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Rehabilitation Options and Scenarios
Contract Number 305031

AGREEMENT FOR PROFESSIONAL SERVICES OR CONSULTANCY
(SINGLE PURCHASE)

GHD PTY LTD

-and-

DEPARTMENT OF PRIMARY INDUSTRIES

1	INTERPRETATION	1
2	ENTIRE AGREEMENT	2
3	INCONSISTENCY	3
4	COMMENCEMENT AND COMPLETION	4
4	LIQUIDATED DAMAGES	5
4	THE PROJECT SERVICES	6
5	VARIATION OR TERMINATION OF PROJECT SERVICES	7
6	FEE FOR PROJECT SERVICES	8
6	INVOICING AND PAYMENT	9
7	CONTRACTOR'S WARRANTIES	10
8	RECORDS	11
8	CONTRACTOR'S STAFF	12
8	CONFIDENTIALITY, SECURITY AND PRIVACY	13
9	CONFLICT OF INTEREST	14
10	WAIVER	15
10	INTELLECTUAL PROPERTY	16
11	TERMINATION	17
11	NATURE OF ENGAGEMENT	18
12	INDEMNITY	19
12	INSURANCE	20
13	SEVERABILITY	21
13	VARIATION OF AGREEMENT	22
13	DISPUTES	23
14	SUB-CONTRACTING OR ASSIGNMENT	24
14	EMPLOYMENT POLICY	25
15	COMPLIANCE WITH LAWS	26
15	SURVIVING OBLIGATIONS	27
15	SERVICE OF DOCUMENTS	28
17	SCHEDULE 1	17
17	AGREEMENT	17
18	SCHEDULE 2	18
18	PROJECT SERVICES	18
20	SCHEDULE 3	20
20	TENDERED RATES	20
21	DEED OF CONFIDENTIALITY	21
23	SCHEDULE 5	23
23	PERFORMANCE STANDARDS	23

CLAUSE HEADING PAGE NO.

TABLE OF CONTENTS

AGREEMENT FOR PROFESSIONAL SERVICES OR CONSULTANCY

THIS AGREEMENT is made the day of month year

BETWEEN

THE STATE OF VICTORIA through the Department of Primary Industries (the "Department")

AND

GHD Pty Ltd (A.B.N. 39 008 488 373) (the "Contractor").

WHEREAS

A. The Department has called for tenders for the provision of the Project Services;

B. The Contractor has offered to supply such Project Services and the Department and the Contractor have agreed upon the provision of the Project Services upon the terms and conditions contained in this Agreement.

IT IS AGREED

1. Interpretation

1.1

In this Agreement unless the context otherwise requires:

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

"**Business Day**" means a day that is not a Saturday, a Sunday or a public holiday appointed under the Public Holidays Act 1993 including any day appointed by the Minister under Section 7 (1) (a) of the Act applicable to the Melbourne metropolitan area;

"**Code of Practice**" means a code of practice as defined in, and approved under, the Information Privacy Act 2000 (Vic);

"**Commencement Date**" means the date so identified in Schedule 1;

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

"**Contractor's Representative**" means the person appointed by the Contractor to represent the Contractor for the purposes of this Agreement and so identified in Schedule 1 or such person as may subsequently be appointed by the Contractor and notified to the Department in writing;

"**Contractor's Staff**" means the persons named in Schedule 1 as the professional staff who will provide the Project Services or such persons who the Department's Representative shall otherwise agree may be engaged in the provision of the Project Services;

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

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

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

"GST" means any tax imposed under any GST Law and includes GST within the meaning of the GST Act;

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) as amended;

"GST Law" means the GST Law as defined in the GST Act and includes any Act of the Parliament of Australia that imposes or deals with GST;

"GST Related Tax Reform" includes any changes, reductions or abolition of any State, Territory or Commonwealth taxes, excise, fees or imposts including, but not limited to, financial transactions tax, wholesale sales tax, stamp duty, debits tax, associated with the introduction of the GST Law;

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

"Information Privacy Principles" means the Information Privacy Principles set out in the *Information Privacy Act 2000* (Vic.);

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

"Performance Standards" means the standards set out in Schedule 5;

