



AGREEMENT FOR THE PROVISION OF CONSULTING SERVICES

Consultant To Provide Services

- 1) McDowall Affleck ("the Consultant") shall provide to the Client the Consulting services described in the accompanying letter together with such other services as may be agreed from time to time ("the Services"), these terms and conditions and the accompanying letter together being called "the Agreement".
- 2) The Consultant shall provide the Services with such skill, care and diligence as is generally exercised by competent members of the engineering profession performing services of a similar nature, at the time the Services are provided.
- 3) The Consultant shall perform the Services in a timely manner to the extent that it is within its control to do so.
- 4) If the Consultant becomes aware of any matter which will change or has changed the scope, timing or work required to deliver the Services then it will give notice to the Client which shall contain, as far as practicable in the circumstances, particulars of the change, in which case clause 11 (b) will apply.
- 5) If the Client becomes aware of any matter which may change the scope, timing or work required to deliver the Services, or the scope or timing of the Project then the Client will give written notice to the Consultant, in which case clause 11(b) will apply.
- 6) The Services will be performed at either or both the site of the project (the "Site") or at other places reasonably required by the Client. Where the locations of the Consultant's work are not under the Consultant's control (including the Site), the Client must provide reasonable access to allow the Consultant to fulfil its obligations (including to provide the Services).

Information To Be Provided By Client

- 7) The Client shall, at its own cost, as soon as practicable make available to the Consultant all information, documents and other particulars relating to the Client's requirement for the project as expressly set out in this Agreement (the "Requirements"). The Consultant is entitled to rely on such information, documents and other particulars as are provided by the Client pursuant to or in connection with this Agreement.
- 8) The Client warrants that all of the information that the Client makes available to the Consultant is or shall be true and correct and that the Consultant is entitled to rely on such information, documents and other particulars as are provided by the Client pursuant to or in connection with this Agreement.
- 9) The Client acknowledges that the Consultant shall not be required or obliged to check or investigate the correctness or accuracy of the information that the Client makes available to the Consultant.
- 10) If there are any mistakes, inaccuracies or errors in the information that the Client makes available to the Consultant, then:
 - a) the Client shall release the Consultant from any liability for loss or damage that the Client suffers by reason of any defect or delay in the Services that is caused by the mistakes, inaccuracies or errors in the information that the Client made available to the Consultant;
 - b) the Client shall indemnify the Consultant against loss or damage suffered by the Consultant (including the Consultant's legal costs) by reason of any claim brought against the Consultant by a third party or government agency because of any defect or delay in the Services that is caused by the mistakes, inaccuracies or errors in the information that the Client made available to the Consultant.

Payment Of Fees

- 11) The Client shall pay to the Consultant:
 - a) The Fee and the Reimbursable Expenses as set out in the accompanying letter together with such other amounts in respect of other services agreed to be provided;
 - b) If clause 4 or 5 applies, an additional amount to reflect the additional costs and expenses which the Consultant will incur in the performance of the Services arising out of or in connection with the matters in clause 4 or 5 attracting the operation of this clause.; and
 - c) An amount to cover additional costs and expenses of the Consultant occasioned by any event or matter beyond the Consultant's control; and
 - d) to the extent that amounts payable under this Agreement are not expressed to be GST inclusive, an additional amount for the GST in relation to the supply of the Services ("GST").
- 12) The Consultant may claim payment in accordance with the times set out in the accompanying letter or, if no time is set out, monthly in arrears. The Client must pay to the Consultant, without set-off or deduction:
 - a) The amount payable under this Agreement for the Services provided during the relevant period, within 14 days of the Consultant's tax invoice; and
 - b) The GST payable under this Agreement for the Services provided during the relevant period, within 7 days of receiving a valid tax invoice.
- 13) If the Client does not pay the Consultant in accordance with this Agreement then, without prejudice to any other rights or remedies the Consultant may have, interest will be payable from the date of invoice until payment at a rate of 12% per annum and in addition the Consultant will be entitled to recover from the Client in addition to any Fees and Reimbursable Expenses outstanding plus interest the amount of any legal, debt collection or other costs incurred by the Consultant in recovery of those amounts on a full indemnity basis..
- 14) If the performance of the Services is delayed beyond a reasonable period for any reason other than a breach of the Agreement by the Consultant, the Client shall pay to the Consultant a reasonable sum of money to cover the consequential costs, and expenses suffered by the Consultant as a result of the delay.

