

## **Terms of Engagement for Consulting Services**

These general conditions form the basis on which Wilkinson Shaw & Associates Pty Ltd (WSA) will undertake consultancy services. They are read in conjunction with the proposal for consulting engineering services and the Proposal Acceptance Form to constitute the entire Agreement between the Client and WSA (the "Agreement"). The Agreement is made in Brisbane and any disputes arising under it are governed by Queensland law.

### **Services**

1. Wilkinson Shaw & Associates ("WSA") shall provide to you (the "Client") the services described in the accompanying proposal document ("Services"). Unless agreed otherwise in writing, the accompanying proposal document and these terms and conditions comprise the entire agreement between the parties ("Agreement") and supersede any previous verbal or written communications or representations.
2. In providing the services, WSA shall exercise the degree of skill, care and diligence normally exercised by consulting engineers in similar circumstances in accordance with the ethics of the engineering profession

### **Information and Documents**

3. The Client shall provide, at its own cost, to WSA briefing and all information and documents concerning the Client's requirement for the service and will advise WSA of any changes to the services required. The Client will cooperate with WSA to allow proper performance of the services. WSA 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.

### **Payment**

4. The Client shall pay WSA:
  - a) the Fee and the Reimbursable Expenses as set out in the proposal, fee schedule or as stated on the Authorisation to Proceed Form together with any such amounts in respect of other services agreed to be provided.
  - b) reasonable adjustments to the Fee and the Reimbursable Expenses to reflect the additional costs, expenses, liabilities, losses or other amounts incurred or suffered by WSA in the performance of the Services and arising out of or in connection with any event or matter beyond WSA's control;
  - c) to the extent that amounts payable under this Agreement are not expressed to be GST inclusive, an additional amount for the GST incurred by WSA in relation to the Supply of the Services.
5. The Fee will be invoiced progressively for fees and costs for work actually done in providing the services. The client must pay to WSA, 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 date of issue of WSA's invoice; and
  - b) the GST payable under this Agreement for the Services provided during the relevant period, within 14 days of the date of issue of a valid tax invoice.
6. You will pay for any additional services we undertake and any liability, cost or expense we incur if:
  - a) The scope or timing of the services or project change;
  - b) Any information you (or your employees, agents or contractor) provide to us is not complete and accurate;
  - c) Part or all of the services are delayed or suspended (other than as a result of our breach of the agreement);
  - d) During or after completion of the services, we or any of our employees are required to give evidence before, or provide any information to, a court or other competent authority;
  - e) You fail to pay an amount due under the agreement; or
  - f) You end the agreement before we have completed the services.

7. The amount you will pay for additional services will be the amount we agree with you (or otherwise, the amount calculated by multiplying the number of hours our employees spend undertaking the additional service by the hourly rates and any amount due to our sub-consultants, or subcontractors plus 12.5%. We may ask you to confirm in writing that you will pay for any additional services, in which case, we are not required to commence the relevant additional services until we receive your written confirmation.
8. If the Client does not pay WSA in accordance with this Agreement, then, without prejudice to any other rights or remedies, WSA may:
  - a) Charge interest payable from the date of invoice until payment at a rate of 10% per annum. In addition, the Client shall be liable for all legal costs and disbursements incurred by WSA arising from the default.
  - b) keep any documents we have prepared in connection with the services and:
    - i. stop undertaking the services; or
    - ii. end the agreement by giving you written notice

### **Liability**

9. To the maximum extent permitted by law:
  - a) subject to paragraphs (b) and (c) below, WSA'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.
  - b) WSA 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 other agreement);
  - c) WSA 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 1 year from the completion of the Services.

### **Insurance**

10. WSA maintains the following insurances with the limits specified

Workers Compensation	As required by Law
Professional Indemnity	\$5 Million
Public Liability	\$20 Million

### **Intellectual property**

11. Copyright and Intellectual Property in all drawings, reports, specifications, bills of quantity, calculations and other documents, in hard or electronic format, provided by WSA in connection with the services shall remain the property of WSA.