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

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

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

"Project Services" means the services described in Clause 6, Schedule 2 and the Project Brief, which are to be performed by the Contractor in accordance with this Agreement;

- 1.2 A recital, schedule, annexure or a description of the parties forms part of this Agreement.
 - 1.3 In this Agreement unless a contrary intention appears words importing a gender include any other gender and words in the singular include the plural and vice versa.
 - 1.4 In this Agreement unless a contrary intention appears a reference to:
 - (a) "dollars" or "\$" is a reference to the lawful currency of Australia;
 - (b) any legislation shall include any Act of Parliament and any subordinate legislation, rule, regulation, order or instrument made there under and shall include any statutory modification, substitution or re-enactment of such legislation;
 - (c) an individual or person includes a corporation, partnership, joint venture, association, governments, local government authorities and agencies;
 - (d) a recital, clause, schedule or annexure is a reference to a recital, clause, schedule or annexure to this Agreement; and
- compliance.
- plans which will ensure the continuity of the Project Services notwithstanding any non-Contractor's Systems or Equipment to be Year 2000 Compliant and includes any contingency "Year 2000 Compliance Program" means a program which will identify any failure of the SAA/SNZ MP77 current at the date of this Agreement, which document is incorporated into this Agreement; and
- Zealand Miscellaneous Publication "A definition of year 2000 conformity requirements" conform with the Year 2000 rules set out in the Standards Australia and Standards New Zealand Miscellaneous Publication "A definition of year 2000 conformity requirements" will conform with the Year 2000 rules set out in the Standards Australia and Standards New Zealand Miscellaneous Publication "A definition of year 2000 conformity requirements"
- "Year 2000 Compliant" means that the performance of any Systems or Equipment will conform with the Year 2000 rules set out in the Standards Australia and Standards New Zealand Miscellaneous Publication "A definition of year 2000 conformity requirements"
- Date or such further period as the parties may mutually agree to in writing.
- "Term" means the term of this Agreement from the Commencement Date to the Completion which rates are set out in Schedule 3;
- "Tendered Rates" means the Contractor's rates for the provision of the Project Services incorporated into Schedule 2 to this Agreement;
- "Tender" means the Contractor's response to the Request for Tenders which response is incorporated into Schedule 2 to this Agreement;
- "Tax Invoice" has the same meaning as in the GST Act;
- "State" means the Crown in right of the State of Victoria;
- systems or equipment containing any of them or any micro-processing technology;
- Contractor for the purpose of the provision of the Project Services or in support of the provision of the Project Services and includes any software, data base, hardware or other "Systems or Equipment" means any systems or equipment used by or on behalf of the Contractor for the purpose of the provision of the Project Services or in support of the provision of the Project Services which document is incorporated into Schedule 2 to this Agreement;
- "Request for Tenders" means the document issued by the Department seeking tenders for the provision of the Project Services which document is incorporated into Schedule 2 to this Agreement;

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

6. The Project Services

NOT APPLICABLE.

5. Liquidated Damages

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

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

4. Commencement and Completion

Where there is a variation or inconsistency between the provisions of the Schedules to this Agreement and the provisions of clauses 1 to 28 of this Agreement the provisions of clauses 1 to 28 shall prevail.

3. Inconsistency

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

2. Entire Agreement

1.8 This Agreement shall be subject to and construed in accordance with the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of the courts of that State.

1.7 If a party to this Agreement consists of more than one person those persons shall be jointly and severally bound under this Agreement.

1.6 In this Agreement if a word is defined cognate words and phrases have corresponding definitions.

1.5 Clause headings in this Agreement are for convenience of reference only and have no effect in limiting or extending the language of the provisions to which they refer.

(e) a party to this Agreement includes the executors, administrators, successors and permitted assigns of that party.

