

## ENGINEERING CONSULTING AGREEMENT

**This agreement is enforceable in relation to works performed by  
Beach Wagner Pty Ltd unless agreed otherwise.**

Parties:

**BEACH WAGNER PTY LTD ABN 58 124 995 624** of Level 8, 149 Wickham Tce, Spring Hill, Q 4000 and any of its subsidiaries or associated entities (collectively referred to as “Beach Wagner/we/us/our”)

AND

**Client Company** and any of your successors, assigns, subsidiaries and other associated entities (jointly and severally referred to as “the Client, you, your”) in relation to the provision of engineering consulting services.

### Background

Whereas:

- A. Beach Wagner provide engineering consulting services.
- B. The Client requires engineering consulting services (the Services) as described in the attached Schedule or in any subsequent Schedule for other projects (the Schedule).
- C. Beach Wagner has agreed to provide the Services for the Price and at the Rates and by the dates set out in the Schedule and on the terms provided in this Engineering Consulting Agreement (this Agreement).
- D. This Agreement shall apply to each and every project for the provision of the Services by Beach Wagner to you.

### Operative Clauses

It is now agreed:

#### Provision of Services

1. We shall provide the Services to you as the Client:
  - (a) in consideration for the Price and at the Rates; and
  - (b) as described;  
in the Schedule.

#### Payment

2. Unless otherwise agreed in writing, you shall pay the Price or any part thereof as identified in the Schedule:
  - (a) within seven (7) days of presentation of our invoice either:
    - (i) every fourteen (14) days from the commencement of the Services until they are complete; or
    - (ii) if otherwise stipulated in the Schedule, on completion of the Services or any stage thereof identified in the Schedule.
  - (b) to the bank or authorised deposit taking institution account described on our invoice.

3. All amounts owing on our invoices shall be a debt due and owing after the expiration of fourteen (14) days and there shall be no:
  - (a) set off;
  - (b) deduction or reduction;
  - (c) counterclaim;by you for such payment.
4. Where the Schedule provides for Rates, they may be varied by us on reasonable notice to you without your agreement after a period of six (6) months has elapsed from the commencement of the Services.

#### Reasonable care and skill

5. We shall provide the Services with due and reasonable:
  - a. care; and
  - b. skill.
6. You acknowledge that the Services:
  - a. are of a professional nature and supplied by us as qualified engineers; and
  - b. any equipment produced as a result of provision of them are novel prototypes capable of improvement.
7. We take no responsibility for the manufacture, disassembly, transport and assembly of any plant or equipment produced using the Services unless otherwise specifically agreed.
8. In providing the Services, you acknowledge we rely on any information provided by you to us for the purpose of providing it being:
  - (a) accurate;
  - (b) complete;
  - (c) provided to us before the commencement of the Services or otherwise in a timely manner after we request it from you; and
  - (d) in writing.

#### Time

9. Unless otherwise agreed and recorded specifically in the Schedule, all times for completion of the Services or any stage or part thereof in the Schedule are estimates only and do not constitute a fixed time for the provision of the Services.
10. Any and all:
  - (a) estimates of times for completion of the Services or any stage or part thereof;  
or
  - (b) any fixed times for the provision of the Services;shall be subject to and conditional on:
  - (c) you providing us with any and all documentation, approvals, facilities and information necessary, whether expressly required by us or not, for the performance of the Services in a timely manner either prior to the commencement of the Services or after we request them from you.

- (d) there being no delay in the performance or works, access to any relevant site, delivery of materials, by persons other than us and not in our power or control which prevents or impedes our performance of the Services.
11. Subject to clauses 9 and 10 above, we shall provide the Services within a reasonable time.
12. Any delay under clauses 10(c) and (d) above, shall, after reasonable notice to you, result in adjustments to:
- (a) the times for completion of the Services or any stage or part thereof; and
  - (b) the Price at the rates agreed in the Schedule.

#### Variations

13. Any and all variations to the Schedule or otherwise to this Agreement shall only be effective if they are in writing and are:
- (a) expressed to be a variation of this Agreement;
  - (b) communicated by either party to the other and then accepted in writing.
14. Unless otherwise agreed in writing under Clause 13 above, any variation to the Services as originally provided for in the Scheduled shall result in an adjustment to the Price calculated according to the Rate in the Schedule.

