

## TecEco Pty. Ltd.

### Agreement to Undertake Testing with Option to Licence

<b>PROVIDER OF CONFIDENTIAL INFORMATION</b>	TECECO PTY LTD (ACN 090 097 591) of 497 Main Road, Glenorchy, Tasmania 7010 ("TecEco")
<b>LICENSEE OF CONFIDENTIAL INFORMATION</b>	???? ???? of ????? ????? ????? ????? ????? ????? ("Licensee")
<b>RECITALS</b>	<p>A. TecEco is the owner of Confidential Information</p> <p>B. The Licensee wishes to:</p> <ul style="list-style-type: none"><li>a. Determine the applicability of TecEco's Confidential Information to its business.</li><li>b. Secure an option to licence TecEco's Confidential Information.</li></ul> <p>C. TecEco has agreed under certain conditions to:</p> <ul style="list-style-type: none"><li>a. Provide the Licensee with its Confidential information to allow it to undertake a testing program.</li><li>b. Develop specific formulations and other technology based on its confidential information suitable for the Licensees Products</li><li>c. At the option of the licensee grant a license to it allowing it to use TecEco's confidential information.</li></ul>
<b>DATE OF AGREEMENT</b>	The date that the last Party signs this Agreement. (see signing page)
<b>TERM OF AGREEMENT</b>	Subject to clause 12, this Agreement will last until cancelled by either party.

TO BE SIGNED BY THE PARTIES TO THIS AGREEMENT

The Parties agree to be bound by the terms and conditions of this Agreement.

<p><b>Signed for ?????:</b></p>   <p>Print Name: ????? ????? ????? ?????</p> <p>Witness: .....</p> <p>Print Name:</p>	<p><b>Signed for TecEco Pty. Ltd.:</b></p>   <p>Print Name: A John W Harrison</p> <p>Witness: .....</p> <p>Print Name:</p>
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TO BE SIGNED BY SUB LICENSEES AND OTHERS TO WHOM THE CONFIDENTIAL INFORMATION IS DISCLOSED BY EITHER PARY

I/we agree by my/our signature(s) below to be bound by the terms of this agreement.

NAME	DESIGNATION	OTHER DETAIL	ADDRESS	SIGNATURE

**NOW THE PARTIES AGREE** as follows:

**1. Interpretation**

1.1 Definitions:

1.1.1 **Associate** means:

1.1.1 Any person including but not limited to a director, employee or family member who as a result of close contact or association with a party becomes familiar with the confidential information.

1.1.2 If a Party is a company, a related body corporate as defined in the Corporations Act 2001 or any subsequent replacement act.

- 1.1.3 A company in which a member or combination of members of either Party either directly or indirectly own a majority of shares and a related body corporate to that company, or
  - 1.1.4 A partnership in which a member or combination of members of either Party directly or indirectly hold a majority interest, or
  - 1.1.5 A trust in which in which a member or combination of members of either Party either directly or indirectly have a majority interest
- 1.1.2 **Calendar Quarter** means any of the following time periods:
- 1.2.1 1<sup>st</sup> January to 31<sup>st</sup> March, both dates inclusive;
  - 1.2.2 1<sup>st</sup> April to 30<sup>th</sup> June, both dates inclusive;
  - 1.2.3 1<sup>st</sup> July to 30<sup>th</sup> September, both dates inclusive;
  - 1.2.4 1<sup>st</sup> October to 31<sup>st</sup> December, both dates inclusive.
- 1.1.3 **Commencement Date** means the date defined in clause 2.3 of this Agreement.
- 1.1.4 **Entity** means any person, partnership, limited partnership, company, trust, joint venture, government or institution.
- 1.1.5 **Execution Date** means the date of signing of this agreement.
- 1.1.6 **GST** means a goods and services tax as defined in A New Tax System (Goods and Services) Act 1999 or any replacement act.
- 1.1.7 **Confidential Information** means:
- 1.1.7.1 Information and know how disclosed (whether orally, in writing or in any other form) by TecEco to the licensee including
    - 1.2.1.1 All copies, notes and records of the Confidential Information; and
    - 1.2.1.2 All related information;generated by the Licensee based on or arising out of any such disclosure.
  - 1.1.7.2 For the purpose of this clause the confidential information of TecEco includes without limitation the information referred to in Schedule 1 as belonging to TecEco.
- 1.1.8 **Party or Parties** means the providers and/or recipients of confidential information who have signed this agreement

