behalf of **XXXXXXXXXX**

.....  
Signature of witness

.....  
Name of witness (block letters)

**THE COMMON SEAL of XXXXXXXXX Inc.** was affixed by the authority of its committee in the presence of:

)  
)  
)  
)

.....  
Signature of authorised person

.....  
Signature of authorised person

.....  
Office held

.....  
Office held

.....  
Name of authorised person (block letters)

.....  
Name of authorised person (block letters)

**THE COMMON SEAL of XXXXXXXXX** was )  
affixed in the presence of: )  
)  
)

.....  
Signature of authorised person

.....  
Signature of authorised person

.....  
Office held

.....  
Office held

.....  
Name of authorised person (block letters)

.....  
Name of authorised person (block letters)

**SIGNED** by **XXXXXXXXXX** in the presence )  
of: )  
)

.....  
) Signature of XXXXXXXXXXXX

.....  
Signature of witness

.....  
Name of witness (block letters)



**Schedule 1****Details**

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The details of this Agreement are:

1. Contractor: [Name Contractor] (ACN )  
(ABN)
2. Project: [Enter description of project]
3. Brief description of Services:
4. Commencement Date:  
(clause 1.1)
5. Completion Date:  
(clause 1.1)
6. Contractor's Principal Officer: Name:  
(clause 1.1) Position:
7. Supervising Officer: Name:  
(clause 6.1) Position:
8. Option Period: Nil  
(clause 2.2)
9. Amount of Public Liability Insurance: \$5,000,000  
(clause 10.6)
10. Amount of Professional Indemnity Insurance: \$5,000,000  
(clause 10.7)
11. Period of Run-off Cover: 10 years  
(clause 10.7)
12. Address of Contractor: [Address of principal place of business]  
(clause 14.1.)
13. Facsimile of Contractor: [Contractor's fax number]  
(clause 14.1)
14. Address of BC: Level 27, Casselden Place  
(clause 14.1) 2 Lonsdale Street, Melbourne Vic 3000
15. Facsimile of BC: [insert fax number]  
(clause 14.1)
16. Maximum Amount Payable \$[Insert the total amount payable to the Contractor  
under the Agreement]

**Schedule 2**

**Funding Structure**

State here details of the Funds to be paid by BC to the Contractor. This obligation should be linked, as appropriate, to instalment payments against progressive completion /deliverables of the Project, acceptance by the Supervising Officer as meeting the requirements of the Agreement, and observance of specified acquittal procedures.

**Summary of Funding (Delete those Options not applicable)**

Option 1: Maximum Lump Sum	\$	
Option 2: Maximum Milestone Payments	\$	
Option 3: Maximum Professional Fee	\$	
Option 4: Maximum Expenses Fee	\$	
Option 5: Maximum Other Fee Structure	\$	
<b>Maximum Payable:</b>	<b>\$</b>	

**Method of Payment (Select from options 1 to 5)**

Pursuant to clause 4 of Schedule 4, BC will pay the Contractor by reference to the following options:

<p><b>Option 1: Lump Sum Fee: \$</b></p> <p><b>[Use this when the Contractor is to be paid a lump sum on completion of the Services/Project]</b></p> <p>This amount is payable when BC certifies that the Services have been completed in accordance with the requirements of this Agreement.</p>
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<p><b>Option 2: Milestone Payments: \$</b> payable by reference to the following milestones:</p> <p><b>[If payments are to be made by instalments during the term of the Agreement, the services and/or products to be delivered (that give rise to BC's obligation to pay) should be stated, together with the due date for delivery and the amount payable for each milestone]</b></p>		
Milestone Description	Date Due	Payment
1.		\$
2.		\$

3.		\$
<b>Total Lump Sum</b>		\$

<b>Option 3: Professional Fee</b>			
[This may be applicable where the Contractor is to be paid at an hourly rate, for specified people to provide services, up to a maximum total amount as set out below]			
The Professional Fee will be paid for each person named or designated below at the rate and up to the maximum(s) set out below.			
Name or Designation	Hourly Rate	Daily	Maximum
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
The total Professional Fee will not exceed \$			

<b>Option 4: Expenses</b>		
Expense Type	Description of Expense [The nature of the expense must be described]	Maximum per item
Travel		\$
Accommodation		\$
Other		\$

**1 Definitions and Interpretation****1.1 Definitions and Interpretation**

For the purposes of this Agreement:

**Business Day** means a day (not being a Saturday or Sunday) on which banks are open for general banking business in Melbourne.

**Commencement Date** means the date stated in Item 4 of Schedule 1.

**Completion Date** means the date stated in Item 5 of Schedule 1.

**Confidential Information** means any information or data, including Personal Information, whether or not in a material form, which is confidential to a party including confidential information acquired, collected or developed for the purpose of the Project or obtained during the currency of this Agreement, except that which is already in the public domain otherwise than as a result of breach of this Agreement.