- 6.2 In addition to complying with the other provisions of this Agreement the Contractor shall comply with all statements or representations as to its performance or the provision of the Project Services contained in the Tender.
 - 6.3 The Contractor shall carry out its obligations and duties and provide the Project Services in order to complete the provision of the Project Services to the reasonable satisfaction of the Department's Representative and shall exercise all due care skill and judgement and at all times act in accordance with all applicable professional standards, principles and practices.
 - 6.4 The Contractor shall have regard to such requirements as may be conveyed to it by the Department's Representative and shall comply with all reasonable directions of the Department's Representative.
 - 6.5 The Contractor shall permit the Department's Representative to enquire of, to confer with and counsel the Contractor and the Contractor's Staff and shall do all that is within its power to facilitate any and all appropriate enquiries, conferences and counselling.
 - 6.6 The Contractor shall provide the Department's Representative with monthly written reports as to the progress of the Project Services.
 - 6.7 The Contractor shall supply to the Department's Representative such information as to the progress of the Project Services as he may from time to time reasonably require.
 - 6.8 NOT APPLICABLE.
 - 6.9 NOT APPLICABLE.
- Variation or Termination of Project Services*
- 7.1 The Department may at any time, by giving written notice to the Contractor, terminate the provision of the Project Services and the Contractor shall on receipt of such notice immediately cease all work under the Agreement and take all appropriate action to mitigate any loss or prevent further costs being incurred with respect to the provision of the relevant Project Services. If the Department elects to terminate under this clause 7.1 it shall pay the reasonable fees and expenses of the Contractor (based upon the Tendered Rates) for all work satisfactorily performed by the Contractor in accordance with the terminated Project Services but not any loss of prospective profits. In no circumstances shall the fees payable for terminated Project Services exceed the fees that would have been paid had the relevant Project Services been completed.
 - 7.2 The Department may at any time give written notice to the Contractor proposing a variation to the scope of the Project Services. The Contractor shall within five Business Days provide a

- 9.1 The Contractor shall give to the Department's Representative an invoice in respect of the Project Services as soon as practicable after, and, in any event, within seven (7) days of the completion of the delivery of the Project Services.
- 9.2 Where Schedule 3 provides for progress payments, invoices for such payments may be submitted in arrears in accordance with the payment provision set out in the Schedule.
- 9.3 The invoice shall comply with the requirements of the GST Law (as a Tax Invoice) and shall, unless inconsistent with the GST Law, specify –
 - (a) the Contractor's Australian Business Number;
 - (b) the Project Fee due to the Contractor and the basis for its calculation;

9. invoicing and Payment

- 8.1 The Department will pay the Project Fees to the Contractor for the provision of the Project Services satisfactorily provided in accordance with this Agreement.
- 8.2 The Tendered Rates are fixed for the Term.
- 8.3 If a Fixed Project Fee is specified in Schedule 3 the Project Fees shall be that fixed lump sum fee. Payment at the Tendered Rates may also be subject to a Project Fee Cap and, if so, Project Fees shall not exceed that Project Fee Cap.
- 8.4 Progress payments will only apply if specified in Schedule 3 and will only be made in accordance with that Schedule.
- 8.5 The Project Fees are inclusive of all costs and expenses of the Contractor whether foreseen or unforeseen, including without limitation, insurance, duties, imposts and taxes and the GST (if any) which shall be paid by the Contractor.
- 8.6 NOT APPLICABLE.
- 8.7 NOT APPLICABLE.
- 8.8 NOT APPLICABLE.

8. Fee for Project Services

written proposal as to varied costs that will apply for the provision of the varied Project Services. The Department may accept the varied cost proposal within five Business Days of receipt from the Contractor but in the absence of such acceptance this Agreement shall continue as if no proposal under this clause 7.2 had been made.

- (a) the Project Services shall be carried out personally by the Contractor's Staff;
- (b) the Project Services shall be carried out with all due care and skill and in accordance with applicable professional standards, principles and practices;
- (c) it shall provide such further Information in relation to the provision of the Project Services as reasonably required by the Department.
- (d) the Information contained in the Tender as to the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Contractor or the Contractor's Staff is correct;

