

CONSULTANCY AGREEMENT

GF-52

To Purchase Order No.: <PO Number>

<Project Name>

<Supplier Name>

There is to be NO contract between the parties until such time that the *Subcontract Agreement* has been signed and executed OR the Purchase Order has been issued.

This note is to be removed by the Purchasing Manager ONLY on issue of the final *Subcontract Agreement* when accompanied by an approved Purchase Order.

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BACKGROUND

- A. CATCON has entered into the Head Contract with the Principal for the execution and completion of the Head Contract Works.
- B. CATCON has agreed to engage the Consultant to execute and complete the works as detailed under the Consultancy Agreement which form part of the Head Contract Works subject to and upon the terms conditions and stipulations contained in this Consultancy Agreement.
- C. Upon request CATCON may make available to the Consultant a copy of the Head Contract and all documents referred to in the Head Contract pertaining to the Supply Agreement Works except for prices included in the Head Contract.
- D. The Consultant has inspected a copy of the Head Contract and all documents referred to in the Head Contract relevant to the Consultancy Works and acknowledges that it has a sound understanding of the Head Contract, the Head Contract Works, and the Consultancy Agreement Works.
- E. CATCON has made available the Site for inspection by the Consultant to assess the Site and its surroundings and the Consultant has satisfied itself of the physical conditions upon and below the surface of the Site, the climatic conditions in the locality of the Site, the nature of access to the Site, the nature, extent, amount and location of the Consultancy Works and the nature quality extent and amount of labour, plant, materials, equipment, machinery, vehicles, tools, facilities and services required and all other matters which can in any way affect the execution of the Consultancy Agreement Works.
- F. The Consultant has made its own enquiries in regard to the matters referred to in the preceding paragraph and acknowledges that it does not rely on any information given or representation made by CATCON its employees or subcontractors in relation to the Consultancy Agreement Works save to the extent that same are expressly contained in the Consultancy Agreement Documents.

OPERATIVE PROVISIONS**1. General Conditions of Contract**

- 1.1 The General conditions of contract for engagement of consultants as set out in the AS 4122-2010 as amended by this Consultancy Agreement are applicable to this Consultancy Agreement.
- 1.2 By executing this Consultancy Agreement the Consultant acknowledges that it has in its possession a copy of the AS4122-2010 and has read the conditions contained in the AS4122-2010 and agrees to these conditions as amended by this Consultancy Agreement.
- 1.3 The Annexures enclosed to the AS 4122-2010 are fully replaced by the Annexures enclosed to this Consultancy Agreement.

2. Special Conditions

The General conditions of contract for engagement of consultants as set out in the AS4122-2010 are subject to the deletions, amendments and additions as set out in the Special Conditions of Annexure B.

Annexure A Contract Particulars

DATED: _____ day of _____ 20 _____

Parties

Referred to as Item No. 1 of Part A in the AS4122-2010:

CATCON: Name: Civil & Allied Technical Construction Pty Ltd
 Representative: _____
 Address: 598-600 South Road, ANGLE PARK SA 5010
 ABN: 78 077 924 120
 Telephone: (08) 8347 1888
 Facsimile: (08) 8347 1877
 Email: _____

Referred to as Item No. 1 of Part A in the AS4122-2010:

SUPPLIER: Name: _____
 Representative: _____
 Address: _____
 ABN: _____
 Telephone: _____
 Facsimile: _____
 Email: _____

Site location/delivery address: 598-600 South Road, ANGLE PARK SA 5010

The item references 3 to 31 in the Australian Standard General Conditions of Contract for Consultants (AS4122-2010) are subject to the following clarifications:

3. The contract documents are (in order of precedence):

- (a) The Purchase Order face sheet
- (b) *General Terms and Conditions* (Form GF-08)
- (c) This Consultancy Agreement
- (d) The Annexures to this Consultancy Agreement
- (e) All Head Contract documents in so far as they relate or affect directly or indirectly the Consultancy Works (as enclosed to this agreement)
- (f) CATCON Project Management Plan and Project Risk Register

4. The scope of work as described in the following document: Annexure C
5. The purpose(s) for which the services supplied under this Consultancy Agreement will be suitable is/are:

- Provide an adequate design that meets the design specifications.

