

SUBCONTRACT AGREEMENT

GF-07

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 Subcontractor to execute and complete the works as detailed under the Subcontract Agreement which form part of the Head Contract Works subject to and upon the terms conditions and stipulations contained in this Subcontract Agreement.
- C. Upon request CATCON may make available to the Subcontractor a copy of the Head Contract and all documents referred to in the Head Contract pertaining to the Subcontract Agreement Works except for prices included in the Head Contract.
- D. The Subcontractor has inspected a copy of the Head Contract and all documents referred to in the Head Contract relevant to the Subcontract Works and acknowledges that it has a sound understanding of the Head Contract, the Head Contract Works, and the Subcontract Agreement Works.
- E. CATCON has made available the Site for inspection by the Subcontractor to assess the Site and its surroundings and the Subcontractor 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 Subcontract 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 Subcontract Agreement Works.
- F. The Subcontractor 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 Subcontract Agreement Works save to the extent that same are expressly contained in the Subcontract Documents.

1. Definitions and Interpretations

1.1 In the Subcontract Agreement the following words and expressions have the meaning hereby assigned to them except where the context otherwise requires:

- **'CATCON'** means the person named in Annexure A
- **'Subcontractor'** means the person named in Annexure A
- **'Approved Provider'** means an Australian Bank with a credit rating of at least "A" from Standard and Poors or such other credit rating as CATCON may direct from time to time.
- **'Contract Sum'** means the Subcontract Sum as specified in Annexure A, or if no Subcontract Sum is Specified, the sum of the value of works resultant from applying the nominated rates to the maximum scope of works that could be performed by the Subcontractor on the project the subject of this Agreement.
- **'Day'** means calendar day
- **'Defect'** means any defect or omission in the Works or any other aspect of the Works which is not in accordance with the requirements of the Subcontract Agreement.
- **'Delivery Date'** means the date nominated for delivery of materials to be supplied by the Subcontractor as part of the Subcontract Works.
- **'Direction'** means any agreement, approval, acceptance, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement which CATCON may make, give or issue pursuant to the Subcontract Agreement.
- **'Environment'** means any aspect of the surroundings of human beings including:
 - (a) The physical characteristics of those surroundings such as the land, the waters and the atmosphere;
 - (b) The biological characteristics of those surroundings such as the animals, plants and other forms of life; and
 - (c) The aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.
- **'Final Completion'** means the completion of all obligations of the Subcontractor under this Subcontract Agreement including the passing of the last of the defects liability periods confirmed by final completion acceptance received in writing from CATCON
- **'Final Claim'** means the statement setting out exhaustively all outstanding claims by the Subcontractor under or arising out of the Subcontract or the Subcontract works.
- **'Goods'** means all materials, labour, equipment, documentation, services and all other obligations, duties, responsibilities and other works required to be furnished or performed by Subcontractor under the PO.
- **'GST'** has the same meaning as in the GST Act.
- **'GST Act'** means A New System (Goods & Services Tax) Act 1999 as amended.
- **'Head Contract'** means the contract under which CATCON is engaged.
- **'Head Contract Works'** means the work briefly described in item 2 of the Contract Particulars, the subject of the Head Contract.
- **'Law'** is:
 - (a) National, federal (including Commonwealth), state, territory, or local government legislation, statutes, ordinances and other laws including regulations, by-laws and other subordinate legislation or law;
 - (b) Common law;
 - (c) Approvals (including any condition or requirement under them).
- **'Month'** means calendar month.
- **'Performance Bond'** means the bank guarantee or other form of security required of the Subcontractor for the due completion of the Subcontract Works.
- **'Practical Completion'** means the completion of all subcontract works including completion of all defects as confirmed by practical completion acceptance received in writing from CATCON. If the Subcontract

Works forms part of a larger project then Practical Completion will occur when the overall project reaches full completion.