The Contractor hereby confirms that-

10. Contractor's Warranties

- 9.7 The Department may set off against any sum owing to the Contractor any amount owing by the Contractor to the Department.
- 9.6 Payment of an invoice is not:
 - (a) evidence or an admission that the Project Services have been provided in accordance with the Project Brief;
 - (b) evidence of the value of the Project Services provided;
 - (c) an admission that the Project Services invoiced were satisfactorily performed or expenses properly incurred;
 - (d) an admission of liability; or
 - (e) acceptance or approval of the Contractor's performance;
 but must be taken only as payment on account.
- 9.5 Subject to certification under clause 9.4, the Department shall pay the Project Fees to the Contractor within thirty (30) days of the receipt of the invoice.
- 9.4 All invoices shall be certified for payment by the Department's Representative prior to payment. No invoice shall be certified for payment unless the Department's Representative is satisfied that the Project Services for which payment is sought have been satisfactorily completed.
 - (c) the amount of any GST paid or payable by the Contractor with respect to the Project Fee;
 - (d) the date of delivery of the Project Services to which the invoice relates;
 - (e) a description (including quantity) of the Project Services delivered;
 - (f) the Contractor's address for payment; and
 - (g) the Department's Reference number.

- 13.2 All Information provided to the Contractor by or on behalf of the Department under this Agreement shall be treated as confidential by the Contractor. In clause 13 this Information is referred to as "Confidential Information".
- 13.1 The Contractor, under the conditions forming part of the Tender, has consented to the Department publishing (on the internet or otherwise) the name of the Contractor and the contract value together with the conditions of this Agreement generally. Subject to this right of publication the Department will treat as confidential all information provided to it in the Tender.

13. Confidentiality, Security and Privacy

The Project Services shall be provided by the Contractor's Staff. Where the Contractor's Staff are unable to undertake work in respect of the Project Services, the Contractor shall notify the Department's Representative immediately. The Contractor shall, if so requested by the Department's Representative, provide replacement staff to the reasonable satisfaction of the Department's Representative, at no additional charge and at the earliest opportunity.

12. Contractor's Staff

- (a) maintain full and proper records of the Project Services provided including the disbursements incurred and the number of hours worked by the Contractor's Staff;
 - (b) provide copies of these records to the Department's Representative when required and allow the authorised representatives of the Department to have access to and to inspect the relevant records at all reasonable times; and
 - (c) maintain such records for not less than six years after the Completion Date.
- The Contractor shall:

11. Records

- (e) the Contractor's Staff are members of the professional body stated in the Tender and it is a condition of this Agreement that the Contractor's Staff shall remain members whilst performing the Project Services; and
- (f) it has established and will comply with and maintain during the Term, the quality assurance arrangements set out in Schedule 2.

14. Conflict of Interest

- 13.3 The Contractor agrees that the Contractor or its employees, agents, directors, partners, shareholders or consultants shall not disclose to any person, any Confidential Information or Information relating to the Department or the affairs of others which may have come to its or their knowledge as a result of this Agreement or performance of the Project Services and shall take all necessary precautions to prevent unauthorised access to such Information.
- 13.4 All Confidential Information shall remain the property of the Department and shall (where possible) be returned to the Department's Representative at the completion of the Project Services or upon the expiration or termination of this Agreement.
- 13.5 The Confidential Information supplied to the Contractor under this Agreement shall be used only for the provision of the Project Services or as directed by the Department's Representative and shall not be used for any other purpose.
- 13.6 The Contractor shall not divulge any Information regarding the nature or progress of the Project Services or give any publicity concerning the Project Services except with the written consent of the Department's Representative.
- 13.7 The Contractor acknowledges that the Department shall be entitled (in addition to any entitlement to damages) to an injunction or other equitable relief with respect to any actual or threatened breach by the Contractor of this clause 13 and without the need on the part of the Department to prove any special damage.
- 13.8 The Contractor shall require all of the Contractor's Staff or any other person to whom Confidential Information shall be disclosed to execute a Deed of Confidentiality in or to the form of Schedule 4 at the cost of the Contractor. Such Deeds of Confidentiality shall be made available to the Department at the request of the Department's Representative or other authorised representative of the Department.
- 13.9 The Contractor's and the Department's obligations under this clause 13 shall not extend to:
 - (a) Information already in the public domain other than due to a breach of this Agreement; or
 - (b) any disclosure required by law.
- 13.10 The Contractor shall be bound by the Information 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 the State or the Department would have been bound by the Information Privacy Principles and any applicable Code of Practice in respect of that act or practice had it been directly done or engaged in by the State or the Department.