**Contractor's Principal Officer** means the person stated in Item 6 of Schedule 1.

**Design** means a concept, product or process that is capable of being patented or registered as a design.

**Expenses** means the out of pocket expenses set out in Schedule 2 to be paid pursuant to clause 4.

**GST** means GST within the meaning of the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended.

**Insolvency Event** means:

- (a) in respect of a Contractor who is a natural person:
  - (i) the Contractor commits an act of bankruptcy as defined in section 40 of the *Bankruptcy Act 1966* (Cth) (Bankruptcy Act);
  - (ii) a creditor's petition is presented against the Contractor pursuant to Division 2 of Part IV of the Bankruptcy Act;
  - (iii) the Contractor presents a petition against himself or herself pursuant to section 55 of the Bankruptcy Act;
  - (iv) a sequestration order is made in respect of the Contractor;

- (v) the Contractor signs an authority pursuant to section 188 of the Bankruptcy Act;
  - (vi) a meeting of creditors of the Contractor is convened for the purposes of Part X of the Bankruptcy Act;
  - (vii) the Contractor enters into any arrangement with creditors pursuant to Part X of the Bankruptcy Act;
- (b) in respect of a Contractor who is not a natural person:
- (i) the board of the Contractor passes a resolution under section 436A of the Corporations Law;
  - (ii) the Contractor is placed into administration pursuant to Part 5.3A of the Corporations Law;
  - (iii) a deed of arrangement is entered in respect of the Contractor;
  - (iv) an application is made to a court for the winding up of the Contractor;
  - (v) the Contractor resolves that it be wound up voluntarily;
  - (vi) a winding up order is made in respect of the Contractor;
  - (vii) a receiver or receiver and manager is appointed to the Contractor;
  - (viii) a court orders that there be a meeting of creditors or members of the Contractor for any purpose related to Part 5.1 of the Corporations Law;
- (c) and in either case:
- (i) a mortgagee takes possession of any assets of the Contractor;
  - (ii) the Contractor informs BC or any creditor of the Contractor, in writing, that it, he or she is insolvent; or
  - (iii) any execution is levied against the property of the Contractor and remains unsatisfied for 30 days.

**Intellectual Property Rights** means statutory and other proprietary rights in respect of trademarks, patents, circuit layouts, copyrights, confidential information, know-how and all other rights with respect to Intellectual Property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967

**Laws** includes all Acts of the Parliaments of Australia and the states, and all regulations, by-laws, awards and orders made thereunder, and the

lawful requirements of public, municipal and other competent authorities in any way affecting or applicable to the Services and the Project.

**Lump Sum Fee** means the fee set out in Schedule 2 to be paid pursuant to clause 4.

**Maximum Amount Payable** means the amount stated in item 16 of Schedule 1, being the maximum amount that can be paid by BC to the Contractor for the Services. This amount is a cap and the Contractor is not automatically entitled to be paid it.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Professional Fee** means the fee set out in Schedule 2 to be paid pursuant to clause 4.

**Project** means the project to be undertaken as described in Item 2 of Schedule 1 in respect of which the Services are to be provided.

**Project Brief** means the brief for the Project set out in Schedule 5 Part 1.

**Proposal** means the submission prepared by the Contractor in relation to the Project, as set out in Schedule 5 Part 2.

**Schedule** means a schedule to this Agreement.

**Services** means the services to be provided by the Contractor as set out in brief in Item 3 of Schedule 1 and more fully set out in Schedule 5 and is inclusive of being ready, willing and able to provide the Services.

**Supervising Officer** means the person nominated in accordance with clause 6.1 (stated in Item 7 of Schedule 1) or such other person from time to time filling the position of that person.

1.2 Unless the context requires otherwise:

- (a) words importing any gender include each other gender;
- (b) the plural includes the singular and vice versa;
- (c) a reference to a person includes any other entity recognised by law and vice versa;
- (d) a reference to a statute, ordinance, code or other law includes subordinate legislation, consolidations, amendments, re-enactments, and replacements of it;
- (e) terms used in the Project Brief and in the Proposal have the same meaning when used in this Agreement;

- (f) where a term is defined, the definition includes all other grammatical forms of that term; and
  - (g) headings and notes in square brackets are for reference only.
- 1.3 Inconsistencies between the terms of this Agreement will be resolved in the following order of priority:
- (a) Schedule 1;
  - (b) the clauses incorporated in this Schedule 4;
  - (c) Schedule 5 Part 1 Project Brief;
  - (d) Schedule 5 Part 2 Proposal; and
  - (e) all other Schedules in numbered order.
- 1.4 Despite anything contained in this agreement, the obligations of clauses 7.1, 7.2, 7.8, 7.10 and 8.1 to 8.8 are continuing obligations and will not cease on the completion, expiry or termination of this Agreement or any other discharge of this Agreement.
- 1.5 In performing this Agreement, both parties must act reasonably and in good faith.

