

**THIS AGREEMENT** is made the                      day of

**BETWEEN**

**CLARENCE VALLEY COUNCIL** of Locked Bag 23, Grafton 2460 (herein called “the Council”)

**AND THE PARTY SET OUT IN ITEM 1 IN THE SCHEDULE** (herein called “the Consultant”)

**THIS AGREEMENT WITNESSES:**

**1. Interpretation**

In this agreement:

- (a) “Agreement” means this agreement including Schedules and other attachments referred to in it,
- (b) “Council Material” means any material provided by the Council to the Consultant for the purposes of this agreement including, but not limited to, documents, equipment, information and data stored by any means,
- (c) “Consultant” shall, where the context permits, include the employees and agents of the Consultant,
- (d) “Contract Material” means all material brought or required to be brought into existence as part of, or for the purpose of performing, the Services including but not limited to documents, equipment, information and data stored by any means,
- (e) “Intellectual Property” includes all rights in copyright, patents, registered and unregistered trademarks, registered designs, knowhow and all other rights of intellectual property as defined in article 2 of the Convention Establishing the World Intellectual Property Organisation of July, 1967,
- (f) “Council Contact” means the person specified in the Schedule or any person substituted therefore by the Council, and
- (g) “Services” means the Services described in Item 2 of the Schedule.

**2. Provision of Services**

- 2.1 The Consultant shall perform the Services (including the preparation of Contract Material) in accordance with the Schedule at a high standard.
- 2.2 The Consultant shall perform the Services at the time and in the manner specified in the Schedule.
- 2.3 In performing the Services, the Consultant shall:
  - (a) consult, cooperate and confer with others as set out in the Schedule,

- (b) comply with all relevant laws in the performance of this agreement, and
- (c) at all times perform the Services to an ethical and professional standard acceptable to the Council.

### **3. Term of contract**

The contract shall be in force from the date of acceptance, for the period set out in Item 3 of the Schedule.

### **4. No guarantee of business**

Council makes no representations, express or implied to the Consultant, as to the volume of trade which might reasonably be expected by the Consultant in the conduct of this contract. .

Council reserves the right, during the period of the Contract to call special tenders, separate quotations / tenders for specific related services. The current Consultants will be asked to submit an offer.

Council reserves the right to not accept the lowest or any tender if circumstances dictate this action.

### **5. Fees**

The Council shall make payments to the Consultant as set out under 'Remuneration' in Item 4 of the Schedule. However, no payments shall be made to the Consultant until such time as the Consultant has supplied Council with:

- (a) its ABN number,
- (b) a tax invoice for the remuneration claimed, and
- (c) a Declaration signed by the Consultant stating that in connection with this project all wages due have been paid, all persons employed have been paid in accordance with the appropriate State award and that the correct insurance required under the Workers Compensation Act remains current, and
- (d) a similar Declaration from each sub-Consultant engaged by the Consultant in the provision of the Services.

### **6. Entire Agreement and Variation**

6.1 This agreement constitutes the entire agreement between the parties and supersedes all communications, negotiation, arrangements and agreements, either oral or written, between the parties with respect to the subject matter of this Agreement.

6.2 No agreement or understanding varying or extending this agreement, including in particular the scope of the Services in the Schedule or the remuneration payable, shall be legally binding upon either party unless in writing and signed by both parties.

**7. Council Contact**

- 7.1 The Consultant shall liaise with and report to the Council Contact (as set out in Item 6 of the Schedule) as reasonably required by the Council Contact during the period of this agreement.
- 7.2 The Consultant shall not discuss this agreement or any aspect of it with any of the elected representatives of the Council.

**8. Contract Material**

- 8.1 Except as set out in this clause 6, all Intellectual Property in the Contract Material will vest in the Council on creation and the Consultant assigns all rights in that property to the Council.
- 8.2 The Consultant retains ownership of all intellectual property rights in material used in performing the Services created by the Consultant and existing at the date of this agreement ("Existing Intellectual Property").
- 8.3 To the extent necessary for the ongoing use of the Contract Material, the Consultant grants to the Council a perpetual, irrevocable, non-exclusive, royalty free licence to use the Existing Intellectual Property.
- 8.4 The Consultant warrants that all material provided by it will not infringe the intellectual property rights of any other person.
- 8.5 The Consultant will promptly execute all documents and do all things the Council requests to confirm or perfect any of the rights in this clause 6.
- 8.6 On the expiration or earlier termination of this agreement, the Consultant shall deliver to the Council all Contract Material and, if necessary, transfer any Intellectual Property to the Council.
- 8.7 The Consultant shall ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this agreement.

**9. Council Material**

- 9.1 Council Material shall remain the property of the Council and, on the expiration or earlier termination of this agreement, the Consultant shall return to the Council all Council Material.
- 9.2 The Consultant shall be responsible for the safe keeping and maintenance of all Council Material in its possession.