Extent Of Warranties Provided By Consultant

- 15) The Consultant does not give any warranty nor accept any liability in relation to the performance or non-performance of the Services except to the extent, if any, required by law or specifically provided for in this Agreement. If apart from this Clause any warranty would be implied whether by law, custom or otherwise, that warranty is to the full extent permitted by law hereby excluded.
- 16) Nothing herein, contained shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services pursuant to this Agreement of all or any of the provisions of The Australian Consumer Law or any relevant State Act or Territorial Ordinance which by law cannot be excluded, restricted or modified.
- 17) To the maximum extent permitted by law:



- a) the Consultant shall not accept any liability for any advice provided in the course of performing the Services if the advice is used or relied upon by the Client for a purpose other than the purpose identified in the Agreement;
 - b) the Consultant shall not accept liability for any advice provided in the course of performing the Services which is used or relied upon by any person other than the Client unless the Consultant has provided that party with prior written consent;
 - c) the Consultant shall not accept liability for any advice provided in the course of performing the Services if the Client does not use and rely on all of the advice provided by the Consultant;
 - d) subject to paragraphs (e), (f) and (g) below, the Consultant's liability to the Client arising out of or in connection with this Agreement (including the performance or non-performance of the Services), whether under the law of contract, in tort, in equity, under statute or otherwise, shall be limited in aggregate to the amount specified in the accompanying letter or \$300,000, if no amount is stated in the letter.
 - e) the Consultant is not liable to the Client in respect of any indirect, consequential or special losses (including loss of profit, loss of business opportunity and payment of liquidated sums or damages under any agreement);
 - f) the Consultant shall be deemed to have been discharged from all liability in respect of the Services whether under contract, in tort, in equity, under statute or otherwise, at the expiration of the period specified in the accompanying letter, or if no date is specified, on the expiration of 3 years from the completion of the Services; and
 - g) if, and to the extent that, any of this clause is void as a result of section 64 of The Australian Consumer Law, then the Consultant's liability for a breach of a condition or warranty is limited to the costs of rectifying the works which are the subject of this Agreement.
- 18) If the Consultant is required to exercise its professional judgement between the Client and a third party with whom the Client has a contract then he shall do so independently and as required by the terms of that contract.

Warranties & Indemnities Provided By Client

- 19) The Client indemnifies and holds harmless the Consultant in respect of any claim against the Consultant caused by or arising out of any act or thing done by the Consultant in good faith and purportedly pursuant to a right granted to the Consultant under the provisions of this Agreement.
- 20) Where McDowall Affleck are not the designer, as defined by WHS Act 2011, section 22 - Duties of persons conducting businesses or undertakings that design plant, substances or structures, the Client indemnifies and holds harmless McDowall Affleck in relation to the safety in design aspect of the project.

Intellectual Property & Confidentiality

- 21) Subject to clause 21 and to the Client complying with its obligations under this Agreement, the Consultant grants to the Client a non-exclusive, royalty-free and irrevocable licence to use (and allow others to use) any intellectual property (including all drawings, reports, specifications, bills of quantity, calculations and other documents, including "works" as defined in the *Copyright Act 1968* (Cth) created or produced by the Consultant) arising out of provision of the Services ("IP Rights") for the purposes of completing the Project. As between the Client and the Consultant, the ownership of the IP Rights vests in the Consultant.
- 22) The Consultant has no obligation to furnish any drawings, reports, specifications, bills of quantity, calculations and other documents, including "works" as defined in the *Copyright Act 1968* (Cth) created or produced by the Consultant in editable electronic, form or in any electronic form which is able to be made editable.
- 23) Neither the client nor the Consultant is to disclose to third parties or use for any purpose (other than providing or benefiting from the Services) any information provided by the other unless:
 - a) required by law;
 - b) the information is already generally known to the public; or
 - c) the other consents to the disclosure.

All documentation and materials containing confidential information provided by one party to the other will be returned upon request unless required otherwise by law or otherwise.

Dispute Resolution

- 24) Any dispute or difference ("Dispute") between the Client and the Consultant may be notified by a party to the other party and the parties shall:
 - a) firstly meet to negotiate, in good faith, resolution of the Dispute; and
 - b) secondly, if negotiation fails to achieve a resolution of the Dispute within 7 days of the notification of the Dispute, attend mediation, administered in accordance with the Resolution Institute Mediation Rules for the Conduct of Commercial Arbitrations, provided that this provision shall not prevent the Consultant from instituting legal action at any time to recover moneys owing by the Client to the Consultant.

Termination Of Contract

- 25) The Client may, without prejudice to any other rights or remedies it may have, by written notice served on the Consultant terminate its obligations under this Agreement:
 - a) if the Consultant is in breach of the terms of the Agreement and the breach has not been remedied within 28 days of a written notice served by the Client on the Consultant specifying the breach and requiring the breach to be remedied; or
 - b) if the Consultant informs the Client that it is insolvent, becomes bankrupt, or becomes subject to any official management, receivership, liquidation, provisional liquidation, voluntary administration, winding up or external administration ("Insolvency Event").
- 26) The Consultant may, without prejudice to any other rights or remedies it may have, by notice in writing served on the Client suspend its obligations under this Agreement:
 - a) immediately by written notice if the Client has failed to pay in accordance with this Agreement; or
 - b) if the Client is in breach of any of the other terms of the Agreement and the breach has not been remedied within 14 days (or longer as the Consultant may allow) of a written notice served by the Client on the Consultant specifying the breach and requiring the breach to be remedied.
- 27) The Consultant may, without prejudice to any other rights or remedies it may have, terminate its obligations under this Agreement:
 - a) if the client having breached the contract by not paying monies when due and payable has not remedied the breach within 5 days of a written notice served by the Consultant on the Client specifying the breach and requiring the breach to be remedied; or



- b) if the Client is in breach of any of the other terms of the Agreement and the breach has not been remedied within 28 days of a written notice served by the Client on the Consultant specifying the breach and requiring the breach to be remedied; or
- c) upon the Consultant giving the Client 60 days' written notice of its intention to do so; or
- d) if an Insolvency Event occurs in relation to the Client or if the Client informs the Consultant that it is insolvent, becomes bankrupt, or becomes subject to any official management, receivership, liquidation, provisional liquidation, voluntary administration, winding up or external administration ("Insolvency Event").