- 1.1.8 **Manufacture** includes formulation, mixing, construction, assemblage, production or other process or preparation for commercial use or exploitation.
- 1.1.9 **Net Purchase Value** means the net purchase price exclusive of GST and any other like or replacement tax multiplied by the number of units purchased at that price.
- 1.1.10 **Net Sales Value** means the net sales price exclusive of GST and any other like or replacement tax multiplied by the number of units purchased at that price.
- 1.1.11 **Outside Party** means any entity other than TecEco, the Licensee, an Associate or Sub-Licensee.
- 1.1.12 **Reporting Period** means the time periods as set out in Schedule 6.
- 1.1.13 **Processes** includes formulations, methodologies, techniques, technologies, and devices.
- 1.1.14 **Product** means the products and/or processes, set forth in Schedule 2 or Schedule 3 which incorporate the use of the Confidential Information provided by TecEco.
- 1.1.14 **Territory** means the geographical locations set forth in Schedule 4.
- 1.1.15 **Research and Development Program** means the program set forth in Schedule 7.
- 1.2 A reference to persons includes any entity whether incorporated or otherwise; words that are singular include the plural and vice versa; words that are gender specific include all genders.
- 1.3 A reference in this Agreement to a statute or a section of a statute includes all amendments to that statute or section passed in substitution for the statute or section referred to and incorporating any of its provisions.
- 1.4 Except for the purpose of identification headings and underlining have been inserted in this Agreement for the purpose of guidance only and are not part of this Agreement.

## **2. Condition Precedent to Commencement and Term**

- 2.1 It is a Condition Precedent to the commencement of this Agreement that:
  - 2.1.1 The Licensee agrees to test the applicability of TecEco's Confidential Information to its Products as defined in Schedule 2 and or Schedule 3 in accordance with a testing program as set out in Schedule 8.
  - 2.1.2 The Licensee, having satisfied itself as a result of the Testing Program that the Confidential Information specific formulations and other technology provided by TecEco is suitable, gives notice that it

wishes to license the Confidential Information for use in one or more Products.

- 2.2 This agreement takes effect immediately upon the Execution Date except clause 3,4,5,6 and 7 which take effect on the Commencement Date.
- 2.3 For the purposes of this agreement the Commencement Date is the date on which the Licensee gives the notice referred to in 2.1.2 above to TecEco.
- 2.4 This Agreement continues, subject to rights of termination provided for in clause 12, for the Term stipulated on the front page of this agreement.
- 2.5 TecEco will furnish the Confidential Information to the Licensee for the purposes of testing or licensed use in the manner and at the times set forth in Schedule 5.

### **3. Licence**

- 3.1 TecEco grants to the Licensee ???? license to use its Confidential Information specified in Schedule 1 to formulate, make, have made, use, vend and market the Products specified in Schedule 2 within the Territory specified in Schedule 4 for ???? from the commencement date.
- 3.2 TecEco grants to the Licensee ???? license to use its Confidential Information specified in Schedule 1 to formulate, make, have made, use, vend and market the Products specified in Schedule 3 within the Territory specified in Schedule 4 for from the commencement date and thereafter on an annual basis at its discretion.
- 3.3 The Licensee will not use the Confidential Information provided by TecEco for any purpose other than that permitted by TecEco.