6. The Client's representative is: Refer to Item 1 above
7. The Consultant's representative is: Refer to Item 2 above
8. Basis for Payment: Lump Sum contract value of \$<XXXXX> plus GST in accordance with Annexure A and D

9. **Disbursements for which the Consultant may claim payment:** In accordance with Annexure D
10. **Time to claim payment is no later than:** As detailed in the *General Terms and Conditions* (Form GF-08) Clause 8.
11. **The time for payment is no later than:** As detailed in the *General Terms and Conditions* (Form GF-08) Clause 8.
12. **The rate of interest for overdue payment is:** 0%
13. **The consultant must complete the services by the time(s) stated in Annexure C**
14. **Other causes of delay for which the consultant may notify an extension of time:** No other causes
15. **The approvals to be obtained by the Consultant are:** As detailed in Annexure C
16. **The key personnel are:**
- <Position>: <Name>
 - <Position>: <Name>
 - <Position>: <Name>
 - <Position>: <Name>
 - <Position>: <Name>
17. **Existing conflicts of interest are:** None
18. **Copyright and other intellectual property Rights:** Alternative 1
19. **List excluded Intellectual Property Rights:** None (not applicable with Alternative 1)
20. **The additional amount payable to the consultant for granting of Intellectual Property Rights in the client's name:** \$0
(not applicable with Alternative 1)
21. **Clause 22 (Moral Rights):** Does not apply
22. **Confidential documents:** Any documents provided under this Consultancy Agreement
23. **Maximum period for which the client may suspend the services:** 6 months
24. **The Consultant's liability is limited to:** \$20 million
25. **The amount of Public Liability Insurance is:** \$20 million per claim event
26. **The amount of Professional Indemnity Insurance is:** \$10 million
27. **The Professional Indemnity Insurance must be maintained for:** 6 years
28. **The Client must affect the following insurances:** Nil
29. **The address for the service of notices is:** As detailed under Items 1 and 2 above (email address excluded)
30. **The law governing this contract is:** South Australia
31. **Has this AS2122-2010 contract been amended from its original form:** Yes

Annexure B Special Conditions

This Consultancy Agreement is subject to the following DELETIONS, AMENDMENTS AND ADDITIONS to the General Conditions of the AS4122-2010

Clause 1: Add the following definition description:

Project Principle means the entity that has contracted CATCON to undertake construction works to the project.

Clause 4: Add the following new paragraph after the first paragraph:

The Consultant shall comply with the provisions of all Statutes, By-Laws and regulations and safety regulations and Project Management Plan for the time being in force and affecting or in any way relating to the Consultant works or the Head Contract works as a whole and will keep CATCON indemnified against all fines, penalties, losses or damage incurred by reason of and/or any claim made as a result of any breach of any such Statutes, By-Laws or regulations rules.

Clause 5: Add the following sub clause 5.5:

The Consultant shall carry out the subcontract works in a proper and work person like manner to the reasonable satisfaction of CATCON and in accordance with:

- (i) These TERMS and CONDITIONS.
- (ii) The provisions of the Head Contract (including all plans, drawings and specifications relating to the head Contract Works) made between CATCON and the Project Principal (a copy of which is available for inspection by the Consultant).
- (iii) The head Contract Construction Schedule (a copy of which is available for inspection by the Consultant) and amendments thereto.

Bills of Quantities are not guaranteed correct and are provided as a guide only and do not form part of this Contract.

All work is 'supply and fix' unless otherwise stated.

Unless otherwise stated, the Consultant sum is not subject to any adjustment on account of any rise or fall in labour rates (including any extra amounts payable on account of conditions in which any work is carried out, and any change in the cost of statutory and/or other overheads), cost of materials or plant rates during the period of the subcontract.

Commencement of work or delivery of materials on site constitutes an acceptance by the Consultant of these Terms and Conditions.

Clause 9: Add the following sub clause 9.5:

The Consultant will not be entitled to claim payment for any variation not directed in writing by CATCON.

Clause 10: Add the following sub clause 10.11:

The Consultant shall be responsible for the payment of all wages and costs associated with this contract in accordance with the relevant awards and/or agreements prevailing which shall include any additional cost as a result of a special site agreement zone and/or disability allowances etc., in force at the date of this Work Order or subsequently prevailing.