16.3 **Material created is State's Property**
The ownership of all Intellectual Property in all Information created as a result of the provision of Project Services shall vest in the State. The Contractor hereby assigns ownership of all Intellectual Property rights in such Information to the State and will ensure that its employees, sub-contractors and agents execute all documents necessary to assign to the State all such rights.

16.2 **Indemnity by Contractor**
The Contractor indemnifies and will at all times keep the Department and the State indemnified against any action, claim, suit or demand, including a claim, suit or demand for or liability to pay compensation or damages and costs or expenses arising out of or in respect of any breach of any third party's Intellectual Property rights relating to the provision of Project Services under this Agreement.

16.1 **Warranty by Contractor**
The Contractor warrants that it is entitled to use any Intellectual Property which may be used by it in connection with the provision of Project Services under this Agreement.

16. Intellectual Property

15.3 Subject to clause 15.1, any failure by the Department to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by the Department to the Contractor, is not to be construed as a waiver of its rights under this Agreement.

15.2 A waiver by the Department will not prejudice any of its rights in respect of any subsequent breach of this Agreement by the Contractor.

15.1 No right or obligation under this Agreement shall be deemed to be waived except upon written acknowledgment signed by each party.

15. Waiver

14.2 The Contractor shall immediately inform the Department of any matter which may give rise to an actual or potential conflict of interest at any time during the Term and the Department may regard a conflict of interest as a breach of a fundamental term of this Agreement and may elect to terminate the Agreement under the provisions of clause 17.

14.1 The Contractor confirms that it does not hold any office or possess any property, is not engaged in any business, trade or calling and does not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with or might appear to be created in conflict with its duties and interests under this Agreement.

18.3 The Project Fees are inclusive of Pay-roll Tax and if this Agreement is deemed to be an "employment agency contract" under the *Pay-roll Tax Act 1971*, the Contractor shall pay the Pay-roll Tax on behalf of the Department with respect to all wages paid or payable as defined in the Act. The Contractor will register with the Commissioner of State Revenue for the purpose of payment of such tax and shall keep all appropriate records of tax paid on behalf of the Department. The Contractor shall provide monthly reports to the Department as to the

18.2 The Contractor acknowledges that it is the employer of all or has otherwise engaged all personnel who will provide the Project Services, including the Contractor's Staff, and the Contractor shall meet all payment obligations to such personnel and shall pay all statutory taxes, fees, levies or charges applicable with respect to the engagement of or payments made to such personnel. The Contractor shall comply with all reasonable requests for verification of such payment obligations received from the Department.

18.1 The Contractor is engaged as an independent contractor and nothing in this Agreement shall be deemed to constitute the Contractor as an agent or employee of the Department or the State and the Contractor shall not have any authority to incur and shall not incur any obligation or make or purport to make any representation on behalf of the Department except with the express written instructions of the Department.

18. Nature of Engagement

17.3 If the Contractor:
(a) being a partnership, company or other composite body undergoes a change in its structure which, in the reasonable opinion of the Department's Representative, limits the capacity of the Contractor to provide the Project Services or may affect the Contractor in carrying out its obligations and duties under this Agreement;
(b) goes into liquidation or a receiver and manager or mortgagee's or chargee's agent is appointed or becomes subject to any form of insolvency administration or arrangement, or in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors;
the Department may terminate this Agreement immediately by written notice.

17.2 If the defaulting party fails to remedy the breach within the period of the notice given under clause 17.1 this Agreement shall be terminated forthwith.

17.1 If a party to this Agreement fails to carry out any of its obligations or duties under this Agreement, the party not in breach may by notice to the party in breach specify the breach and request that the breach be remedied within 14 days after receipt of such notice.