### **4. Sub-Licences**

- 4.1 At its discretion TecEco grants to the Licensee the right to grant Sub-Licences to use the Confidential Information to formulate, make, have made, use, vend and market the Product in Schedule 2 and/or Schedule 3 within the Territory for the Term of this Agreement.
- 4.2 Any Sub-Licence granted by the Licensee to a third party must be made subject to the same terms and conditions as contained within this Agreement except that:
  - 4.2.1 The Sub-Licensee must not have the right to grant further Sub-Licences;
  - 4.2.2 Sub-Licensees may be required to make minimum payments pursuant to clause 5.1.1 below to the Licencensee or TecEco at the option of TecEco
  - 4.2.3 The sub-Licence must purchase proprietary cements, magnesia or other components thereof for the manufacture of the product only from from the Licensee or TecEco at the option of TecEco.
- 4.3 A proposal for granting a Sub-Licensees must be approved by TecEco

## 5. Licence and Other Fees

- 5.1 During the Term of this Agreement the Licensee
- 5.1.1 Must make Minimum Payments to TecEco as set out in Schedule 7.
  - 5.1.2 May make further payments to TecEco for the development of products as from time to time agreed the first of which shall be \$ ????.
- 5.2 Prior to or on the commencement date the parties to this agreement must for each product agree whether during the Term of this Agreement the Licensee either:
- 5.2.1 Purchases TecEco proprietary cements, magnesia or other components thereof for the manufacture of the product from TecEco or an Associate; or
  - 5.2.2 Pays to TecEco:
    - 5.2.2.1 ??? per cent (???) of the Net Purchase Value (excluding GST) of magnesia purchased by the Licensee for the Product other than from TecEco or an Associate; or
    - 5.2.2.2 ??? per cent (???) of the Net Purchase Value (excluding GST) of other cement components introduced by TecEco and purchased by the Licensee for the Product other than from TecEco or an Associate
    - 5.2.2.2 ??? per cent (???) of the Net Sales Value (excluding GST) of the Product.
  - 5.2.3 If the value of the components pursuant to 5.2.2.1 to 5.2.2.2 above is not easily calculated then a fair approximation of the value shall be determined by TecEco at its discretion; and
- 5.3 The method of payment pursuant to 5.2 above once agreed cannot be changed unless agreed by both parties
- 5.4 Amounts payable to TecEco are to have the appropriate amount of GST or any replacement or similar tax added to the GST exclusive amount and are to be paid within thirty (30) days of the beginning of any Reporting Period in a form acceptable to TecEco
- 5.5 The Licensee must notify TecEco within thirty (30) days of the beginning of each Reporting Period as to why the money is being paid and how the amount has been calculated. If required by TecEco, the Licensee must have their auditor certify such payments and calculations as correct. If the Licensee does not have an auditor, or at TecEco's bidding, the certification may be performed by a person approved by TecEco.

## 6. Sales to Sub-Licensees

- 6.1 The Licensee must keep the same records for each of its Sub-Licensees as are required for its own licence pursuant to clause 7 below.

## **7. Maintenance and Inspection of Records**

- 7.1 The Licensee must maintain, in sufficient detail for a period of three (3) years after the end of the relevant reporting period and in a manner approved by TecEco, separate and accurate records and accounts to enable the information set out in clause 5 to be easily determined.
- 7.2 The Licensee must permit an accountant or auditor appointed by TecEco from time to time during ordinary business hours to inspect and verify any or all records required to be maintained by the Licensee. The Licensee must give all assistance necessary to such accountant or auditor to carry out such inspection and verification and permit such accountant or auditor to take copies of any such records.

## **8. Improvements**

- 8.1 If at any time during the term of this Agreement, should the Licensee discover or come into the possession of any improvements or further inventions relating to the Confidential Information provided by TecEco or in connection with the design, manufacture, use and sale of products using the same, the party shall furnish TecEco information on such improvements or further inventions without any delay and free of charge.
- 8.2 The intellectual property (if any) relating to improvements shall belong to TecEco.
- 8.3 The Licensee shall be entitled to use such improvements on the same terms and conditions as contained within this agreement.

## **9. Exclusivity**

- 9.1 In the case of an exclusive licence TecEco must not during the Term of licence willingly permit any other person except itself or an Associate, the Licensee and any Sub-Licensees to formulate, manufacture, have made, use and/or market the Product in the Territory, except as provided for in 9.2.
- 9.2 TecEco may contract with an outside party to formulate, manufacture, have made or use the Product or a constituent thereof for the purpose of:
  - 9.3.1 Supply of the Product or constituent thereof to TecEco, an Associate, the Licensee or a Sub-Licensee; or
  - 9.3.1 Compliance with the Testing Program referred to in clause 8.
- 9.3 Any person or entity which has been given permission to use the Confidential Information provided by TecEco prior to the Execution Date of this agreement may continue to do so in accordance with the permission given.