**10. Disclosure of Information**

The Consultant and its servants or agents must not, without the prior written consent of the Council, at any time issue any statement or communication or make any representation directly or indirectly in connection with the Services or this Agreement to any person or entity not a party to this Agreement other than:

- (i) as necessary to perform the Services; or

- (ii) with respect to any matter already within the public domain.

## **11. Indemnity**

The Consultant indemnifies Council from and against all actions, claims, costs, expenses and damages (including the costs of defending or settling any action or claim) in respect of:

- (i) loss of or damage to property of Council; or
- (ii) personal injury (including death) to any person or loss of or damage to any property,

arising out of or by reason of anything done or omitted intentionally or negligently by the Consultant in respect of the Services.

The Consultant's liability to indemnify Council is reduced proportionally to the extent that an act or omission of the Council or employees or agents (other than the Consultant) of Council may have contributed to the injury, damage or loss.

## **12. Insurance**

The Consultant shall effect and maintain the insurances specified in Item 5 of the Schedule and, if requested, provide the Council with a Certificate of Currency for the policies.

## **13. Conflict of Interest**

The Consultant warrants that, at the date of signing this Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement. If, during the term of this Agreement, a conflict or risk or conflict of interest arises, the Consultant undertakes to notify the Council immediately in writing of that conflict or risk.

## **14. Security**

The Consultant shall, when using the Council's premises, property or facilities, comply with all reasonable directions and procedures relating to occupational health (including the Council's smoke free work place policy) and safety and security in effect at those premises or in regard to those facilities or property, as notified by the Council.

## **15. Access to Consultant**

- 15.1 The Consultant must, upon reasonable notice from Council, permit Council to inspect, discuss or assess the provision of the Services.
- 15.2 The Consultant shall provide Council with access to all the Consultant's files containing information from time to time in connection with the performance of the Services.

## **16. Negation of Employment Partnership and Agency**

- 16.1 The Consultant shall not represent itself as being an employee, partner or agent of the Council.

16.2 The Consultant shall not, by virtue of this Agreement, be or for any purpose be deemed to be an employee, partner or agent of the Council.

**17. Termination and Reduction**

17.1 This Agreement may be terminated at any time by the Council without notice if:

- (i) the Consultant breaches a provision of this Agreement and the breach is not remedied within 14 days after receiving written notice from the Council requiring it to do so,
- (ii) the Consultant breaches this Agreement and that breach is not capable of remedy,
- (iii) the Consultant is unable to pay its debts as and when they fall due,
- (iv) the Council is joined, is threatened to be joined or it is likely that it will be joined in an action, suit, claim, proceedings or litigation that has arisen or is likely to arise, as a result of any action or omission by the Consultant (either personally or by any third party representative, or employee),
- (v) the Consultant fails to disclose a potential or actual conflict of interest, or
- (vi) the Consultant fails to carry out the Services with due diligence and competence or, without reasonable cause, suspends the carrying out of the Services.

17.2 Termination of this Agreement is without prejudice to the rights of each party against the other accrued up until the date of termination.

17.3 Upon receipt of a notice of termination the Consultant will:

- (a) stop work as specified in the notice,
- (b) take all available steps to minimise loss resulting from that termination and to protect Council Material and Contract Material, and
- (c) continue work on any part of the Services not affected by the notice.

17.4 In the event of partial termination the Council's liability to pay the remuneration set out in the Schedule shall, in the absence of agreement to the contrary, abate proportionately to the reduction in the Services.

17.5 The Council shall not be liable to pay compensation in an amount which would, in addition to any amounts paid or due, or becoming due, to the Consultant under this agreement, together exceed the remuneration set out in the Schedule. The Consultant shall not be entitled to compensation for loss of prospective profits.

**18. Unavoidable delay**

A party to this agreement shall not be entitled to exercise its rights and remedies upon the default of the other party (whether at common law or under Clause 15) if that default:

- (a) is caused by an act or event that is beyond the reasonable control of that other party,
- (b) continues for less than 1 month; and
- (c) was not reasonably foreseeable at the time this agreement was entered into.

**19. Waiver**

A waiver by the Council in respect of any breach of a condition or provision of this agreement shall not be deemed to be a waiver in respect of any other or of any subsequent breach.

**20. No Assignment**

The Consultant shall not assign or sub-contract or purport to assign or sub-contract any of its right, title or interest under this Agreement, except with the written consent of Council.

**21. Notices**

Any notice, request or other communication to be given or served pursuant to this agreement shall be in writing and addressed, as the case may be, as follows:

- (a) if given to the Council, marked for the attention of the Council Contact; and
- (b) if given by the Council, signed by an authorised officer and forwarded to the Consultant at the address indicated in this agreement or as otherwise notified in writing by the Consultant.

**22. Goods and Services Tax**

22.1 In this clause, the expressions 'consideration', 'GST', 'GST Law', 'Recipient', 'supply', 'adjustment note', 'adjustment event', 'input tax credit' and 'tax invoice' have the same meanings given to those expressions in the *A new Tax System (Goods and Services Tax) Act 1999*. A reference to a party to this Agreement includes a reference to that party's 'representative number' as defined in *A New Tax System (Goods and Services Tax) Act 1999*.