- **'Prescribed Working Hours'** means the hours of work from time to time prescribed by CATCON for the execution of the Subcontract Works on the Site.
- **'Principal'** means the party that has engaged CATCON to carry out the Head Contract Works or any part of them.
- **'Principal's Representative'** means the appointed representative of the Principal to give instructions or directions under the Head Contract.
- **'Programming Requirements'** means any date for delivery, any date for completion noted in this Agreement or any program enclosed or referenced by this Agreement.
- **'Pollution'** includes any solid, liquid, gas, odour, heat, sound, vibration, radiation or other substance or thing which makes or may make the Environment:
 - (a) Unsafe or unfit for habitation or occupation by humans or animals;
 - (b) Degraded in its capacity to support plant life;
 - (c) Contaminated, or
 - (d) Otherwise environmentally degraded.
- **'Purchase Order(s)'** (hereafter referred to as **"PO"**) means these conditions together with all documents attached hereto or incorporated herein by reference including the documents.
- **'Purchaser'** means Civil and Allied Technical Construction Pty Ltd (ABN 780 779 241 20) referred hereafter as CATCON
- **'Release'** means the document prepared by CATCON evidencing the release and discharge of CATCON from any claims of the Subcontractor pursuant to this Subcontract.
- **'Retention Moneys'** means the amounts to be retained by CATCON from the Subcontract sum described in 13 of the Schedule.
- **'Shop Drawings'** means the drawing detailing, in sufficient detail to enable workmen to understand how the Goods are to be put together, giving effect to a more general design that is to be complied with.
- **'Site'** means the place or places where the Subcontract Works are to be carried out and any other places made available to the Subcontractor by CATCON for the purposes of this Subcontract.
- **'Subcontract Agreement'** means the legally binding and enforceable contract between the Parties as constituted by the Subcontract Agreement, the Purchase Order cover sheet, and any enclosed documents.
- **'Subcontract Documents'** are the documents that form part of the contract as defined under the meaning 'Contract' in the General terms and Conditions.
- **'Subcontract Sum'** means the amount stipulated in item 5 of the Contract Particulars.
- **'Subcontract Works'** means the work briefly described in item 4 of the Contract Particulars and which may be more particularly described in annexure B to this Subcontract.
- **'Subcontractor's Progress Claim'** means the statement to be submitted to CATCON monthly by the Subcontractor setting out the value of work (including authorised variations) and goods or materials properly executed or delivered by the Subcontractor during the preceding calendar month.
- **'Subcontractor's Supervisor'** means the person named in item 20 of the Contract Particulars nominated by the Subcontractor for the purpose of clause 3.13 to supervise and control the extent of the Subcontract Works.
- **'Variations'** means any change to the Subcontract Works briefly described in item 4 of the Contract Particulars and which may be more particularly described in annexure B to:
 - (a) increase, decrease or omit any part of the work under the Subcontract;
 - (b) change the character or quality of the material or work;
 - (c) change the levels, lines, positions or dimensions of any part of the work under the Subcontract;
 - (d) execute additional work; and/or
 - (e) demolish or remove material or work no longer required by CATCON or the Principal

1.1 Interpretation of 'Fabricate'

1.1.1 For the purposes of this Contract the word fabricate will include one or more of the processes of manufacture, modification, filling, printing logos and other processes necessary to satisfy the requirements of Schedule 1, the Specification and Drawings.

1.1.2 If the Contract requires the Subcontractor to undertake any design associated with the Goods then the word fabricate will be deemed to include design and the provisions of Schedule 2 will apply.

1.3 In the Subcontract Agreement:

1.3.1 Headings and sub-headings are for the convenience only and are not to be used in interpretation or construction;

1.3.2 References to the singular include the plural; and

1.3.3 'include', 'includes' and 'including' are to be read as if followed by 'without limitation.'

1.4 Unless otherwise provided all reference to sums of money shall be in terms of Australian currency, all documents and communications shall be in the English language and all references to measurements, quantities and dimensions and units shall be in terms of Commonwealth legal units.

2. Contract

The PO together with all documents attached hereto or incorporated therein by reference, shall constitute the entire terms of the PO and supersedes all previous correspondence, communications and existing terms and conditions. In the absence of a written acceptance by CATCON, the commencement of any work on site by the Subcontractor in pursuance of the PO shall be deemed an acceptance thereof and the contract shall be formed upon the terms and conditions set forth in the PO. In any other circumstances this PO shall not be deemed an agreed contract until the Purchaser has issued a formal PO by its purchasing department. The Subcontractor agrees and understands that CATCON only performs works under CATCON's terms and conditions and as a

result any terms issued by the Subcontractor post the communications of these CATCON terms and conditions will have no effect. For the avoidance of doubt, the requirements for liability and indemnity contained in this PO supersede those contained in any prior agreements. The Subcontractor also understands and agrees that liability it has incurred in relation to works performed under other (including previous) PO for CATCON can be offset by CATCON against monies due by CATCON under this PO consistent with the principles set out in Clause **24** of this Subcontract Agreement.

3. Precedence of Documents

It is agreed that the order of precedence of documents shall be as follows, with (1) being the highest precedence: **(1)** Any Special Conditions, **(2)** The PO face sheet, **(3)** These *Terms and Conditions*, **(4)** Terms and Conditions contained in any enclosed agreement or conditions, **(5)** Specifications, **(6)** Drawings, **(7)** Any Subcontractor referenced documents.