### **Confidentiality, documents and information**

12. The Client alone shall have a licence to use the documents referred to in Clause 11 for the purpose of completing the project, but the Client shall not use, or make copies of such documents in connection with any work not included in the project.
13. If the Client is in breach of any obligation to make a payment to WSA, WSA may revoke the licence referred to in Clause 12, and

the Client shall then forthwith cause to be returned to WSA all documents referred to in Clause 11 and copies thereof.

14. Neither the client nor WSA 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.

#### Disputes

15. Any dispute or difference (“Dispute”) between the Client and WSA may be notified by a party to the other party and the parties shall:

- a) firstly, meet to negotiate, in good faith, a 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,

provided that this provision shall not prevent WSA from instituting legal action at any time to recover moneys owing by the Client to WSA.

#### Ending the agreement

16. The client may terminate their obligations under this Agreement –

- a) In the event of a substantial breach by WSA of their obligations hereunder, which breach has not been remedied within 30 days of written notice from the Client requiring the breach to be remedied; or
- b) Upon giving WSA 60 days written notice of their intention to do so; or
- c) If WSA 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”).

17. WSA may suspend or terminate their obligations under this Agreement –

- a) in the event of –
  - iii. moneys payable to WSA hereunder being outstanding for more than 60 days;
  - iv. another substantial breach by the Client of his obligations hereunder, which breach has not been remedied within 30 days of written notice from WSA requiring the breach to be remedied; or
- b) upon giving the Client 60 days written notice of their intention to do so; or
- c) if an Insolvency Event occurs in relation to the Client.

#### General

18. The Client may engage, or prior to this Agreement have already engaged, a third party to provide specialist services for the project. WSA may, as an agent for the Client, engage a third party to provide specialist services for the project. The Client accepts responsibility for all moneys payable to such third party or third parties unless otherwise provided in Clause 1.

19. The Client acknowledges that these specialist services provided by the third party are provided under a separate agreement for the Client and do not form part of this Agreement. Under no circumstances, whether as a result of any act, neglect or default or otherwise howsoever arising, shall WSA have any liability (including for negligence) for the specialist services in Clause 18 or in relation to any work, reports, information, plans, designs or specifications supplied or performed by any third party, including a third party engaged by or at the suggestion of WSA.

20. 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 the Agreement.

21. 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.

22. You agree that we can publish articles, photographs and other illustrations relating to the services and the project unless you tell us in writing otherwise within 7 days of executing the agreement.

23. WSA will supply the client with a copy of all required Development Assessment forms. It is the client’s responsibility to check these forms and provide written evidence to WSA that they are in agreeance with the details contained in the forms.

#### Definitions

24. Unless the context otherwise requires, in the agreement:

“**agreement**” means the agreement executed by the parties in connection with the services, including these terms, the agreement details and our proposal

“**consequential losses**” means any consequential or indirect loss or damage, loss of profit or anticipated profit, business interruption losses, production losses, loss of revenue or loss of use

“**document**” includes a written or electronic document

“**fees**” means the amount set out in the agreement details including disbursements

“**hourly rate(s)**” means the relevant hourly rates(s) set out in the agreement details (or otherwise the rate(s) that WSA normally charges for work undertaken by the relevant WSA employee(s) at the time the work is undertaken)

“**information**” includes documents and information provided before the execution of the agreement

“**liability**” means liability for loss or damage, whether arising under, in connection with or for breach of the agreement, or in connection with the performance or nonperformance of the services and any additional services, whether such liability arises in contract, in tort (including negligence), under statute or otherwise, and whether arising in connection with one or more event

“**project**” means the project(s) that the services relate to

“**proposal**” means any proposal (and if more than one, the final proposal) we gave you in relation to the services

“**services**” means the services set out in the agreement details (or otherwise the services we undertake)

“**third party**” means a person who is not a party, but does not include or employees, agents, subcontractors and sub consultants

“**we**”, “**us**” and “**WSA**” means Wilkinson Shaw & Associates as set out in the agreement details

“**you**” and “**the Client**” means the person(s) set out in the agreement details (and if more than one person, “you” means each of those persons severally and all of the jointly) including that person’s permitted successors.