## **10. Infringement**

- 10.1 If the Licensee learns of:

10.1.1 Any infringement or threatened infringement of the Confidential Information provided by TecEco licenced under this agreement; or

10.1.2 Any common law passing-off which may cause deception or confusion to the public by a third party;

the Licensee must immediately notify TecEco in writing giving particulars of the infringement.

10.2 TecEco may then seek the opinion of Senior Counsel practicing in intellectual property or Confidential Information as to the possible success of any actions.

10.3 TecEco may, at its discretion, institute and prosecute an action against infringement.

10.4 The proceeds from any judgment or settlement made by TecEco in any action brought by it under clause 10 must first be used to pay TecEco's costs and expenses and then to reimburse the Licensee or its Sub-Licensees for all expenses incurred by it or them in assisting TecEco in prosecuting the action.

10.5 The Licensee must execute all documents and do all things reasonably necessary to aid and cooperate in the prosecution of any such actions instigated under clause 10 by TecEco.

## **11 TecEco's Warranties**

11 TecEco states that, to the best of its knowledge and belief, the use of any or all of the Confidential Information provided by it according to the Terms and Conditions of this Agreement will not result in the infringement of proprietary rights of third parties.

## **12. Termination**

12.1 Termination of this agreement can be made by either party by written notice to the other party if the other party commits any breach of any provision of this Agreement and has failed to remedy such breach within thirty (30) days of receipt of written notice requiring it to do so.

12.2 TecEco may also by notice in writing terminate this Agreement in any of the following circumstances:

12.2.1 If the Licensee becomes insolvent because:

12.2.1.1 the Licensee ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course of business, or announces its intention to do so;

12.2.1.2 a receiver, receiver and manager, administrator, liquidator or similar officer is appointed to the Licensee or any of its assets;

- 12.2.1.3 the Licensee enters into, or resolves to enter into, a scheme or arrangement, compromise or composition with any class of creditors;
  - 12.2.1.4 a resolution is passed or an application to a court is taken for the winding up, dissolution, official management or administration of the Licensee;
  - 12.2.1.1 anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;
  - 12.2.2 In the event that the Condition Precedent set forth in clause 2.1 is not met within ??? of the signing of this agreement;
  - 12.2.3 The making by the Licensee of an assignment or attempted assignment for the benefit of its creditors;
  - 12.2.4 In the event that the Licensee fails to make, sell, lease, hire or distribute the Product for a period of 12 months after the Commencement Date.
- 12.3 In the event the Licensee fails to pay TecEco any amounts payable under this Agreement TecEco may terminate this Agreement by notice in writing or, in the case where the licence is an exclusive licence, may optionally convert the licence to one with non-exclusive rights. Should a licence be so converted the Licensee will continue to be bound by each and every provision of this Agreement and must continue to pay the licence fee.
- 12.4 Any termination of this Agreement pursuant to clause 12.1, 12.2 or 12.3 is without prejudice to the rights of the party terminating to seek and obtain damages for any breach of this Agreement by the other party.

## **13 Effect of Termination**

- 13.1 Upon early termination of this Agreement under clause 12:
- 13.1.1 The Licensee must deliver to TecEco all documents and other materials (including all copies) in its possession relating to the Confidential Information provided by TecEco and do such further things as may be reasonably required by TecEco to protect its right, title and interest in the Confidential Information;
  - 13.1.2 All licence fees previously paid remain the property of TecEco and the Licensee can make no claim in respect of them. The Licensee must further pay to TecEco any licence fee accrued but unpaid as at the date of the termination; and
  - 13.1.3 The Licensee agrees to no longer use the confidential information of TecEco to make product incorporating the confidential information of TecEco or for any other purpose.