4. Inconsistencies

In the event of any inconsistencies, ambiguities or discrepancies that arise in or between the documents forming this agreement which cannot be resolved by applying the order of precedence set out in clause 3, it is agreed that the highest standard or most stringent requirement on the Subcontractor has precedence over the lower or less stringent requirement. If the Subcontractor discovers any such inconsistency, ambiguity or discrepancy, between or within the documents comprising the PO, the Subcontractor shall forthwith notify CATCON

5. Acknowledgement

- 5.1 CATCON and the Subcontractor acknowledge the accuracy of the facts set out in the Background and the Schedule.
- 5.2 Each party to this Contract shall remain an independent contractor and shall be exclusively responsible for its employees and its Subcontractors, suppliers and consultants.
- 5.3 The Subcontractor understands that the engagement is based on CATCON's expectation and reliance that the Subcontractor has the expert knowledge of the Goods supplied or undertaken. If the scope is subject to a reduction under the terms of this PO or by agreement, then the Subcontractor shall not be entitled to any payment, including payment for overhead, profit, loss of income or lost opportunity cost in respect to such reduction.

6. Execution of the Subcontract Works

- 6.1 The Subcontractor agrees to fabricate, supply, deliver and construct (as the case may be) the Subcontract Works with all due care and skill and in accordance with the terms, conditions and stipulations of this Subcontract Agreement including but without limitation the Subcontract documents for the Sum stated in this Subcontract Agreement.
- 6.2 The Subcontractor must not deliver the Goods prior to the Delivery Date, except with the prior approval in writing of CATCON.
- 6.3 The Subcontractor must comply with the Programming Requirements as set out in this Subcontract Agreement.
- 6.4 Time shall be of the essence in respect to any date or period nominated in, or in connection with, this Subcontract Agreement.
- 6.5 If design is part of the Subcontract scope supply of Shop Detail Drawings and other materials:
 - 6.5.1 The Subcontractor must submit to CATCON for approval at the times specified in Schedule 4 or such other times as are reasonably required by CATCON, the shop drawings, and other materials identified in the Appendix.
 - 6.5.2 The Subcontractor will be responsible for and will bear the cost of any alteration to the work to be performed on the Goods arising from a discrepancy or error in, or omission from any drawings, or other material issued by the Subcontractor whether the same has been reviewed by CATCON or not.
 - 6.5.3 Unless otherwise agreed, the minimum period required by CATCON for the review and approval of shop drawings will be as follows:
 - (i) 3 weeks from the date of submission; or
 - (ii) 1 week from the date of re-submission where drawings are amended.
- 6.6 Inspection
 - 6.6.1 CATCON or its authorised representative may inspect and examine the Goods and witness tests on the materials, workmanship and performances of the Goods and the process of fabrication at any time during or subsequent to fabrication at the Subcontractor's premises, at the premises of its Subcontractors (if any), or at the Delivery Point. For the purposes of this sub-clause, the Subcontractor must ensure that CATCON or its authorised representative is given a right of access to any premises on which work in respect of the Subcontract Agreement is being carried out.
 - 6.6.2 CATCON will be entitled to reject at any time Goods which do not comply with the requirements of this Contract and may, in its absolute discretion, direct the Subcontractor to either repair or replace promptly and within any reasonable time specified by CATCON any rejected Goods wholly at the Subcontractor's expense.
- 6.7 Testing
 - 6.7.1 The Subcontractor must give not less than three (3) day's prior written notice to CATCON of the place, date and time of any tests to be carried out on the Goods. CATCON or its nominated representative will be entitled to attend any such tests and the Subcontractor must provide any test results requested by CATCON.