The Consultant shall be responsible to ensure that all its employees engaged in or on the works are paid on time and in accordance with site agreements, statutory requirements, workplace agreement and/or relevant awards. Should the Consultant fail to discharge this responsibility and a dispute occurs involving CATCON in any delay, loss or expense then the Consultant will be responsible for the cost occasioned by such delay, loss or expense and such cost will be recoverable from the Consultant and may be deducted from any monies due to him under this subcontract.

Clause 12: Add the following sub clause 12.4:

In relation to awards and working hours the Consultant; the Consultant shall not carry out any part of the subcontract works outside of normal working hours without the prior consent of CATCON or unless CATCON considers it necessary in order to maintain the construction schedule and requests the Consultant to do so. The cost of all overtime shall be borne by the Consultant except where CATCON expressly agrees to pay for the same.

Clause 13: Add the following sub clause 13.4:

CATCON shall not be liable upon any claim by the Consultant whether arising under or out of or in the course of the Contract or for breach, or in tort, quasi-contract or for breach of a statutory duty or for statutory liability, unless the claim, together with full particulars thereof, is lodged in writing with CATCON not later than thirty days after the date of the occurrence of the events or circumstances on which the claim is based.

This clause shall not however apply to claims for extensions of time for completion or to claims for payment to the Consultant of an amount or amounts forming part of the Contract Sum.

Clause 26.1: At the end of sub clause 26.1 add the following new paragraph:

CATCON may terminate this Contract immediately on written notice to the Consultant:

- (i) If the Consultant become insolvent or subject to one of the forms of external administration referred to in Chapter 5 of the Corporations Act 2001 (Cth) or an order has been made for the purpose of placing the Consultant under external administration or being an individual, becomes bankrupt, or enters into a scheme of arrangement with creditors; or
- (ii) If The Head Contract is terminated for any reason.

Clause 29: Add the following sub clause 29.3:

The total limit of liability set out in this clause shall exclude any cost and liability arising as a result of Consultant's fraud, illegal or unlawful acts or wilful breach.

Clause 37: Add the following new clause 37 'Occupational Health and Safety Provisions'

The following provisions apply to all Consultants working for or on behalf of CATCON:

- a) General
 - (i) All Consultants will be required to comply with The Head Contract Project Management Plan whilst carrying our work for or on behalf of CATCON.
 - (ii) Consultant herewith indemnifies CATCON against any additional costs incurred as a result of the adoption of unsafe work practices and/or use a unsafe plant and equipment.
- b) Safety Equipment
 - (i) All Consultants must be aware of specific areas of working operations where safety equipment and/or personal protective clothing must be worn.
 - (ii) Consultants will be expected to provide their own safety PPE including helmets, goggles, earmuffs, safety boots and reflective vests etc., and to wear, or use, such items when directed to do so by CATCON or as required by The Project Principle's Safety Plan.
 - (iii) Protective clothing is to include Long Sleeve Shirts and Trousers or below the knee pants on all Sites.
 - (iv) Where the Consultant requires the use of an operator for Plant/Equipment the Consultant shall ensure that the operator is:
 - Is experienced, competent and fit to operate the Plant/Equipment
 - Holds appropriate licenses and certificates
 - Complies with legislation, project specific industrial relations requirements, safety and environmental requirements
 - Complies with relevant Australian Standards.
 - Complies with CATCON's directions; and
 - Is paid in accordance with the payment conditions, and receives the working conditions, applicable to the Project site;
 - Carries out the documented inspections of the Plant/Equipment prior to each shift.

The Consultant is to submit documentary evidence of compliance of these conditions prior to commencement of the contact. The Consultant is to submit copies of Daily Inspection Forms.
- c) Systems of Work
 - (i) All work must be carried out in accordance with the Occupational Health, Safety and Welfare Act 1991, Construction Safety Regulations, specified Australian Standards relating to Occupational Health and Safety and CATCON and Consultant safe work methods.
 - (ii) Consultants are not permitted to alter, erect or use any scaffolding or shoring, or interfere with any plant, tool or equipment unless agreed with CATCON.
 - (iii) Any scaffolding, or shoring, used by Consultant s must be inspected to ensure that it is erected and maintained in accordance with the requirements of the Construction Safety Regulations.
 - (iv) Materials, articles or substances used by Consultant s must conform to all applicable Australian Standards and full details must be given to CATCON prior to introduction to site.
- d) Maintenance
 - (i) All equipment, tools and plant introduced by Consultant s must be properly maintained, and in good general working order with any necessary guards and/or safety devices in place.
 - (ii) Power tools and all electrical equipment introduced by Consultant s must conform to the Construction Safety Regulations and Australian Standards and be appropriately tagged.
 - (iii) Consultants will be required to maintain workplaces in a clean and tidy condition with debris, waste materials and surplus equipment, removed and cleared as work proceeds. Work areas and access to work areas must be cleared at the end of each working day. All costs associated with maintaining a clean and tidy workplace will be borne by the Consultant.