- 13.1.4 The Licensee agrees to no longer sell product using the confidential information of TecEco however it is permitted to sell Product that has already been manufactured as at the date of termination.
- 13.2 Clauses 14 and 15 will survive the termination of this Agreement.

## **14 Confidentiality Obligations**

- 14.1 The Licensee must:
  - 14.1.1 Keep confidential all Confidential Information and technical data disclosed to it by TecEco
  - 14.1.2 Not use any of TecEco's disclosures Confidential Information or other information or technical data, except for the purposes of the licences granted here in and on the Terms of this Agreement.
- 14.2 Notwithstanding the provisions of clause 14.1 the Licensee may disclose information if and to the extent that:
  - 14.2.1 Such disclosure is forced by laws, regulations or orders;
  - 14.2.2 The information is generally available in the public domain except where that is a result of a disclosure in breach of this Agreement.
  - 14.2.3 it is necessary for employees to know the information for the use of the licences granted in this Agreement.

## **15. Licensees Insurance and Indemnification of TecEco**

- 15.1 The Licensee must promptly advise TecEco in writing of any actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, charges and expenses which may be brought or claimed against the Licensee or TecEco or in respect of which the Licensee or TecEco may become liable arising out of the manufacture, use, promotion, sale, supply or other use of the Product by the Licensee, its servants or agents.
- 15.2 The Licensee indemnifies TecEco against any actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs (including solicitor and client costs), charges and expenses arising out of the manufacture, use, promotion, sale, supply or any other use of the Confidential Information provided by TecEco by the Licensee, its servants, agents or customers. The defense of any litigation to which this clause applies is to be under the control of the Licensee, its solicitors and counsel, and all legal costs and expenses of any such litigation is borne by the Licensee. TecEco, its solicitors and counsel, may participate in such litigation at the expense of the Licensee.
- 15.3 The Licensee shall carry adequate insurance covering liabilities that may arise through the manufacture, use, promotion, sale, supply or any other use of the Confidential Information provided by TecEco by the Licensee, its servants, agents or customers.

## 16. General

- 16.1 **Waiver.** Any waiver in regard to the performance of this Agreement operates only if in writing and applies only to the specified instance, and does not affect the existence and continued applicability of the Terms of this agreement thereafter.
- 16.2 **Entire Agreement.** This Agreement embodies all the Terms binding between the parties and replaces all previous representations or proposals other than those included as not to be superseded in Schedule 9.
- 16.3 **Currency.** All amounts payable under this agreement are in Australian dollars.
- 16.4 **Assignment.**
- 16.4.1 The Licensee must not assign all or any of its rights in this Agreement without the prior written consent of TecEco, which consent TecEco may grant, or not, in its absolute discretion.
- 16.4.2 TecEco may at its discretion assign all or any of its rights under this Agreement.
- 16.5 **Applicable law.** This Agreement must be read and construed according to the laws of the State of Tasmania in Australia and the parties submit to the jurisdiction of that State.
- 16.6 **Amendments.** This Agreement may not be varied except in writing signed by the parties.
- 16.7 **Severability.** If any provision of this Agreement is held by a court to be unlawful, invalid, unenforceable, or in conflict with any rule of law, statute, ordinance or regulation, it must be severed so that the validity and enforceability of the remaining provisions are not affected.
- 16.8 **Notices.**
- 16.8.1 All notices must be in writing and be given by any one of the following means:
- 16.8.1.1 By delivering it to the address of the party on a business day during normal business hours;
- 16.8.1.2 By sending it to the address of the party by pre-paid airmail post or, if airmail post is not available, by ordinary post; or
- 16.8.1.3 By sending it by facsimile transmission to the facsimile number of the party and on the next business day giving it by either of the means set in paragraph 16.8.1 or 16.8.2 above.
- 16.8.2 A notice is deemed to be given and received if given in accordance with:
- 16.8.2.1 Clause 16.8.1.1 - on the next business day after the day of delivery in the place of delivery;



# **SCHEDULE 1**

## **The Confidential Information provided by TecEco**

Any information, documents, plans, intellectual property, drawings, designs formulations and any other material in any form whatsoever which relates directly or indirectly to the activities, operations or research, ideas, inventions, innovations or projects being conducted by TecEco or an Associate and includes information relating to binder systems, kilns, energy transfer methods and any other subject matter specifically listed below. The confidential information of TecEco also includes information or material that has already been disclosed prior to the execution of this Agreement and information disclosed by an Associate of TecEco.