- 6.7.2 The Subcontractor must obtain from any relevant third party or manufacturer any necessary permission or consent to enable CATCON or its nominated representative to attend the test of inspection.
- 6.7.3 The Subcontractor must carry out all additional tests reasonably requested by CATCON or if specified. If the Goods fail any test so requested, the cost of such test will be borne by the Subcontractor. If the Goods pass the test or tests so requested by CATCON the cost of all such tests will be borne by CATCON.
- 6.7.4 Where the Goods or any part of the Goods fail to meet test requirements or in the reasonable opinion of CATCON are defective the relevant tests on the Goods as repaired or replaced must be repeated within a reasonable time if so requested by CATCON. All costs associated with such retesting will be borne by the Subcontractor. Any costs associated with such retesting incurred by CATCON may be deducted from the moneys due otherwise to the Subcontractor under the Contract.
- 6.8 Storage
- 6.8.1 Upon completion of fabrication, all Goods which have been made ready for delivery must be stored at its own risk and cost by the Subcontractor and must be:
- (i) available for immediate delivery;
 - (ii) free from any form of lien, mortgage or guarantee in favour of any third party;
 - (iii) properly stored and protected against damage or deterioration;
 - (iv) when payment has been made pursuant to Clause 4 clearly marked as the property of CATCON, and set aside in a secure area separate from other Goods and materials not relating to this Contract.
- 6.8.2 If CATCON extends any Delivery Date pursuant to Clause 2.8.2(v) or Clause 2.8.5 and the Goods are required to be stored beyond the earlier Delivery Date the Subcontractor must store the Goods fabricated and ready to be delivered at no cost to CATCON for up to the period of months, specified in the Appendix, however if CATCON requires that the Goods fabricated and ready for delivery be stored by the Subcontractor for a longer period, the Subcontractor will be entitled to claim the additional amount specified in the Appendix per week in respect of such storage until the Goods are delivered.
- 6.9 Packing and Transportation
- 6.9.1 The Subcontractor must at its own risk and cost, procure and transport the Goods required for the Subcontract Works (including all equipment and Subcontractor's equipment) to the Site in accordance with the requirements of the specification and this Subcontract, or if not so specified, in an expeditious and orderly manner.
- 6.9.2 A detailed list identifying the Goods must be handed to CATCON or its representative by the Subcontractor at the time of delivery.
- 6.9.3 All items comprising the Goods must be clearly tagged or marked for identification in the manner as instructed by CATCON.
- 6.9.4 Each item must be marked legibly with CATCON's name, the name of the Project and any relevant description and item number specified in the Contract.
- 6.9.5 The Subcontractor is liable for any loss, damage, depreciation or delay caused during the transportation of the Goods required for the Subcontract Works (including all Equipment and Subcontractor's Equipment).
- 6.9.6 The Subcontractor indemnifies CATCON from and against all losses and any claims under any applicable Law, at common law, in equity or otherwise for damage to Goods, persons, property, roads, bridges or any other traffic facilities which may be caused by the Subcontractor or its personnel in connection with this Subcontract Agreement.
- 6.10 Delivery
- 6.10.1 The Subcontractor must notify CATCON in writing two (2) days prior to the dispatch of the Goods of the name of its carrier and the estimated time of arrival at the Delivery Point.
- 6.10.2 CATCON may at any time by notice in writing to the Subcontractor extend the Delivery Dates or any of them for any reason.
- 6.10.3 If a variation ordered pursuant to this Subcontract Agreement involves or may involve a reduction in time for the execution of the supply and fabrication of the Goods, CATCON and the Subcontractor must attempt to agree upon the reduction or reductions of time to apply and failing such agreement CATCON must determine an appropriate reduction or reductions in time and in either case, must notify the Subcontractor in writing of the adjusted Delivery Date or Delivery Dates.
- 6.10.4 If the Subcontractor fails to make deliveries within the date or dates specified CATCON will be entitled to do one or more of the following:
- (i) determine this Contract by written notice to the Subcontractor;
 - (ii) direct the Subcontractor not to supply some or all of the Goods which have not been delivered within the specified times in which case the Contract Sum will be reduced by a reasonable amount in respect of those goods; and
 - (iii) claim damages in accordance to this Subcontract Agreement.
- 6.10.5 The Subcontractor must deliver the Goods to the Delivery Point in accordance with the details set out in the notice from CATCON given pursuant to the Subcontract Agreement.
- 6.10.6 CATCON must notify the Subcontractor in writing at least one (1) day prior to requiring delivery of any Goods of:
- (i) the date and time for delivery;
 - (ii) details of the Goods required;
 - (iii) the Delivery Point.

Where the date for the delivery of the Goods stated in the notice is later than the Delivery Date in respect of those Goods, the notice must be deemed to be a notice given pursuant to Clause 2.8.2(vi) hereof and the Delivery Date shall be deemed to be extended to the date for delivery contained in the notice.