22.2 The Consultant may recover from Council any GST payable in relation to this Agreement. The amount of any GST shall be paid at the same time as the remuneration is paid for the supply to which it relates.

22.3 The remuneration specified in the Schedule is inclusive of GST at the GST rate prevailing at the Agreement date. If the GST rate is varied during the currency of the Agreement, the GST inclusive amount may be varied to reflect those changes.

- 22.4 If the abolition of GST or any subsequent change to the GST Law is accompanied by an abolition or reduction in any existing taxes, duties, excises or statutory charges the remuneration payable hereunder by Council shall be reduced by the same proportion as the reduction in the Consultant's cost. Council may request that the Consultant provide it with all reasonable evidence necessary to demonstrate compliance with this clause.
- 22.5 Where an adjustment event occurs in relation to any supply under this Agreement, the supplier must provide an adjustment note to the other party within 14 days after that adjustment event.
- 22.6 To the extent the Council is liable under this Agreement to reimburse the Consultant for any costs that the Consultant has incurred with a third party, Council will only be liable to reimburse the Consultant for the amount of those costs less any input tax credit the Consultant is entitled to.

**23. Access to Information**

- (1) The Consultant must, within 7 days of receiving a written request by the Council, provide the Council with immediate access to the following information contained in records held by the Consultant:
- (a) information that relates directly to the performance of the services provided to the Council by the Consultant pursuant to the Contract;
  - (b) information collected by the Consultant from members of the public to whom it provides, or offers to provide, the services pursuant to the Contract; and
  - (c) information received by the Consultant from the Council to enable it to provide the services pursuant to the Contract.
- (2) For the purposes of sub-clause (1), information does not include:
- (a) information that discloses or would tend to disclose the Consultant's financing arrangements, financial modelling, cost structure or profit margin;
  - (b) information that the Consultant is prohibited from disclosing to the Council by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
  - (c) information that, if disclosed to the Council, could reasonably be expected to place the Consultant at a substantial commercial disadvantage in relation to the Council, whether at present or in the future.
- (3) The Consultant will provide copies of any of the information in sub-clause (1), as requested by the Council, at the Consultant's own expense.
- (4) Any failure by the Consultant to comply with any request pursuant to sub-clause (1) or (3) will be considered a breach of an essential term

and will allow the Council to terminate the Contract by providing notice in writing of its intention to do so with the termination to take effect 7 days after receipt of the notice. Once the Consultant receives the notice, if it fails to remedy the breach within the 7 day period to the satisfaction of the Council, then the termination will take effect 7 days after receipt of the notice.

**24. Consultation under the Government Information (Public Access) Act**

- (1) The Council will take reasonably practicable steps to consult with the Consultant before providing any person with access to information relating to the Contract, in response to an access application under the *Government Information (Public Access) Act 2009 (GIPA Act)*, if it appears that:
  - (a) the information:
    - i. includes personal information about the Consultant or its employees;
    - ii. concerns the Consultant's business, commercial, professional or financial interests; or
    - iii. concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Consultant.
  - (b) the Consultant may reasonably be expected to have concerns about the disclosure of the information; and
  - (c) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.
- (2) If, following consultation between the Council and the Consultant, the Consultant objects to disclosure of some or all of the information, the Consultant must provide details of any such objection (including the information objected to and the reasons for any such objection) within 5 days of the conclusion of the consultation process.
- (3) In determining whether there is an overriding public interest against disclosure of government information, the Council will take into account any objection received by the Consultant.
- (4) If the Consultant objects to the disclosure of some or all of the information but the Council nonetheless decides to release the information, the Council must not provide access until it has given the Consultant notice of the Council's decision and notice of the Consultant's right to have that decision reviewed.
- (5) Where the Council has given notice to the Consultant in accordance with sub-clause (4), the Council must not provide access to the information:



- (a) before the period for applying for review of the decision under Part 5 of the GIPA Act has expired; or
  - (b) where any review of the decision duly applied for is pending.
- (6) The reference in sub-clause (5)(a) to the period for applying for review of the decision under Part 5 of the GIPA Act does not include the period that may be available by way of extension of time to apply for review.

**SCHEDULE**

**Item 1 The Consultant** (*Name*)  
(*Address*)

**Item 2 The Services**  
The Services are

**Item 3 The Term**

**Item 4 Remuneration**

**Item 5 Insurance**  
The Consultant shall effect:

- (a) public liability and professional indemnity insurance in the sum of not less than \$10 million.
- (b) Workers Compensation insurance

**Item 6 Council Contact**

Signed by the parties on the date set out on the first page of this Agreement.

**SIGNED** for and on behalf of  
**CLARENCE VALLEY COUNCIL**  
by: .....

.....  
Witness

**SIGNED** by the Consultant  
in the presence of: .....

.....  
Witness