Subcontracting Services

- 28) If the Consultant considers it appropriate to do so, it may, with the Client's prior approval, which shall not be unreasonably withheld or delayed, engage other consultants to assist the Consultant in specialist areas. The consultant shall be engaged at the Client's risk, cost and expense, and on its behalf.

Credit Checks & Guarantees

- 29) If the Fee and the Reimbursable Expenses for the Consultant's services is expected to exceed \$10,000 (inclusive of GST), then the Consultant may, in the Consultant's sole discretion, and at any time before or during the course of the performance of the Services:
- a) require the Client to procure personal guarantees from any person nominated by the Consultant to secure the Client's payment of the Fee and Reimbursable Expenses; and
 - b) carry out a credit check over the Client and the proposed guarantors.
- 30) The Client and the proposed guarantors irrevocably authorise the Consultant to contact other people or entities who have personal information relevant to the Client and the proposed guarantor's creditworthiness.
- 31) If:
- a) the Client fails to procure the personal guarantees requested by the Consultant; or
 - b) the Client or the proposed guarantor fail to:
 - i) provide the Consultant with any information that the Consultant requires to assess the creditworthiness of the Client and the proposed guarantor; or
 - ii) authorise any person who possesses personal information relevant to the Client and the proposed guarantor's creditworthiness to provide that personal information to the Consultant,

then the Consultant may terminate this Agreement by notice in writing served on the Client.

- 32) If this Agreement is terminated in accordance with clause 30 above:
- a) the Consultant shall be released from:
 - i) any obligation to provide the Services to the Client; and
 - ii) any warranty which the Consultant would otherwise be provided to give the Client for the Services provided by the Consultant prior to the termination of this Agreement;
 - b) the Consultant shall be entitled to forfeit any deposit paid by the Client for the Fees and Reimbursable Expenses paid to the Consultant prior to the termination of this Agreement.

Site Access

- 33) In the event that the Consultant is obliged to visit the Client's premises or site, the Client warrants to the Consultant that:
- a) The Customer has the legal authority to grant the Consultant with access to the Client's premises or site; and
 - b) The site or premises complies with all health and safety laws and requirements.
- 34) In the event of any damage being caused to the Client's site or premises as a result of the Services;
- a) The Consultant, or the Consultant's representative will immediately notify the client; and
 - b) The Consultant, or the Consultant's representative will immediately notify the project manager for the Client.
- 35) In the event of any damage being caused to the Client's site or premises as a result of the Services, the Client indemnifies and holds harmless the Consultant in respect of any claim against the Consultant:
- a) caused by or arising out of any act or thing done by the Consultant in good faith; or
 - b) purportedly pursuant to a right granted to the Consultant under the provisions of this Agreement; or
 - c) as a result of carrying out the Services in the manner deemed necessary by the Consultant.
- 36) In the event of any dispute between the Consultant and the Client in relation to the matters mentioned in Clauses 32 to 34 above, the parties shall be obliged in the first instance to comply with Clause 23.

Privacy

- 37) The Consultant will not disclose any personal information which it has collected on the Client and the guarantors unless:
- a) it is required to do so by law; or
 - b) it has obtained the prior written consent of the person who is the subject of that personal information.
- 38) The Consultant will provide the Client and the guarantors with access to the personal information held by the Consultant upon request on the basis that access is provided at a mutually convenient time at the Consultant's business premises.



- 39) The Consultant may refuse access to the personal information if:
- a) they are prohibited from granting access by law;
 - b) the access would unreasonably interfere with the privacy of another person;
 - c) the request for access is frivolous;
 - d) the information sought relates to actual or anticipated legal proceedings against the Consultant which the person would not be entitled to access in those proceedings.
- 40) If you require copies of any documents in the Consultant's possession, the Consultant reserves the right to charge a photocopying charge for the copies that you request.

Miscellaneous

- 41) Neither party may assign, transfer or sublet any obligations under this Agreement without the written consent of the other. Unless stated in writing to the contrary, no assignment, transfer or subletting shall release the assignor from any obligation under this agreement.
- 42) In the interpretation of this Agreement, no rule of construction applies to the disadvantage of one party on the basis that it put forward this Agreement or any part of it.
- 43) The law of Western Australia is applicable to this agreement.
- 44) This Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the parties with respect to the subject matter of this Contract.
- 45) No agreement or understanding varying or extending this Contract, including in particular the scope of the Consultancy Services in Schedule 1, shall be legally binding upon either party unless in writing and signed by both parties.