- 6.10.7 If the Subcontractor has fabricated and stored Goods before the Delivery Date, CATCON may require early delivery of those Goods at no additional cost to CATCON.
- 6.10.8 The Subcontractor shall supply two (2) copies of the delivery dockets to CATCON: one (1) with the delivery of Goods and one (1) enclosed with the invoice;
- 6.10.9 Upon delivery the Materials shall be accompanied by a delivery document with CATCON's PO number nominated thereon;
- 6.10.10 The Price shall be inclusive of all freight insurance and other charges in or in connection with the forwarding of Materials to CATCON;
- 6.10.11 Upon return of Materials which are not fit for purpose, not acceptable or unwanted by, CATCON, the Subcontractor shall reimburse CATCON for:
 - i) any amounts paid by CATCON on account of the price of the returned element of the Materials; and
 - ii) any costs incurred by CATCON in connection with the delivery and return of the relevant element of the returned Materials;
- 6.10.12 Any signature to a delivery document by a CATCON representative is an acknowledgement of a delivery event only. In case of timesheets; signature does not constitute verification of the record. Products or services are subject to compliance to this PO. No agreement to quantum or quality or acceptance of any Subcontractor's terms and conditions is implied.
- 6.11 Subcontractor shall execute and complete the Subcontract Works in all respects to the satisfaction of CATCON.
- 6.12 The Subcontractor shall, unless otherwise directed by CATCON in writing, observe and perform all the obligations of the Head-Contract to be undertaken by CATCON that relate, directly or indirectly, to the Subcontract Works but which are not inconsistent with the express provisions of this Subcontract with the intent and to the effect that the Subcontractor shall duly execute and complete all the Subcontract Works to be completed by CATCON pursuant to the Head Contract.
- 6.13 The Subcontractor shall take all reasonable steps to minimise and mitigate any delay, disruption or any other circumstance that is likely to cause loss, delay or damage to the Subcontract Works or CATCON generally.
- 6.14 The Subcontractor warrants that all goods and materials supplied and/or manufactured by the Subcontractor for the Subcontract Works shall be fit for the purpose for which they are required.
- 6.15 The Subcontractor acknowledges that nothing in this Subcontract Agreement confers on the Subcontractor any right or interest in the Head Contract.
- 6.16 Subcontractor shall co-operate with CATCON its employees and Subcontractors on the Site to ensure the uninterrupted progress of the Head Contract Works.
- 6.17 The Subcontractor will comply with all directions of CATCON relating to access and work areas and the order of work to be completed in the manner and at the times CATCON from time to time directs.
- 6.18 The Subcontractor shall discharge all debts and liabilities which may from time to time accrue to its suppliers, employees and Subcontractors on the due dates for payment or satisfaction failing which CATCON may (but shall not be obliged to) pay and satisfy the same and deduct any amounts so paid from any money at any time due to the Subcontractor under this Subcontract Agreement.
- 6.19 The Subcontractor shall pay and be solely responsible for the payment of all workmen engaged in the performance of the Subcontract Works, including but without limitation all amounts payable in respect of wages, overtime, social benefits, loadings, indemnities, compensation and fringe benefits.
- 6.20 CATCON may direct the removal from the works undertaken on the project site any person employed in connection with the works who is in the opinion of CATCON incompetent, negligent or who misconducts themselves.
- 6.21 The Subcontractor shall ensure that it submits to CATCON promptly all notices, claims, information, documents and/or evidence that CATCON may require to enable CATCON to effect due compliance with its obligations under the Head Contract whether in regard to claims to be made under the Subcontract or otherwise howsoever.
- 6.22 The Subcontractor acknowledges that if it fails to cooperate with CATCON as required by this Subcontract or otherwise fails to submit to CATCON the notices, claims, information documents or evidence required by the preceding clause CATCON shall be released from any claim (or any part of any claim) by the Subcontractor that CATCON in its reasonable opinion is precluded from making or unable to make against the Principal.
- 6.23 The Subcontractor shall at all times during the performance of the Subcontract Works and in any event during the Prescribed Working Hours have on Site a competent supervisor to supervise and control the execution of the Subcontract Works and to ensure that the obligations on the part of the Subcontractor under or by virtue of this Subcontract are observed and performed in every respect and the Contractor nominates the person named in item 20 of the Schedule as the Subcontractor's Supervisor for the purposes of this clause until further notice in writing by CATCON.
- 6.24 The Subcontractor acknowledges that the rights to any unfixed goods or materials for incorporation into the Subcontract Works shall pass to CATCON upon delivery to the Site.
- 6.25 The Subcontractor acknowledges that CATCON shall not be obliged to account for any unfixed goods or materials supplied to the Site unless and until the Subcontractor has satisfied CATCON that the supplier concerned has no claim to ownership or possession of such goods or materials.
- 6.26 Unless otherwise expressly stipulated in item 14 of the Contract Particulars the Subcontractor shall provide all labour, plant, materials, equipment, machinery, vehicles, tools, facilities and services required for the proper execution and completion of the Subcontract Works.