#### Liability and indemnity

15. Liability to you for any defect, error, failure or non-performance of the Services in the Schedule by us shall be confined and limited to:
- (a) us supplying the Services to you again where possible; or otherwise;
  - (b) refund of any payment made by you to us under this Agreement.
- and shall not extend to any indirect, consequential, special, exemplary or punitive damages for loss of profits, delay, damage to persons or property.
16. You acknowledge that:
- (a) the Services provided under this Agreement are not for any personal, domestic or household purpose;
  - (b) it is fair and reasonable for us to rely on the limitation in Clause 15 above;
  - (c) this provision has been reasonably brought to your attention; and
  - (d) no inducement as to the Price, time or any other matter in relation to the Services has been provided to so as to agree to this clause or to Clause 15 above.
17. You indemnify us for any and all claims, actions, damages and losses arising from or in connection with the provision of these Services by you or any other party unless they arise directly from any negligence or other breach of duty by us.

#### Termination and Default Interest

18. We may terminate this Agreement on providing seven (7) days notice in writing to you if you:
- (a) fail to make any payment due under this Agreement;

- (b) do not comply with Clause 8 of this Agreement;
  - (c) otherwise act so as to prevent, impede or obstruct us in providing the Services.
19. We may terminate this Agreement without notice if any part of the provision of the Services appear to us to involve any illegal or unsafe conduct in our reasonable opinion.
20. You may terminate this Agreement upon provision to us of seven (7) days notice in writing to us if:
- (a) such notice identifies clearly a breach of this Agreement and what remedy you seek to rectify that breach;
  - (b) we are provided with a reasonable opportunity to rectify that breach.
21. Upon termination of this Agreement,
- (a) all unpaid invoices; and become immediately due and owing;
  - (b) the invoice which we shall provide to you for the part of the Services provided since our last invoice;
- shall all become immediately due and owing.
22. Any and all payments due by you to us under this Agreement shall be subject to default interest if not paid when due at the rate of twelve per cent per annum (12%) calculated daily and applied pro rata to the period for which such payment is overdue.

#### Intellectual property and Confidentiality

23. Any and all right, title or interest in any intellectual property generated or created by us in the provision of the Services:
- (a) remains with us unless otherwise specifically agreed in writing;
  - (b) shall be the subject of a non-exclusive limited licence to you solely for the purposes of operating, repairing any device or equipment which is the subject of the Services for the projected specified in the Schedule and no other;
  - (c) shall not be shared, distributed, sold or otherwise used by you for any purpose other than in clause 23(b) above without our express written consent.
24. Each party acknowledges that any information provided by the other for the purposes of this Agreement shall be treated as Confidential and, as such, shall not be shared, distributed, sold otherwise dealt with other than as is necessary and required for the purposes of this Agreement.
25. Each party shall take all reasonable steps to ensure that no other person or party shall obtain or access or use the Confidential information and shall, if they become aware of such access or use, immediately notify the other of such access or use with as many details as are known to them.
26. This clause will remain operative after the contract has been performed and notwithstanding its termination.

#### General provisions

27. This Agreement constitutes the entire agreement between the Parties and no other amendments, communications, representations and contracts, or terms, whether

express or implied, and whether written or oral, between the Parties relating to the Services or shall be enforceable by either party unless it constitutes a variation under clauses 9 and 10 above.

28. This Agreement is governed by the laws of the State of Queensland, Australia and the parties hereby submit any dispute arising from or under it or otherwise from the provision of the Services to the exclusive jurisdiction of the courts of that State.
29. Each party shall before any court or arbitration proceedings in relation to any dispute arising from or under this Agreement or otherwise from the provision of the Services other than for urgent interlocutory relief may be commenced:
  - (a) take reasonable steps to resolve any dispute in good faith; but
  - (b) if no such resolution is achieved within ten (10) business days of a party notifying the other of a dispute; then
  - (c) the dispute shall be referred to a mediator agreed between the parties; and
  - (d) the costs of the mediator and any related mediation costs shall be paid for by the parties in equal shares.
31. No right under this Agreement can be waived by delay, non-exercise or otherwise than by notice in writing as if it were a variation under clauses 9 and 10 above and any delay or waiver of any right under this contract by any party on one occasion shall not be taken as a delay or waiver of that right on any other occasion nor as applying to any other right under this Agreement.
32. All communications which are required to be given under this Agreement shall be in writing including by email but not by text or other direct messaging and shall be sent to and from the email or postal address of the Contact or Contracts identified in the Scheduled or to their address last notified to the other party.
33. Communications may be delivered by hand, facsimile or prepaid letter or email and shall be deemed to have been received when delivered (if delivered by hand) or 48 hours after posting (if sent by prepaid letter) or on confirmation of transmission (if sent by facsimile) or on confirmation of transmission (if sent by email).
34. Each person who executes this Agreement warrants that they have all rights, titles, consents and approvals and authority to enter into this Agreement on the part of the party for which they have executed it.
35. This Agreement may be executed in counterparts.
36. This Agreement may be executed in electronic form.
37. This Agreement is comprised by this document, the attached Schedule and any subsequent Schedule for other projects and is executed by the parties as an Agreement.

Executed under section 127 of the Corporations Act 2001.