

TERMS AND CONDITION

1 DEFINITIONS

- 1.1 "Background IP"** means any IP that exists prior to or is created independently of this Agreement that a party has agreed to contribute to the Services;
- 1.2 "Contract Material"** means all material, documents, equipment, software, information, data and the deliverables created by the Contractor as a result of or in connection with or otherwise arising from the performance of the Services;
- 1.3 "Delivery Dates"** means the dates for delivery of Contract Material as set out in the Service Details;
- 1.4 "Fee"** means the service fee set out in the Service Details;
- 1.5 "Intellectual Property Rights" or "IP"** means confidential information, copyright, computer layouts and programs, discoveries, inventions, patents, registered and unregistered trademarks, registered and unregistered designs, trade secrets and know-how;
- 1.6 "Moral Rights"** has the meaning ascribed to it under s189 of the Copyright Act 1968 as amended;
- 1.7 "Service Details"** means the document preceding and attached to these terms and conditions;
- 1.8 "Services"** means the goods and/or services to be provided by the Contractor to Bushfire and Natural Hazards CRC described in the Service Details;

2 SERVICES

- 2.1** The Contractor will or will procure the Contractor Specified Personnel to carry out the Services and provide all Contract Material in accordance with the Service Details and these Terms and Conditions.
- 2.2** In providing the Services the Contractor guarantees that the Services:
- will be carried out with due care and skill;
 - will be fit for the purpose that Bushfire and Natural Hazards CRC has made known to the Contractor; and
 - will be provided by the Delivery Dates or as agreed in writing.
- 2.3** The Contractor will:
- liaise with the Bushfire and Natural Hazards CRC Contact in relation to the performance of the Services;
 - comply with any reasonable directions given by the Bushfire and Natural Hazards CRC Contact;
 - comply with all policies, procedures and directives of Bushfire and Natural Hazards CRC so far as they are made known to the Contractor;
 - comply with all applicable standards, laws and regulations.
- 2.4** Bushfire and Natural Hazards CRC agrees to make available to the Contractor any information, materials or Background IP necessary to carry out the Services.
- 2.5** Bushfire and Natural Hazards CRC reserves the right at any time, to alter, qualify or reject upon written notice to the Contractor any Contract Material which is not to Bushfire and Natural Hazards CRC's satisfaction, but shall not exercise its discretion unreasonably. Rejected Contract Material shall be promptly corrected by the Contractor at the Contractor's expense. Where the Contractor fails to remedy or resupply the Services within

the time specified in the notice Bushfire and Natural Hazards CRC may terminate this Agreement immediately by notice in writing to the Contractor.

- 2.6** The Contractor may not sub-contract the Services or any part thereof without the prior written approval of Bushfire and Natural Hazards CRC.

3 INTELLECTUAL PROPERTY

- 3.1** Any material or Background Intellectual Property provided by Bushfire and Natural Hazards CRC or the Contractor for the Services shall remain the property of the contributing party. The parties shall return all such material or Background IP to the other party upon completion or termination of the Services.
- 3.2** The Contractor grants to Bushfire and Natural Hazards CRC a non-exclusive, permanent, royalty free, worldwide licence with the right to sub-licence to use, adapt, alter, copy and reproduce the Contractor Background IP to the extent required for Bushfire and Natural Hazards CRC to use in the Services and with the Contract Material.
- 3.3** The title to and Intellectual Property Rights in the Contract Material shall vest immediately upon its creation in Bushfire and Natural Hazards CRC.
- 3.4** The Contractor shall:
- do such things as may be required to effect the vesting of such title in Bushfire and Natural Hazards CRC; and
 - execute or procure the execution of any document or do or procure the doing of anything requested by Bushfire and Natural Hazards CRC to assign to Bushfire and Natural Hazards CRC absolutely and unconditionally ownership in Intellectual Property Rights derived from the Contract Material or resulting from the Services throughout the world including copyright in all reports, plans, sketches; drawings, designs computer programs or any of those reproduced or created by the Contractor in performing the Services.

4 MORAL RIGHTS

The Contractor will grant on behalf of itself and will and will procure from its personnel any consents relating to their Moral Rights that are required by Bushfire and Natural Hazards CRC to allow Bushfire and Natural Hazards CRC to use or modify the Contract Material without any obligation for attribution of authorship.

5 INSURANCE

The Contractor agrees that it will at its own expense effect and maintain during the term of this Agreement appropriate insurance cover that a responsible entity would put in place to cover the risks associated with the Services including cover for public and products liability, workers compensation and professional indemnity insurance.

6 CONFIDENTIALITY

- 6.1** Each Party will keep confidential and only use for the purposes of the Services the other party's confidential

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information unless written approval is obtained. Each Party may disclose such confidential information to its employees and agents as necessary for the performance of the Services provided that such employees and agents are instructed as to the confidential nature of the information.