- 6.27 The Subcontractor shall at all times have available sufficient material and labour to carry out the Subcontract Works with diligence and due expedition and shall apply such materials and labour in the diligent and expeditious execution of the Subcontract Works.
- 6.28 The Subcontractor shall not do or permit anything to be done that would affect the due progress of the Head Contract Works.
- 6.29 The Subcontractor shall commence the Subcontract Works on the Subcontract Commencement Date stipulated in item 8 of the Schedule or when no date is stipulated upon receipt of CATCON's written notice to commence the Subcontract Works.
- 6.30 The Subcontractor shall complete the Subcontract Works in all respects in accordance with the Subcontract Documents by the Subcontract Completion Date stipulated in 9 of the Schedule subject to any extension of the period granted in accordance with this Subcontract Agreement.
- 6.31 No services shall be provided in excess of the PO amount.
- 6.32 If the Gross Vehicle Mass (GMV) of the delivery is in excess of 4.5 tonne, the Subcontractor is to comply with the requirements of the *Heavy Vehicle National Law* and CATCON's procedure SPG-12 *Chain of Responsibility* available from our website (<http://www.catcon.com.au>). Further the transport company used by the Subcontractor must complete the *Heavy Vehicle Transport Checklist* with each delivery and have it available with the delivery vehicle. As required, the Subcontractor is required to have the consignor to complete a complying *Container Weight Declaration* form.
- 6.33 Acceptance
- 6.33.1 The Subcontractor agrees that that CATCON are entitled to reject, at any time, Goods which do not comply with the requirements of this agreement. CATCON shall only be obliged to accept completion or delivery of Goods insofar it fully complies with the terms of this agreement. If the Goods do not fully comply then the Subcontractor shall, if so required by CATCON, remove all such rejected elements of the Goods and replace the same with Goods acceptable to CATCON. All freight, insurance and other cost incurred whatsoever in connection with the replacement of rejected Goods shall be paid and borne by the Subcontractor.
- 6.34 Warranty
- 6.34.1 The Subcontractor warrants that all of the Goods: **(1)** Will conform to the requirements of this agreement; **(2)** Shall be of good merchantable quality and fit for the known purpose for which it is sold; **(3)** Are new (unless otherwise specified); **(4)** comply with all relevant Australian Standards; **(5)** Are free from all liens and encumbrances and the Subcontractor has a good marketable title thereto; and **(6)** Shall be delivered by the due Delivery Date specified in this agreement.
- 6.34.2 These warranties are in addition to any and all warranties offered by the Subcontractor and/or arising by operation of law and nothing contained herein shall be construed as limiting or restricting such warranties.

7. Extension of Subcontract Completion Date

- 7.1 The Subcontractor agrees that the Subcontract Works will not be suspended or interrupted by inclement weather.
- 7.2 The Subcontractor must immediately give notice to CATCON of all incidents, circumstances or events of any nature affecting or likely effect the progress of the Subcontract Works which might be reasonably expected to result in a delay to the Subcontract Works achieving completion by the Subcontract Completion Date ('Delay Event') stipulated in item 9 of the Contract Particulars.
- 7.3 Within 7 business days after the date of the notice issued under clause **7.2** the Subcontractor must give a further notice to CATCON which must include:
- 7.3.1 the material circumstances of the Delay Event including the cause or causes;
- 7.3.2 the nature and extent of any delay caused by or likely to be caused by the Delay Event;
- 7.3.3 the corrective action already undertaken or to be undertaken;
- 7.3.4 the effect on the critical path;
- 7.3.5 whether, in its opinion, the Delay Event qualifies as one which entitled the Subcontractor to an extension of time to the Subcontract Completion Date under these Subcontract terms and conditions;
- 7.3.6 the period, if any, by which, in its opinion the Subcontract Completion Date should be extended; and
- 7.3.7 a statement that this is a notice under this clause **7.3**.
- 7.4 Within 30 business days after receipt of the notice in clause **7.3**, CATCON may issue a notice notifying the Subcontractor:
- 7.4.1 whether the relevant Delay Event qualifies as one which entitled the Subcontractor to an extension to the Subcontract Completion Date; and
- 7.4.2 if it does, the period, if any, by which the Subcontract Completion Date is to be extended.
- 7.5 It is a condition precedent to the Subcontractor's entitlement to an extension of time that:
- 7.5.1 the Subcontractor has submitted the notices required under clauses **7.2** and **7.3** within the specified time periods;
- 7.5.2 the Delay Event is not due to an act or omission of the Subcontractor;
- 7.5.3 the Delay Event directly delays the critical path;
- 7.5.4 the relevant Delay Event is demonstrable on the actual and current critical path to achieving Practical Completion by the Subcontract Completion Date; and
- 7.5.5 the Subcontractor satisfies CATCON that it has used its best endeavours to prevent any delay in the Subcontract Works and has complied with its obligations to mitigate the delays by to the completion of the Subcontract Works.