## **2 Period of contract**

- 2.1 The Contractor's engagement under this Agreement will commence on the Commencement Date and, subject to this clause 2 and clause 12, conclude on the Completion Date or such other date as agreed in writing between the parties.
- 2.2 If the Contractor fails to deliver to the reasonable satisfaction of BC by the Completion Date any product or service that it is required to deliver under this Agreement then this Agreement will continue, without the Contractor being entitled to any additional payment, until:
- (a) the product or service is delivered to BC;
  - (b) BC waives the right to insist on delivery of the product or service; or
  - (c) BC elects (in its sole discretion) to end the agreement by notice to the Contractor,

but the operation of this clause will not be construed as a waiver by BC of any of its rights.

### **Option to renew**

- 2.3 BC may, at its sole and absolute discretion, renew this Agreement on the same terms and conditions, for a period not exceeding the period set out in Item 8 of Schedule 1 in the following manner:

- (a) BC will provide the Contractor with a written notice of exercise of the option to renew no later than three (3) calendar months before the Completion Date;
- (b) the Contractor must, within fourteen (14) days of the date of the notice given under clause 2.3(a), give BC a written notice accepting or rejecting the exercise of the option to renew this Agreement. If the Contractor fails to give notice under this sub-clause within the time stipulated, the Contractor is deemed to have accepted BC's exercise of its option to renew this Agreement;
- (c) upon the Contractor accepting the exercise of the option to renew, this Agreement will be renewed by the period specified in the notice and the commencement day of the renewed Agreement pursuant to this option clause will be the day immediately following the Completion Date of this Agreement irrespective whether that day is a Business Day;
- (d) if BC exercises the option to renew for a period of less than two years, BC may exercise the option to renew for a further period, in accordance with clauses 2.3(a), 2.3(b), and 2.3(c), provided that the total period of the Agreement, including all further periods, is not more than three (3) years.

### **3 Contractor's obligations**

The Contractor must carry out the Services in accordance with this Agreement to the satisfaction of BC.

#### **Duties**

3.1 The Contractor must:

- (a) exercise due care, skill and judgement and at all times act in accordance with the highest professional principles and standards applicable in the Contractor's field of endeavour;
- (b) ensure that any person employed by the Contractor to perform any work under this Agreement possesses adequate levels of skill and experience to perform that work to the satisfaction of BC;
- (c) observe and comply with all Laws;
- (d) perform the Services within such reasonable time as may be stipulated by the Supervising Officer and otherwise in a timely manner;
- (e) have regard to such consideration and requirements as may be conveyed by the Supervising Officer; and
- (f) prepare and submit to the Supervising Officer within such reasonable time as may be stipulated by the Supervising Officer, progress reports or other material prepared in accordance with this Agreement.



## **4 Payment**

### **Amount of payment**

- 4.1 BC will pay the Contractor for the Services, in accordance with this clause 4 and Schedule 2.
- 4.2 If the total amount payable under the Agreement is in excess of \$25,000, BC may withhold 20% of the amount to be paid to the Contractor until BC is satisfied that the Project is satisfactorily completed.

### **Method of payment**

- 4.3 The Contractor must:
- (a) submit invoices for payment for the Services monthly in arrears, or in accordance with such other schedule of payments as set out in Schedule 2;
  - (b) provide information in support of the value of any invoice if requested by the Supervising Officer;
  - (c) detail the amount of any GST included in the invoice for payment for the Services.

### **Time of payment**

- 4.4 Subject to clause 4.2 and unless the Supervising Officer questions or disputes the amount stated in the invoice, BC will pay the invoiced amount within thirty (30) days of receiving the invoice.

### **Disputed claims**

- 4.5 If the Supervising Officer disputes the whole or any portion of the amount stated in the invoice:
- (a) BC will pay the portion of the invoice which is not in dispute and will notify the Contractor in writing of the reasons for disputing the balance of the invoice; and
  - (b) if the parties are unable to agree within seven (7) days of BC giving the notice, the dispute will be settled in accordance with clause 11. If it is resolved that some or all of the amount in dispute ought properly to have been paid at the time it was first invoiced, BC will pay the amount finally resolved.

### **Expenses**

- 4.6 The Contractor may only claim Expenses on the basis of actual expenses incurred, as evidenced to the satisfaction of the Supervising Officer. Expenses will not be payable in excess of the maximum amount for each item set out in Schedule 2 unless the Supervising Officer agrees in writing before the Expense is incurred.