17. Termination

wages declared, the tax paid and the specific employees to whom the wages and payment relate. [Note this clause 18.3 can be deleted if the Department proposes to pay the Pay-roll Tax and the level of fees should reflect whether the fees are inclusive of Pay-roll Tax or not.]	18.4	The Contractor indemnifies and shall keep the Department indemnified against: (a) any obligation to make payments to Contractor's Staff and other personnel engaged in the provision of the Project Services, and (b) any obligation to pay any related statutory taxes, fees, levies or charges.
The Contractor indemnifies the Department its employees and agents against damages, costs, expenses, loss or damage which they may incur or sustain and actions, proceedings, claims and demands whatsoever which may be brought or made against it or them by any person in respect of or by reason of or arising out of: (a) any negligence of the Contractor or the Contractor's Staff or other employees, or sub-contractors or of any other persons for whose acts or omissions the Contractor is vicariously liable; (b) death, injury, loss of or damage to the Contractor, the Contractor's Staff or its other employees, agents, sub-contractors, licensees, invitees or visitors; and (c) any negligent breach of this Agreement by the Contractor.	19.1	The Contractor's liability under this clause shall be reduced to the extent to which any action, proceeding, claim or demand arises out of any negligence or other wrongful act or omission of the Department or its employees or agents.
The Contractor shall effect and maintain a professional indemnity insurance policy for the Term. Such insurance shall be for an amount mutually agreed and not less than that stated in Schedule 1. The Contractor shall maintain a policy of insurance on similar terms for a period of six years after expiration of the Term.	20.1	Professional Indemnity Insurance
The Contractor shall maintain an appropriate Public Liability policy of insurance covering the Contractor in respect of any claim arising from or related to the provision of the Project Services. Such policy shall be for an amount not less than that stated in Schedule 1	20.2	Public Liability Insurance
Proof of Policies	20.3	Proof of Policies

20. Insurance

19. Indemnity

- (c) The Expert must make a determination or finding in respect of the dispute within ten Expert's appointment.
- otherwise agree, the presentation must be no later than five Business Days after the respective positions and shall inform the Parties accordingly. Unless the Parties agree, the Expert shall fix a time for presentation to the Expert by the Parties of their
- (b) The Expert shall fix a time for presentation to the Expert by the Parties of their Dispute Notice the Expert shall be appointed by the President of the Law Institute Panel cannot agree on such appointment within ten Business Days of service of the relation to that dispute a qualified person considered appropriate by the Panel. If the If a dispute is referred for Expert determination the Panel shall appoint as Expert in

23.2 Expert Determination

- (a) If a dispute is referred for Expert determination the Panel shall appoint as Expert in Dispute Notice either party may refer the dispute for Expert determination.
- (d) If the Panel does not resolve the dispute within ten Business Days of service of the shall be binding on the Parties.
- (c) If the dispute is referred to the Panel, the Panel shall meet to resolve the dispute within five Business Days of service of a Dispute Notice and a decision of the Panel
- (ii) the Contractor's Representative.
- (i) the Department's Representative ; and
- (b) The Panel in respect of a dispute shall consist of:
must specify in reasonable detail the nature of the dispute.
- (a) "Dispute Notice") refer the dispute to the Panel for resolution. The Dispute Notice between the Parties any party to the dispute may by notice to the other party (a If any dispute in relation to this Agreement or a Purchase Order Contract arises

23.1 Mediation

23. Disputes

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

22. Variation of Agreement

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

21. Severability

The Department may require the Contractor to provide proof that the policies of insurance required in clauses 20.1 and 20.2 have been effected and maintained. The Department may terminate this Agreement if the Contractor does not comply with this clause.

25.3 Where a federal industrial award may apply to the capacity in which an employee is engaged by the Contractor, or by a sub-contractor, in the provision of the Project Services, the rates of pay and conditions on which that employee is engaged shall be no less beneficial to the employee than the rates and conditions under that award.

25.2 The Contractor and any person engaged in the provision of the Project Services shall not:
(a) engage in unethical work practices; or
(b) engage employees or sub-contracted workers upon terms and conditions which are not commensurate with industry standards generally applicable in Victoria.

25.1 The Contractor shall not be in breach of the Commonwealth Affirmative Action (Equal Opportunity for Women) Act 1986 (Commonwealth) during the Term.

25. Employment Policy

24.2 The Contractor shall be fully responsible for carrying out the Project Services notwithstanding that the Contractor has sub-contracted or assigned the performance of any part of these Project Services.

24.1 The Contractor shall not without the prior written approval of the Department subcontract or assign the performance of any of the Project Services to be provided or any rights or obligations under this Agreement. In giving written approval the Department may impose such terms and conditions as it considers appropriate.