6.2 The Contractor will keep the Contract Material confidential and will not publish or present in written form or orally the Contract Material without the express written permission of Bushfire and Natural Hazards CRC.

7 PUBLICITY

Neither Party shall use the name or logo of the other Party as a consequence of or in connection with this Agreement without the prior written permission of the other Party.

8 FEE AND PAYMENT

8.1 Bushfire and Natural Hazards CRC's obligation to pay the Fee shall be contingent upon the satisfactory performance of the Services and Bushfire and Natural Hazards CRC's acceptance of the Contract Material where applicable.

8.2 Bushfire and Natural Hazards CRC will pay the Contractor upon receipt of a correctly rendered tax invoice and in the manner set out in the Service Details.

8.3 If the Services provided by the Contractor are not satisfactory to Bushfire and Natural Hazards CRC the Contractor will either provide the Consultancy Services again at its own cost and expense or refund the Fee paid or payable for the provision of the Services.

9 RISK MANAGEMENT

9.1 The Contractor warrants that in providing the Services it will not infringe the Intellectual Property Rights of any person and that no Intellectual Property of any third party will be used or incorporated in the Contract Material.

9.2 The Contractor releases and indemnifies Bushfire and Natural Hazards CRC from and against any loss or damage cost and expense (including the cost of defending or settling any action, claim or demand) arising from any negligent act error or omission by the Contractor in the provision of the Services or any breach of the warranties, terms and conditions of this Contract except to the extent that any loss, damage, cost or expense is caused by any negligent act error or omission by Bushfire and Natural Hazards CRC.

9.3 The Contractor shall be responsible for all costs, damages, loss or liability and other matters relating to any of its employees, agents or sub-contractors including claims arising by virtue of injury, death or disability suffered by such employees, agents or sub-contractors.

10 TERMINATION

10.1 If either party commits a breach of this Agreement, the other party may request in writing that the breach be remedied, and if this is not done within 30 days of the request then the other party may terminate this Agreement immediately by notice in writing.

10.2 Bushfire and Natural Hazards CRC may terminate this Agreement immediately by notice in writing if:

- (a) the Contractor becomes insolvent or a receiver, receiver-manager or liquidator is appointed over the affairs of the Contractor;
- (b) in the opinion of Bushfire and Natural Hazards CRC a conflict of interest arises for the Contractor in performing the Services; or
- (c) any of the Specified Personnel become unavailable to continue work under this Agreement and the Contractor is unable to secure a replacement acceptable to Bushfire and Natural Hazards CRC;

10.3 Where this Agreement has been terminated under clause 10.1 or 10.2 the Contractor shall be entitled to pro rata payment for performance of Services undertaken and accepted by Bushfire and Natural Hazards CRC up until the date of termination.

10.4 The Contractor shall not be entitled to compensation for any loss of prospective profits or other income or consequential losses.

11 UNAVOIDABLE DELAY

No party will be responsible for performing an obligation under this Agreement where performance is prevented due to any circumstances beyond the reasonable control of that party. If such circumstances continue beyond 14 days either party may terminate this Agreement. Bushfire and Natural Hazards CRC shall be entitled to pro rata payment for performance of Services undertaken up until the date of termination.

12 CONCILIATION

12.1 If there is a dispute between the parties concerning this Agreement the disputing party shall give written notice specifying details of the dispute to the other party.

12.2 If the dispute is not settled by agreement within 14 days of service of the notice the dispute will be referred to the Chief Executive Officer of Bushfire and Natural Hazards CRC, who will attempt to resolve the dispute by formal or informal mediation.

13 GENERAL

13.1 This Agreement constitutes the entire agreement between the parties, and may only be varied by written agreement signed by both parties.

13.2 Should any provision of this Agreement be held by a Court to be unlawful, invalid or unenforceable the validity and enforceability of the remaining provisions shall not be affected.

13.3 The Contractor and its Specified Personnel shall not by virtue of this Agreement be deemed to be employees of Bushfire and Natural Hazards CRC.

13.4 The provisions of **Clauses 3, 4, 6, 7, 8, 10.3, 13.4 and 13.5** shall survive and be of full effect after expiration or termination of this Agreement.

13.5 This Agreement will be governed by law of State of Victoria and the parties submit to the jurisdiction of the Courts of Victoria.

13.6 Any notice to be given by either party will be in writing and forwarded to the other party either by post, facsimile transmission or electronic mail to the address indicated in the Service Details or such other updated address provided by a party.

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13.7 The parties may sign and deliver this Agreement by electronic or facsimile transmission. Each party agrees that the delivery of the Agreement by electronic or facsimile transmission shall have the same force and

effect as delivery of original signatures and they may use such electronic or facsimile signatures as evidence of the execution and delivery of the Agreement by all parties to the same extent that an original signature could be used.