## **Other Out of Pocket Expenses**

- 4.7 All other out of pocket expenses are deemed to have been allowed for in the Professional Fee, Lump Sum Fee or Expenses and may not be separately claimed for by the Contractor.

## **Limit on Total of All Fees**

- 4.8 Subject to the provisions of this Agreement, the amount payable by BC in respect of the Professional Fee, Lump Sum Fee and Expenses will be limited to the maximum amounts set out in the Summary of Funding in Schedule 2.

## **GST**

- 4.9 In this clause, expressions set out in italics bear the same meaning as those expressions in the GST Act.
- 4.10 BC and the Contractor will register for the purpose of receiving and supplying taxable supplies under the GST Act.
- 4.11 Unless otherwise stated, an amount payable by BC under this Agreement in respect of a *supply* by the Contractor that is a *taxable supply*, represents the GST inclusive value of the *supply* and BC is not required to pay to the Contractor any additional amount for the GST payable in respect of the *supply*.
- 4.12 The Contractor must give BC a *tax invoice* at the time of submitting an invoice for payment under clause 4.3.
- 4.13 The GST amount payable under clause 4.11 is payable immediately on receipt of a *tax invoice*, unless the invoice is disputed under clause 4.5.
- 4.14 Clauses 4.9 to 4.13 have no application where the Services are input taxed or GST-free.

## **5 Contractor's Principal Officer**

- 5.1 The Project must be carried out by the Contractor under the direction of the Contractor's Principal Officer and no other person, unless BC consents otherwise in writing.
- 5.2 The Contractor's Principal Officer will:
- (a) represent the Contractor and be available at all reasonable times for consultation with BC or the Supervising Officer in connection with any matter arising under this Agreement; and
  - (b) be deemed to be the agent of the Contractor in respect of any decision made or information given or received by the Contractor concerning any matter arising under this Agreement, with full authority to bind the Contractor.

## 6 Supervising Officer

### Supervision

- 6.1 BC will nominate a person to act as the Supervising Officer to supervise performance of this Agreement (as set out in Item 7 of Schedule 1) and retain the Supervising Officer for the duration of this Agreement.
- 6.2 The Supervising Officer will:
- (a) represent BC and be available at all reasonable times for consultation with the Contractor's Principal Officer in connection with any matter arising under this Agreement; and
  - (b) be deemed to be the agent of BC in respect of any decision made (except with respect to payment of moneys in excess of Maximum Amount Payable) or information given to or received by the Supervising Officer concerning any matter arising under this Agreement unless stated otherwise in this Agreement.

## 7 Confidentiality

### Mutual Warranty

- 7.1 Each party must keep all Confidential Information absolutely confidential and each party warrants to the other that it will not communicate, publish or release, or permit the communication, publication or release of any Confidential Information except:
- (a) as is necessary for the parties to perform their obligations under this Agreement;
  - (b) as required by Law.

### Privacy

- 7.2 Without limiting the rest of this clause 7, the Contractor will comply with and is bound by the provisions of:
- (a) the *Privacy Act 1988 (Cth)* as amended or replaced from time to time, and in relation to any information the Contractor obtains in performance of this Contract, it will comply with the National Privacy Principles set out in that Act; and
  - (b) the *Information Privacy Act 2000 (Vic)* and *Health Records Act 2001(Vic)* (both as amended or replaced from time to time), and their respective Information Privacy Principles and Health Privacy Principles and any applicable code of practice, with respect to any act done, or practice engaged in, by the Contractor for the purposes of this Agreement in the same way and to the same extent as BC would have been bound by them in respect of that act or practice had it been directly done or engaged in by BC.

## **Warranty by Employees and Agents of Contractor**

7.3 The Contractor must:

- (a) procure from each person employed or engaged by it in relation to this Contract a warranty that is consistent with the Contractor's obligations under clause 7.1, in effect, that the person will not communicate, publish or release Confidential Information, before giving them access to any Confidential Information;
- (b) on being informed, or otherwise becoming aware, of any breach or anticipated breach of any warranty referred to in subclause (a), take such action as may be necessary to enforce that compliance, including all reasonable actions directed by BC, and irrevocably authorises and permits BC to enforce the warranty in the event that the Contractor fails adequately do so.

7.4 BC may at any time request in writing that warranty required by clause 7.3 be given in the form of an executed deed in favour of BC, essentially in the form set out in Schedule 3. If BC so requests, then the Contractor must deliver a copy of the warranty to the Supervising Officer.