24. Sub-contracting or Assignment

23.4 **Interlocutory Relief**
The Parties shall not oppose any application for interlocutory relief pending resolution of a dispute under this clause 23.

23.3 **Performance during Dispute Resolution**
The Parties shall continue to perform their respective obligations under this Agreement pending resolution of a dispute.

(d) Any determination of a dispute by the Expert shall include a determination as to the award of costs.
(e) Any determination made by the Expert shall be binding on all Parties.
(f) The Expert shall act as an expert and not as an arbitrator.

Business Days after the presentation referred to in paragraph 23.2(b)

- 28.3 The provisions of this clause are in addition to any other mode of service permitted by law.
- business on the next normal business day in that place.
- pm (local time) it will be taken to have been duly given or made at the commencement of which is not a normal business day in the place to which the Notice is sent or is later than 4.00 but if the result of the foregoing is that a Notice would be taken to be given or made on a day result of the transmission as satisfactory.
- of pages, the correct telephone number of the destination facsimile machine and the from the dispatching machine showing the date of transmission, the relevant number in the case of facsimile transmission, on receipt by the sender of a transmission report (c) in the case of delivery by post, two business days after the date of posting; and (b) in the case of delivery in person, when delivered; (a)
- 28.2 A notice or document shall be taken to be delivered or served as follows:
- (a) to the Department at the address which is set out in Schedule 1
- (b) to the Contractor at the address which is set out in Schedule 1.
- 28.1 All notices and documents required to be delivered or served by one Party to this Agreement on the other may be delivered or served by delivering or sending them by pre-paid post, facsimile, pre-paid courier as follows:

28. Service of Documents

The obligations of the Contractor under clauses 10, 11, 13, 16, 18, 19, and 20.1 shall survive the termination or expiration of this Agreement.

27. Surviving Obligations

The Contractor shall ensure that in carrying out the Project Services under this Agreement it shall comply with the requirements of all Acts of the Parliament of the Commonwealth and with the requirements of all ordinances, regulations, by-laws, orders and proclamations made or issued under any such Acts or Ordinances and with the lawful requirements of public and other authorities in any way affecting or applicable to the provision of the Project Services.

26. Compliance with Laws

65449-5 Prepared for the Victorian Government Purchasing Board by the Victorian Government Solicitor
131873

Name: V.E. SEDONARY
Witness: [Signature]
in the presence of:)
)
GHD PTY Ltd
for and on behalf of)
)
SIGNED by Paul Currie)

[Signature]

Name: Kevin Egan
Witness: [Signature]
in the presence of:)
)
the STATE OF VICTORIA
for and on behalf of)

[Signature]

Signed by Sean Rooney)

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

<u>Item (i)</u>	<u>Name of Contractor:</u> GHD Pty Ltd
<u>Item (ii)</u>	8/180 Lonsdale Street MELBOURNE VIC 3000 Contractor's Representative: Paul Currie 8/180 Lonsdale Street (bh) 8687 8167 (mobile) 0419 527 943
<u>Item (iii)</u>	The Victorian Department of Primary Industries GPO Box 4440 Melbourne, Vic 3001
<u>Item (iv)</u>	The Department's Representative shall be Sean Rooney or the person occupying the position of Coal Development Manager GPO Box 4440 Melbourne, Vic 3001
<u>Item (v)</u>	<u>Insurance:</u> Professional Indemnity \$5,000,000 in aggregate Public Risk \$10,000,000 per occurrence
<u>Item (vi)</u>	The <u>Commencement Date</u> is 30/11/2007 The <u>Completion Date</u> is 30/06/2008
<u>Item (vii)</u>	<u>Contractor's Staff:</u>
<u>Item (viii)</u>	Paul Currie Project Director – Mine Planning Ted Wagborne Project Manager (Mining) Phil Baker Environmental Steve Newcomb Geotechnical Mark Pratt Hydrogeology Russell Hawken Water Campbell Watts Planning NA