1. Technical information and data relating to the TecEco confidential information.
2. Results of and information regarding feasibility studies or evaluation of the TecEco confidential information.
3. Patent applications and patents in respect of the TecEco confidential information.
4. Business and strategic plans and advice relating to the commercialisation of the TecEco confidential information.
5. Information relating to the formulation of binder systems Including but not limited to a hydraulic cement composition comprising:
  - One or more hydraulic cements other than magnesium oxide;
  - a magnesium oxide component; and
  - optionally, one or more pozzolan components,
6. Information relating to the formulation of formulation of low fines concretes, geopolymers and high calcium aluminate blends with or without reactive magnesia
7. Information relating to the formulation and application of concrete, concrete renders, mortars and sprayable concretes.
8. Information relating to pre-stressing, post-stressing, partially pre-stressing, post-stressing or reinforcing, including but not limited to:
  - The use of metal, plastic or other material tensile tendons characterized by being substantially wider than thick.
9. Information regarding kiln technologies including but not limited to a kiln design that:

- 9.1 Grinds and calcines at the same time,
  - 9.2 Operates at a wide range of temperatures,
  - 9.3 Can be powered by variable non fossil fuel and waste energy,
  - 9.4 Runs more efficiency,
  - 9.5 Is theoretically capable of producing much more reactive product (In the case of magnesium oxide - even with ores of high Fe content,)
  - 9.6 Is theoretically capable of producing much more consistent properties in product, and
  - 9.7 Captures CO<sub>2</sub> for bottling and sale to the oil industry (geological sequestration).
8. Information about concrete and low fines or porous concrete storage, mixing, delivery and placement methods, machinery and systems.
  9. Information about formulation and recording software for concrete
  10. Information about stone wall stacking software.
  11. Information about the Gaia Engineering process

## **SCHEDULE 2 PRODUCT(S) AND/OR PROCESSES.**

???? using the licensed confidential information.

## **SCHEDULE 3 PRODUCT(S) AND/OR PROCESSES.**

using the licensed confidential information.

## **SCHEDULE 4**

### The Territory

The Territory to which this Agreement relates to is ????.

## **SCHEDULE 5**

### **Manner in which the Confidential Information provided by TecEco is to be supplied**

The Confidential Information provided by TecEco will be supplied by personal communication during site visits, email, telephone, written correspondence and in any other manner deemed appropriate by the parties.

## **SCHEDULE 6**

### **Reporting Period**

The Reporting Period for the purposes of this agreement shall be quarterly starting from the first Calendar Quarter beginning after the Commencement date.

## **SCHEDULE 7**

### **Minimum Payments for Research and Development**

\$ ???? exclusive of GST per Reporting Period for the first year,

\$ ???? exclusive of GST per Reporting Period for the second year,

\$ ???? exclusive of GST per Reporting Period for the third year,

\$ ???? exclusive of GST per Reporting Period for the fourth year,

\$.???? exclusive of GST per Reporting Period for the fifth year,

\$ ???? exclusive of GST per Reporting Period for each subsequent year together with increases in accordance with the increase in the Australian CPI from the beginning of the sixth year to the Australian CPI at the beginning of the year to which the Reporting Period relates plus ???? per cent (???? %)

## **SCHEDULE 8**

### **The Testing Program**

A testing program shall be as agreed to by the parties, and if attached is marked as Schedule 7.

The testing program may be changed from time to time as agreed to between the parties in writing.

It is expressly agreed that the Licensee must pay all costs associated with the testing.

## **SCHEDULE 9**

### **Contracts, Deeds or Agreements not to be Superseded by this Agreement**

Previous Confidentiality Agreements signed by both TecEco and the Licensee.