## **Warranty by Others**

7.5 [The Contractor must ensure that anyone it employs to perform the Project completes a confidentiality deed if requested by BC before having access to any Confidential Information]

Where in the conduct of, or for the purposes of, the Project the Contractor desires to engage the services of a person who is not an employee or agent, and it is necessary for the purposes of that engagement to disclose Information, no such disclosure may be made unless:

- (a) the other person warrants to BC that it will maintain the confidentiality of the Information in like terms to that required by clause 7.1 of this Agreement;
- (b) except as expressly excluded by BC in writing, the other person executes and delivers to the Supervising Officer a similar undertaking to that set out in clause 7.3 and Schedule 3; and
- (c) the consent in writing of the Supervising Officer is first obtained.

## **Surrender of Materials**

7.6 [The Contractor must return to BC or destroy all copies of BC's Confidential Information at the end of this Agreement]

Subject to clause 7.7, on or before the Completion Date the Contractor must:

- (a) deliver to BC all Confidential Information and other material received from or through BC including without limiting the generality thereof, reports, papers, technical information, plans,

charts, drawings, calculations, tables, graphs, schedules, notes, computer programs, computer tapes and discs, computer data bases, reference books and other texts; and

- (b) delete and render irrecoverable any form of electronic or optical record of the final report or any draft or copy thereof, or any other information or program that was created, collected or otherwise received in the course of carrying out the Project including installed software provided by BC.

- 7.7 If the Supervising Officer gives the Contractor written permission to retain certain specific Information held in electronic or written form, the Contractor need not comply with the provisions of clause 7.6 in respect of the relevant materials.

### **Security of Materials**

- 7.8 [The Contractor must keep all Confidential Information secure]

The Contractor is responsible for and must take all reasonable measures to ensure the security of the Confidential Information for so long as that Confidential Information is within its control, and in so doing must ensure that the Confidential Information is protected at all times from access, use or misuse, damage or destruction, by any person not authorised by this Agreement to have access to it.

### **Permitted Disclosure**

- 7.9 [The VGPB Guidelines require that the terms of certain contracts be made available to the public in order to promote a policy of probity and open accountability for public spending]

The parties agree that notwithstanding the provisions of this clause 7, the terms of this Agreement may be disclosed to the public, including disclosure on the internet, provided such disclosure does not involve trade secrets or proprietary information of a party where disclosure would result in a significant commercial disadvantage to that party.

- 7.10 Notwithstanding clause 7.9 and the other provisions of this clause 7, the parties agree that if so requested by the Auditor-General or the Ombudsman of the State of Victoria in the course of performing their statutory duties, they will permit disclosure of the Confidential Information and the terms of this Agreement to the Auditor-General or the Ombudsman as the case may be.

## **8 Intellectual property**

- 8.1 [The Contractor retains ownership of its Intellectual Property Rights created independently of this Agreement]

All Intellectual Property Rights in all material prepared or developed by the Contractor prior to the Commencement Date (including all documents, reports, charts, drawings, data bases, software, source codes, models systems, slides, tapes and specifications) and in all processes, tools and methodologies prepared or developed by the Contractor prior to the Commencement Date and improvements to those processes, tools and methodologies developed during the Services vest in and are owned by the Contractor.

- 8.2 [The Contractor will allow BC to use its intellectual property for the purposes of this Agreement.

The Contractor grants to the BC a non-exclusive, irrevocable, world-wide, royalty free licence to use, reproduce, publish, adapt and exploit all Intellectual Property Rights referred to under clause 8.1 to the extent necessary to enable the BC to enjoy the full benefit of the Services, the Project and this Agreement.

- 8.3 [BC will own all Intellectual Property Rights created under this Agreement]

The Contractor assigns to the BC exclusive ownership of all Intellectual Property Rights created, discovered, brought into existence or otherwise acquired, as a result of, for the purposes of, or in connection with the Project, the Services or this Agreement (including in all documents, reports, charts, drawings, data bases, software, source codes, models systems, slides, tapes graphs notes and specifications) and ownership of such Intellectual Property Rights vests exclusively in the BC.

- 8.4 [If the Contractor's employees or contractors own the Intellectual Property Rights in any work created under this Agreement, the Contractor will ensure that the owner of that Intellectual Property Rights will assign those rights to the Contractor]

The Contractor agrees that, to bring the provision of Section 197 of the *Copyright Act 1968* into effect, it will procure from its consultants and contractors a written assignment to it of all copyright in all written materials (including software), created or otherwise brought into existence by its consultants or contractors in any way relating to the Project, the Services or this Agreement.

- 8.5 The assignment in clause 8.4 is for the sole purpose of facilitating assignment by the Contractor to the BC of the copyright in all written material (including software) created or otherwise brought into existence by its consultants or contractors in any way relating to the Project the Services or this Agreement. The Contractor must execute all documents and do all things reasonably necessary to assign the copyright in such materials to the BC, and must procure its consultants and contractors to do likewise.