- 7.6 The Subcontractor agrees that any principle of law or equity which might otherwise render the Subcontract Completion Date immeasurable and any Delay Liquidated Damages unenforceable does not apply to this Subcontract.
- 7.7 The Subcontractor is not entitled to an extension of the Subcontract Completion Date where more than one Delay Event causes concurrent delay to the Subcontract Works and at least one of those events is due to any act or omission of the Subcontractor.
- 7.8 Subject to the clause **7**, if a variation is directed pursuant to clause **20**, or action directed pursuant to an Acceleration direction under clause **9**, which reduces the time required to achieve completion of the Subcontract Works, the relevant Subcontract Completion Date will be brought forward by the period of the reduction.

8. Delay Costs

- 8.1 The Subcontractor is not entitled to any costs relating to delay, prolongation or distribution incurred after the Subcontract Completion Date or Subcontract Completion Date as extended under clause **7.4**.
- 8.2 Where the Subcontractor has necessarily incurred extra cost as direct consequence of a Delay Event, the Subcontractor must give to CATCON notice of its claim for delay costs at the same time as the notice referred to in clause **7.2** or the final notice in clause **7.3** (as the case may be), including all available particulars and supporting documentation.
- 8.3 Amounts payable under clause **8**:
- 8.3.1 only include reasonable costs and expenses incurred as a direct consequence of the work activities delayed or disrupted as a result of the Delay Event;
- 8.3.2 do not include the costs or expenses of personnel and other resources whilst they are deployed on other Work activities or activities other than the Subcontract Works; and
- 8.3.3 do not include off-site overheads, profit or loss of profit.
- 8.4 In all other circumstances, an extension of time, if any, is the limit of the Subcontractor's entitlement to compensation for delay.

9. Acceleration

- 9.1 CATCON may, at any time prior to completion of the Subcontract Works, direct the Subcontractor to accelerate or re-sequence the Subcontract Works for any reason, including as an alternative to granting an extension of time to the Subcontract Completion Date.
- 9.2 Within 7 business days of its receipt of the direction under clause **9.1** the Subcontractor must advise the Subcontractor as to whether it can reasonably comply with the direction, with details of any additional cost the Subcontractor will incur (if any) in complying with the direction.
- 9.3 Subject to the Subcontractor's obligation to mitigate under clause **3.12**, if complying with the direction under clause **9.1** will cause the Subcontractor to necessarily incur additional costs in performing the Works, subject to clause 17 and except where the direction was issued as a consequence of the failure of the Subcontractor to fulfil its obligations under this Subcontract, the Subcontractor may be entitled to its additional cost and margins [which much not exceed 10% collectively and includes profit and overhead). CATCON must assess and decide, as soon as reasonably practical, the extra costs necessarily incurred by the Subcontractor.
- 9.4 CATCON must assess and decide as soon as reasonably practical any reduction of the Subcontract Price due to any cost savings resulting from the Subcontractor complying with an acceleration direction under clause and CATCON will be entitled to reduce the Subcontract Price by that amount.

10. Practical Completion

- 10.1 Practical completion of the Subcontract Works shall take place on the date when CATCON certifies in writing that the Subcontract Works are fully completed to its satisfaction.
- 10.2 A Practical Completion Certificate issued under clause **10.1** is not an acknowledgement that the Subcontract works have been executed and completed in every aspect nor that this has been completed to the satisfaction of the Principal.
- 10.3 The Subcontractor must rectify or complete within the time stated in a Practical Completion Certificate each of the Punch-List Items [and the Punch-List Items must be appended to the relevant Practical Completion Certificate). In the event that the Subcontractor fails to do so, CATCON may arrange for the outstanding work to be done and the cost of such works will be certified by CATCON and deducted from the Subcontract Price or at CATCON 's discretion) paid to CATCON by the Subcontractor.

11. Final Completion

- 11.1 Providing conclusion of the Defects Liability Period CATCON may :
- 11.1.1 issue a certificate of Final Completion stating the Subcontract Works have reached Final Completion and stating the date on which the Subcontract Works reached Final Completion: or
- 11.1.2 notify the Subcontractor in writing of any Defects that must be remedied before Final Completion can be achieved.
- 11.2 If CATCON notified the Subcontractor of any outstanding Defects. the Subcontractor must correct those Defects and the procedures described in clauses **11.1.1** and **11.1.2** must be repeated until CATCON issues a certificate of Final Completion.
- 11.3 A certificate of Final Completion issued under clause **11.1.1** will discharge each party's obligations under this Subcontract Agreement except for:
- 11.3.1 indemnities given under this Subcontract;
- 11.3.2 warranties given under this Subcontract;

- 11.3.3 any Defects in the Subcontract Works or any part thereof which were not apparent at the end of the Defects Liability Period or which would not have been disclosed upon reasonable inspection at the time of the issue of the certificate of Final Completion;
- 11.3.4 any obligations that are expressly stated in this Subcontract to or by their nature survive completion, expiry or termination of this Subcontract