- e) Communication
 - (i) Any accident or injury sustained to site personnel and Consultant s must be reported immediately to CATCON in accordance with the CATCON's Project Management Plan.
 - (ii) Consultants must comply with any instructions issued by CATCON relating to any aspect of Safety Health and Welfare.

Clause 38: **Add the following new clause 18 'Removal of Consultant's Employees and Consultants'**
CATCON may direct the removal from the Works of any person employed in connection with the Works who is in the opinion of CATCON incompetent, negligent or who misconducts himself.

Annexure C Scope of works

Details of the following elements, as appropriate, that apply to the Consultant and to the Consultancy Agreement.

- a) **Scope of Works:**
- b) **Design Requirements:**
- c) **Programming Requirements:**
- d) **Specification:**
- e) **Drawings:**
- f) **Quality Assurance:**
- g) **Safety Management Systems:**
- h) **Operations and Maintenance Manuals:**
- i) **As-Constructed Drawings:**
- j) **Required Approvals to be obtained:**
- k) **Assumptions and Exclusions:**
- l) **Contract Sum:** \$<XXXXXX> (ex. GST)

Annexure D Schedule of Rates / Bill of Quantities

The following rates are to be used for the valuation of scope changes:

POSITION	RATE/HR

Annexure E Release Form**CERTIFICATE OF RELEASE UPON FINAL PAYMENT (FINAL STATEMENT)**

Pursuant to the provisions of the Agreement between Civil & Allied Technical Construction Pty Ltd, hereinafter referred to as CATCON, and the undersigned, hereinafter referred to as the Supplier, this Release is executed.

IN CONSIDERATION of the payment of <AUD \$XXXXXX> to be paid to the Supplier by CATCON as full and final payment of all work required of and performed by the Supplier for CATCON on that certain project known as <Project Name> as set out in Purchase Order No <XXXXXX>.

The Supplier HEREBY WAIVES RELEASES AND FOREVER DISCHARGES CATCON, its heirs and successors, and the Principal from all claims, demands, debts, accounts, expenses, costs, liens, actions and proceedings of any and every kind name and nature and description whether known or unknown at this point in time, which the Supplier has or might have or might assert against CATCON arising under or by virtue of the Contract Agreement or out of its performance and the Supplier HEREBY INDEMNIFIES AND AGREE TO KEEP INDEMNIFIED AND HOLDS HARMLESS CATCON, its officers, servants and agents, and the Principal from and against all claims, demands, debts, accounts, expenses, costs, liens, actions and proceedings of any and every kind name and nature and description whether known or unknown by any person corporation or firm arising from incidental to or by virtue of the Contract Agreement or out of its performance SAVE AND EXCEPT:

- (i) any moneys due upon execution of this Release Form.
- (ii) any claim, demand, debt, accounts, expenses, costs, liens, actions and proceedings which has asserted, commenced or notified prior to the date of this Release

I/We agree that on receipt of the sum shown in paragraph 2 above this Purchase Order has been paid in full and I/We have no further claims against the CATCON or the Principal.

The Signatory also warrants that he/she has the authority to sign this document.

Dated the _____ day of _____ 20 _____

Company Name: _____

Company Registration No.: _____

THE COMMON SEAL OF <Supplier Name> was affixed to this document in the presence of:

(Director/Secretary Name)

(Signature)

(Director Name)

(Signature)

Annexure F Signature Page**EXECUTED AS AN AGREEMENT**Signed for and on behalf of **CATCON**

Name of Signatory

Position

In the presence of:

Signature of Witness

Name of Witness

Signed for and on behalf of **CONSULTANT**

Name of Signatory

Position

In the presence of:

Signature of Witness

Name of Witness