- 8.6 In relation to any work in which the Contractor or a person engaged by it has a moral right the, Contractor consents, and will procure the consent of any person engaged by it, to BC, doing or omitting to do, anything that, but for this consent, would constitute an infringement of those moral rights including, reproducing, publishing, performing, transmitting, exhibiting, adapting, altering or in any way changing or using the work in which the Intellectual Property Rights subsist:
- (a) with or without attribution of authorship;
  - (b) with or without any other materials comprising copyright;
  - (c) with or without any other text, data, sounds or images;
  - (d) with no title, the same title or any other title;
  - (e) in any medium or context,
- in any way that BC sees fit.
- 8.7 On or before the Completion Date, the Contractor must deliver to BC all material in which Intellectual Property Rights have vested in the BC pursuant to clause 8.3.
- 8.8 The Contractor may be excused from compliance with clause 8.7 where the Supervising Officer has given written approval for the material to be retained.

## **9 Status of Contractor**

- 9.1 The Contractor is engaged as an independent contractor and nothing in the Agreement will be deemed to constitute the Contractor nor any person employed or engaged by it as an agent or employee of the State of Victoria or of BC and the Contractor has no authority to incur and may not incur any obligation or make any representation on behalf of the State of Victoria or BC, except with express written instructions from BC.

## **10 Indemnity and insurance**

- 10.1 The Contractor indemnifies BC, the State of Victoria and the officers, employees, agents and contractors of BC and the State of Victoria against any liability arising from all actions, proceedings, suits, claims, and demands, of any nature, including without limitation, any claim, liability, loss or damage in respect of:
- (a) personal injury or the death of any person; and
  - (b) loss of or damage to any property; and
  - (c) a contravention of applicable privacy legislation,
- arising in any manner out of a breach by the Contractor of its obligations under this Agreement, any negligent act or omission or any unlawful action or willful misconduct of the Contractor or any personnel employed or retained by the Contractor in the course of providing the Services.

- 10.2 The Contractor must perform and observe all obligations and requirements required of the Contractor by Law in relation to itself and its employees, including but not limited to paying all necessary wages, superannuation payments, taxes (including GST), duties and imposts, taking out and continuing all necessary insurances, including compliance with the *Accident Compensation Act 1985* (Vic) by registration as an employer and the payment of any WorkCover premium required to be paid under that act, and complying with all occupational health and safety requirements.
- 10.3 The indemnities in this clause 10 are not intended to, and do not, extinguish rights in law which the Contractor might otherwise have to claim contribution or indemnity.
- 10.4 The indemnities in this clause 10 are continuing obligations, separate and independent from other obligations of the parties and survive termination of this Agreement.
- 10.5 It is not necessary for BC or the State of Victoria to incur expense or make payment before enforcing a right of indemnity under this clause.
- 10.6 The Contractor must on and from the Commencement Date insure BC and the Contractor with an insurer approved by BC by means of a comprehensive policy of insurance with respect to public risks arising out of or in any way connected with the Project, for at least the amount set out in Item 9 of Schedule 1, or if no amount is so stated, \$5,000,000.
- 10.7 The Contractor must on and from the Commencement Date effect a professional indemnity insurance policy with an insurer approved by BC for at least the amount set out in Item 10 of Schedule 1, or if no amount is so stated, \$5,000,000. Such insurance policy must include run-off cover for the period after the Completion Date set out in Item 11 of Schedule 1, or if no period is so stated, 10 years.
- 10.8 The Contractor must provide documentary evidence to the satisfaction of BC of the currency and the details of insurances it is required to effect under this Agreement if requested in writing to do so by the Supervising Officer.

## **11 Dispute resolution**

### **Application of procedure**

- 11.1 Each of the parties will use its best endeavours to co-operatively resolve a dispute.

### **Discussions between the parties**

- 11.2 If a dispute arises, either party may give a notice of the dispute in writing to the other party. The dispute must then be referred immediately to the Contractor's Principal Officer and the Supervising Officer for resolution.



### **Referral to a Panel**

- 11.3 If the dispute is not resolved within three (3) days of such referral, the dispute will be referred to a panel ("Panel") for resolution. Each party must nominate a senior representative for the Panel within three (3) days of the referral to the Panel in accordance with this clause.
- 11.4 If a dispute is referred to the Panel in accordance with clause 11.3, the Panel will meet to resolve the dispute unless the Panel agrees to resolve the dispute without the need for a meeting.
- 11.5 The Panel may determine its own procedures for meetings. Decisions of the Panel may only be made by unanimous agreement of the members of the Panel. Any decision of the Panel will be final and binding on the parties and will be provided in writing to the parties.
- 11.6 If the Panel does not resolve the dispute within ten (10) days of it being referred to the Panel, the parties agree that the dispute must be referred to mediation.

