

Consultant confidentiality and non disclosure deed

AGREEMENT DATED:

BETWEEN: Wingecarribee Shire Council ABN: 49 546 344 354 of
68 Elizabeth Street Moss Vale NSW 2577 (**Disclosing Party**); and
of
(**Receiving Party**).

RECITALS

- A. The Receiving Party has been engaged by the Disclosing Party to provide services to the Disclosing Party (**Services**).
- B. As between the Parties it is acknowledged and agreed that to carry out the Services, it may be necessary for the Disclosing Party to disclose certain information on a confidential basis to the Receiving Party.
- C. The Parties wish to ensure that the confidentiality of the information disclosed is maintained.

AGREEMENT

1. Definitions

(a) In this Agreement:

Confidential Information means Information which is disclosed by the Disclosing Party to the Receiving Party from time to time and which is to be treated as confidential in the manner provided by this Deed, or is otherwise confidential or commercially sensitive, and includes any other Information which is developed using such Confidential Information.

Information means information, communications or data in any form including oral, written, graphic or electro-magnetic form, which deals with matters including the Disclosing Party's products, product specifications, processes, procedures, policies, prices, rates, terms of loan acceptance, discounts, costs, business affairs, future plans, ideas, technical data, customer lists, or other aspects of the Disclosing Party's business.

Party means each entity to this Agreement or any related body corporate (as defined in the Corporations Act 2001 (Cth)) of such entity.

2. Confidentiality

- (a) All Information disclosed by the Disclosing Party to the Receiving Party shall be treated as Confidential Information
- (b) Confidential Information conveyed orally shall not lose its quality of confidentiality if the Disclosing Party fails to reduce it to writing or other tangible form.
- (c) The Disclosing Party agrees to give the Receiving Party access to the Confidential Information for the sole and exclusive purpose of performing the Services, from time to time (**Purpose**).
- (d) In consideration of the Disclosing Party giving the Receiving Party access to the Confidential Information for the Purpose, the Receiving Party undertakes and agrees with the Disclosing Party:

- (i) to keep the Confidential Information confidential and not to disclose it to any person without the prior written consent of the Disclosing Party (which may be withheld or granted at absolute discretion of the Disclosing Party);
 - (ii) that the Confidential Information is and remains at all times the exclusive property of the Disclosing Party and that the Receiving Party will at no time have, and must not assert, any proprietary or intellectual interest or right in the Confidential Information; and
 - (iii) that the Confidential Information will only be used for the Purpose.
- (e) Any Confidential Information disclosed to the Receiving Party by the Disclosing Party prior to entering into of this Agreement shall be considered in the same manner and be subject to the same treatment as the Confidential Information disclosed after entering into this Agreement.

3. Disclosure

Except as may be required by law, the Receiving Party agrees not to disclose to any person:

- (a) the fact that discussions or negotiations are taking place concerning the Services with a client or prospective client of the Disclosing Party; or
- (b) any of the terms, conditions or other facts with respect to the Services which are, or may be, provided to a client or prospective client of the Disclosing Party,

without the prior written consent of the Disclosing Party (which may be withheld or granted at the absolute discretion of the Disclosing Party).

4. Indemnity

The Receiving Party agrees to indemnify and keep indemnified the Disclosing Party from and against any and all loss, costs, expenses or damage which the Disclosing Party may incur as a result of any breach or omission by the Receiving Party of its obligations contained within this Agreement.

5. Severance

If any provision of this Agreement should be held in law to be void, voidable, unenforceable or illegal, such provision shall be deemed modified to the extent required to comply with such law or, if necessary, shall be severed from the rest of this Agreement and the remainder of this Agreement shall have full force and effect.

6. Waiver

- (a) No failure or delay by either Party in exercising any right power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof, or the exercise of any other right power or privilege hereunder.
- (b) No waiver of any breach of this Agreement shall be effective unless in writing and signed by the Party granting such waiver.
- (c) Unless otherwise expressly provided, the extent of any waiver granted shall be restricted to the specific breach concerned and shall not extend to any further occurrence of such breach.

7. Obligations to continue

- (a) The obligations imposed under clauses 2(c), 2(d) and 3 continue until such time as (in relation to individual items of Confidential Information):
 - (i) such Confidential Information is generally available to the public other than as a result of a breach of this Agreement;
 - (ii) such Confidential Information is already in the possession of the Receiving Party without restriction and prior to any disclosures hereunder;

- (iii) such Confidential Information is or has been lawfully disclosed to the Receiving Party by a third party, not employed by, or otherwise affiliated with the Receiving Party, who is free lawfully to disclose the same; or
 - (iv) such Confidential Information is independently developed by the Receiving Party and no Confidential Information has been used directly or indirectly in that development.
- (b) Upon receipt of written notice from the Disclosing Party the Receiving Party must forthwith return to the Disclosing Party all documents and other materials in its power, possession, custody or control which contain, or which have been produced with reference to, (including any copies of any Confidential Information made by the Receiving Party at any time) any Confidential Information.
- (c) The Receiving Party shall have no right or entitlement to make any use whatsoever of the Confidential Information during the currency, or after the termination of the consultancy agreement referred to in Recital A of this Agreement.

8. General terms

- (a) This Agreement does not grant or confer rights by license or otherwise in any Confidential Information disclosed to the Receiving Party.
- (b) This Agreement constitutes the complete agreement of the Parties relating to the subject matter contained herein.
- (c) All prior representations, agreements and statements, whether oral, written or in an electronic form, are hereby excluded.
- (d) No modifications to this Agreement shall be effective unless expressed in writing and signed by the Parties.
- (e) This Agreement takes effect, is governed by, and shall be construed in accordance with the laws from time to time in force in the state of New South Wales. The Parties submit to the non-exclusive jurisdiction of the court of New South Wales.
- (f) This Agreement may be executed in any number of counterparts all of which, when taken together, will constitute one and the same instrument.



EXECUTED as an agreement.

Signed for and on behalf of)
Wingecarribee Shire Council ABN: 49 546 344 354)
by its authorised representative)
in the presence of:)

Signature of witness

Signature of authorised representative

Name of witness (please print)

Name of authorised representative
(please print)

Signed for and on behalf of)
the)
in the presence of:)

Signature of witness

Signature of *[insert name of Receiving Party]*

Name of witness (please print)

When complete a master copy is to be stored in ECM/Dataworks under 601/6 CONSULTANTS & CONTRACTORS CONFIDENTIALITY AGREEMENTS