AGREEMENT

SCHEDULE 1

Date	Description
30 November 2007	Milestone 1 - Finalisation of Draft Report Structure
14 December 2007	Review existing mine rehabilitation plans, discussions with Mine Reps (subject to their availability)
21 December 2007	Review super-pits and deep mining rehabilitation
21 December 2007	Review Environmental Issues
25 January 2008	Develop Rehabilitation Options (in house workshop)
31 January 2008	Develop 1st draft Rehabilitation Principles
15 February 2008	Review of Vic government policy, legislative implications, water requirements
29 February 2008	Consider possible pathways for government & industry to work together to modify current rehabilitation plans (if required) to meet Rehab Principles
7 March 2008	Issue prepared notes for discussion at Working Meeting
21 March 2008	Working Meeting with Project Co-ordination Group to discuss Rehabilitation Options, government issues, consultation paper and key stakeholders to involve in stakeholder workshop
31 March 2008	Finalisation of Draft Consultation Paper for DPI review
11 April 2008	Complete DPI comments on Draft Consultation Paper
18 April 2008	Submission of Consultation Paper to Key Stakeholders

Work Program

- (a) The Request for Tenders and Project Brief for Rehabilitation Options and Scenarios for the Latrobe Valley dated 23 August 2007 issued by the Department;
 - (b) the Contractor's Tender dated September 2007; and
 - (c) the updated Draft Framework dated 22 November 2007.
- In interpreting the documents which describe the Project Services, the following order of precedence shall apply to the extent of any inconsistency:
- (a) The Agreement;
 - (b) The Schedules;
 - (c) Project Management Meeting Minutes
 - (d) The Request for Tenders;
 - (e) The Tender.
- The Project Services are also described in the following documents (which documents are hereby incorporated into this agreement) namely:

PROJECT SERVICES

SCHEDULE 2

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Liquidated Damages
For the purpose of clause 5 liquidated damages (as specified in Schedule 1) shall apply if the Contractor fails to meet the following date or dates for the delivery of the Project Services.
NOT APPLICABLE.

<u>Deliverables</u>	<u>Date</u>
Stakeholder Workshop	30 April 2008
Draft Report Submitted	15 May 2008
Final Report Submitted	30 June 2008

<u>Description</u>	<u>Date</u>
Stakeholder Workshop	30 April 2008
Milestone 2 – Draft Report Submitted	15 May 2008
Complete comments from DPI	30 May 2008
Milestone 3 – Final Report Submitted (pdf version ready for printing)	30 June 2008

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A fixed project fee of \$99,990 for all stages to, and including, the provision of the final report.

FIXED PROJECT FEE

1.

TENDERED RATES

SCHEDULE 3

- 1. In this Deed unless the context otherwise requires or the contrary intention appears -
 - (a) The singular includes the plural and vice versa and words importing a gender include other genders.
 - (b) Terms importing natural persons include partnerships and bodies corporate.
 - (c) Other grammatical forms of defined words or phrases have corresponding meanings.
 - (d) Where a party comprises two or more persons, the provisions of this Deed that bind that party shall bind those persons jointly and severally.
 - (e) "Project Services" means all the services which the Covenantor will provide in accordance with the Services Contract between the State and the Contractor.
 - (f) "Information" means all information or data however held, stored or recorded including drawings, plans, specifications, calculations, reports, models, concepts, source codes, files, computerised data, photographic recordings, audio or audio visual recordings and any information or data made available to the Covenantor in carrying out the Project Services.

It is Agreed

- A. The Covenantor is an employee of GHD Pty Ltd (the "Contractor") which is involved in providing the Project Services defined in a Services Contract between the State and the Contractor for the provision of Inventory of Victoria's Coal Resources (the "Services Contract").
- B. The Information to which the Covenantor will have access for the performance of Project Services under the contract is confidential.
- C. The State will allow the Covenantor access to this Information provided that confidentiality can be maintained and the Covenantor has entered into this Deed in order to acknowledge the conditions under which access to the Information will be granted.

Introduction

THE STATE OF VICTORIA (the "State")

IN FAVOUR OF

BY Paul Currie of GHD Pty Ltd (Covenantor)

THIS DEED is made the date day of month year

DEED OF CONFIDENTIALITY

SCHEDULE 4

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PERFORMANCE STANDARDS

SCHEDULE 5

Clause 6.1 incorporates the Performance Standards. NA.