### **Conduct of Mediation**

- 11.7 The mediator may be appointed either by agreement between the parties or, failing such agreement within five (5) days of expiry of the period set out in paragraph 11.6, by the president for the time being of the Law Institute of Victoria.
- 11.8 The parties agree that:
- (a) each will bear their respective costs of the mediation save that the mediator's fee, fees for mediation rooms and costs of shared equipment facilities and services of the mediation will be shared equally;
  - (b) the venue for the mediation will be agreed between the parties or, failing such agreement, will be nominated by the mediator;
  - (c) each party may be legally represented if they so wish; and
  - (d) the mediation will be conducted without prejudice and complete confidentiality will be preserved in respect of the mediation and any documents and information used at or in relation to the mediation.

### **Condition Precedent**

- 11.9 It is a condition precedent to the commencement to any litigation of any dispute that the issues arising in that dispute must have been the referred in accordance with the procedures set out in clauses 11.3 to 11.8.
- 11.10 If the dispute or difference has not been resolved or mediated within sixty (60) days (or some other time agreed by the parties) of receipt of the notice specified in clause 11.2, the condition precedent established by clause 11.9 will be deemed to have been satisfied.

## **Performance of obligations pending resolution of dispute**

- 11.11 Prior to the resolution of a dispute, the Contractor must continue to perform its obligations under this Agreement.

## **12 Termination**

### **Termination for convenience**

- 12.1 BC may terminate this Agreement at any time and in its sole discretion by the giving of twenty-eight (28) days prior written notice to the Contractor.

### **Termination by BC**

- 12.2 BC may, by notice to the Contractor, immediately terminate this Agreement if the Contractor is in breach of its obligations under this Agreement, and such breach is not remedied within seven (7) days of the receipt of a notice from BC, or if such breach is remedied but repeated at any time after the receipt of such a notice.

- 12.3 BC may terminate this Agreement at any time by notice to the Contractor, without prejudice to its rights at law or otherwise, if an Insolvency Event occurs in relation to the Contractor.

The rights given by this clause 12.3 are in addition to any other rights and may be exercised notwithstanding that there has been no breach of this Agreement.

### **Termination by the Contractor**

- 12.4 The Contractor may terminate this Agreement by notice to BC if:
- (a) BC has failed to make a payment in breach of clause 4, except with respect to any payment or portion that BC disputes under clause 11; and
  - (b) the breach in clause 12.4(a) is not remedied within thirty (30) days of receipt of a notice from the Contractor.

### **Obligations of the Contractor upon termination**

- 12.5 Upon termination of this Agreement, the Contractor must immediately:
- (a) take all reasonable steps to cease providing the Services in a manner that will not cause any unnecessary or unreasonable loss or inconvenience to BC;
  - (b) take all available steps to mitigate any loss resulting from termination; and
  - (c) deliver to BC any documentation provided to the Contractor by BC or produced by the Contractor under this Agreement, whether in the course of preparation or completed by the Contractor at the date of termination, which have not been supplied to BC and

ensure that it is able to do so in respect of such documentation prepared by any Contractor or consultant employed by the Contractor.

- 12.6 BC may make full use of all documentation prepared by the Contractor (or any consultant or contractor employed by the Contractor) pursuant to and for use under this Agreement, regardless of any dispute in existence between BC and the Contractor over any unpaid fees or other matter and the Contractor hereby waives any right of lien or similar right which might otherwise be attached to the same.

#### **Payment upon termination**

- 12.7 If BC terminates this Agreement under clause 12.1 or the Contractor terminates this Agreement under clause 12.4, BC will only be liable for payment for the Services carried out prior to the date of termination and for extra costs necessarily incurred by the Contractor as a result of the termination under clauses 12.1 or 12.4.
- 12.8 If BC terminates this Agreement under clause 12.2 or 12.3, BC will only be liable to pay the Contractor for the Services carried out prior to the date of termination, and subject to clause 12.10.
- 12.9 If BC terminates this Agreement under clause 12.2 or 12.3, the Contractor must pay to BC the additional costs incurred by BC in completing the Project. For the purposes of this clause additional costs means the amount by which the costs incurred by BC in completing the Project or attempting to complete the Project, exceed the balance of the contract price that would have been payable by BC to the Contractor if this Agreement had not been terminated. Those costs include:
- (a) the additional cost to BC of having the Services or equivalent services provided by an alternate service provider to complete the Project, including costs of any acceleration or expedited methods used in an attempt to mitigate any delay caused by the Contractor;
  - (b) all reasonable charges for administering any related trade contract or consultancy agreement; and
  - (c) all legal costs incurred by BC (on an indemnity basis) associated with the termination.
- 12.10 Any amount due to it from the Contractor under clause 12.9 may be set off against any amount due under clause 12.8. If the amount due to BC under clause 12.9 is not ascertainable at the time that payment would otherwise be due to the Contractor under clause 12.8, BC may retain such amount as BC reasonably estimates will become due to it under clause 12.9 until the actual amount has been determined.
- 12.11 If the amount payable by the Contractor to BC under clause 12.9 exceeds the amount payable by BC to the Contractor under clause 12.8, the difference is a debt due and payable by the Contractor to BC

### **Condition precedent to payment**

- 12.12 It is a condition precedent to any payment to the Contractor of any outstanding amount as at the date of termination that the Contractor has fully complied with its obligations under clause 12.5.

### **Miscellaneous**

- 12.13 Any termination of the Contractor's appointment under this Agreement will not prejudice or affect the accrued rights, claims or liabilities of either party under this Agreement.

## **13 Resources**

- 13.1 Unless authorised by the Supervising Officer in writing, the Contractor will not access or utilise any of the resources of the BC, including without limitation, its employees or premises.

## **14 Notices**

- 14.1 Any notices to be served on a party to this Agreement may be served by:
- (a) hand on the Supervising Officer or Contractor's Principal Officer; or
  - (b) pre-paid post to the address of the party to be served set out in item 12 or 14 of Schedule 1 or to such address as notified by the relevant party in writing from time to time; or
  - (c) facsimile forwarded to the facsimile number of the party to be served set out in item 13 or 15 of Schedule 1 or to such facsimile number as notified by the relevant party in writing from time to time.
- 14.2 A Notice given to a party in accordance with this clause is treated as having been given and received:
- (a) if delivered, on the day of delivery if delivered before 4.00 pm on a Business Day, otherwise on the next Business Day;
  - (b) if sent by pre-paid mail, on the third day after the day on which it was posted; and
  - (c) if sent by facsimile and the transmission report states that it was sent in full and without error, on the day of transmission if that report states that the transmission was completed before 4.00 pm on a Business Day, otherwise on the next Business Day.

## **15 Governing law**

- 15.1 The laws of the State of Victoria govern this Agreement.
- 15.2 Subject to clause 11, each party submits to the exclusive jurisdiction of the courts of the State of Victoria and the courts of appeal from those courts.

- 15.3 If any provision of this Agreement is or becomes illegal, invalid or unenforceable ("Ineffective"), it will be read down to the extent necessary to ensure that it is not Ineffective. If the offending provision cannot be so read down, it will be severed. In any event, the remainder of this Agreement will be construed so as to ensure that it remains effective to the greatest extent possible,

## **16 Entire agreement**

- 16.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

## **17 Joint and several liability**

- 17.1 If the Contractor is a partnership or joint venture (or consortium) of two (2) or more persons, all such persons are jointly and severally liable to BC for the fulfilment of the terms of this Agreement.
- 17.2 The Contractor's Principal Officer has authority to bind the partnership or joint venture (or consortium) and each of its members.
- 17.3 Where the Contractor or any part of it is a partnership, this Agreement will not automatically terminate upon death, retirement or resignation of one or more members of such partnership.
- 17.4 The composition or the constitution of the partnership or joint venture (or consortium) may not be altered without notice to BC.

## **18 No assignment or subcontracting**

- 18.1 Except with the prior written consent of BC, the Contractor may not assign the whole or any part of the Contractor's obligations under this Agreement or assign or sub-contract the whole or any part of the works or tasks associated with the Project.

## **19 Scope or timing of services**

- 19.1 If either party becomes aware of any matter which may change the amount of work or time involved in completing the Project, that party must give written notice of that matter to the other party as soon as reasonably practicable.

## **20 Variation of agreement**

- 20.1 This Agreement may only be varied with the written consent of each party.

## **21 Conflict of interest**

- 21.1 The Contractor warrants that at the Commencement Date no conflict of interest exists in relation to this Agreement or is likely to arise during the period of this Agreement. The Contractor must inform BC as soon as it becomes aware of any matter that may give rise to a conflict of interest, during the currency of this Agreement.

21.2 Any information provided by the Contractor under clause 21.1 will be treated in confidence by BC.

## **22 Waivers**

22.1 A waiver of any provision of, or right or obligation under, this Agreement must be in writing and is effective only to the extent specifically described in such writing.

22.2 If a party waives its rights in relation to a breach of any covenant, obligation or provision in this Agreement by the other party, that waiver does not operate as a waiver of another or a continuing breach of that covenant, obligation or provision or of any other covenant, obligation or provision in this Agreement.

**EXECUTED AS AN AGREEMENT**

The Contractor will provide the Services more fully set out in:

**Part 1 Project Brief**

**Part 2 Proposal**