12. Liquidated Damages

- 12.1 The Subcontractor shall pay to CATCON liquidated damages for delay in completion of the Subcontract Works in the event that:
 - 12.1.1 a sum in respect of liquidator damages is stipulated in item 10 of the Contract Particulars; and
 - 12.1.2 the Subcontract Works are not completed by the Subcontract Completion Date stipulated in item 9 of the Contract Particulars (as extended by any extension of the period for completion granted by CATCON pursuant to this Subcontract).
- 12.2 Such liquidated damages to be calculated in accordance with item 10 of the Contract Particulars for the period from the Subcontract Completion Date to the date of Practical Completion of the Subcontract Works or, if CATCON has granted to the Subcontractor an extension of the period for completion for some portion of that period the period for which the extension does not apply.
- 12.3 Delay Liquidated Damages must be invoiced by CATCON in accordance with item 10 of the Contract Particulars and payment must be made by the Subcontractor within 7 Business Days of the date of the invoice unless CATCON has agreed to deduct or offset such amounts against payments due and payable to the Subcontractor. If at the expiration of those 7 Business Days, the amount invoiced is not paid, that amount will be a debt due and payable to CATCON on demand and may be deducted from any payments otherwise due from CATCON to the Subcontractor.
- 12.4 If no sum in respect of liquidated damages is stipulated in item 10 of the Contract Particulars CATCON shall in any event be entitled to damages for any loss it may incur as a result directly or indirectly of delay by the Subcontractor in completing the Subcontract Works.
- 12.5 The parties agree that the Delay Liquidated Damages specified in item 10 of the Contract Particulars are a fair, reasonable and enforceable pre-estimate of the damages likely to be sustained by CATCON as a result of the Subcontractor's failure to achieve completion by the Subcontract Completion Date.
- 12.6 The aggregate liability of the Subcontractor for Delay Liquidated Damages will not exceed 20% of the Subcontract Price.

13. Head Contract – Subcontractor to Uphold

- 13.1 The Subcontractor shall do all things necessary to ensure that no breach shall occur or penalty be imposed in respect of any of CATCON's obligations under the Head Contract.
- 13.2 The Subcontractor shall at all times provide to CATCON all information, documentation and materials necessary to enable CATCON to give notice or otherwise protect its position under the Head Contract in regard to the Subcontract Works or any instruction or direction of the Principal or the Principal's Representative pertaining to any matter of which the Subcontractor is or should be aware.

14. Release and Indemnities

- 14.1 To the full extent permitted by law the Subcontractor releases CATCON its employees agents and Subcontractors from any liability howsoever arising directly or indirectly in relation to the state or condition of the Site, the execution of the Head Contract Works and the acts or omissions of any person or persons engaged by the Principal, the Principal's Representative or CATCON.
- 14.2 The Subcontractor will defend at its own cost and indemnify CATCON in respect of costs, losses and expenses, including any damages arising from any claim, action or suit made against CATCON for patent or copyright infringement. The Subcontractor must obtain all permits, licences and give all notices necessary to comply with the requirements of any legislation or statutory authority in respect of the Goods and the work under the Subcontract and must pay and bear all fees, deposits and taxes payable in connection therewith.
- 14.3 The Subcontractor shall indemnify CATCON from and against any liability, loss, damage, claim or proceedings whatsoever and howsoever rising whether under any statute or at common law or by contract for personal injury or death to any person caused or contributed to by the carrying out of the Subcontract Works or the failure to carry out the Subcontract Works or the failure to secure the Subcontract Works or any part thereof respectively save to the extent that the same is due to any negligence on the part of CATCON.
- 14.4 The Subcontractor shall indemnify CATCON from and against any liability to the Principal or any other person claiming through or under the Principal or the Head Contract for any loss or damage (including liquidated damages payable under the Head Contract) costs (including legal costs on a full indemnity basis) and expenses howsoever incurred by reason of any act or omission of the Subcontractor and its employees or agents.
- 14.5 The Subcontractor shall indemnify CATCON from and against any liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property including but without limitation improvements and fixtures to real property howsoever arising and which is on the Site or elsewhere caused or contributed by the carrying out of the Subcontract Works.
- 14.6 The Subcontractor acknowledges that CATCON has no obligation to supervise or control the execution of the Subcontract Works by the Subcontractor its employees or Subcontractors and that the indemnities given in this Subcontract by the Subcontractor shall not be defeated or reduced by any failure on the part of CATCON its employees or Subcontractors to supervise or control the work of the Subcontractor or the conduct of its employees or Subcontractors.
- 14.7 CATCON shall be entitled to retain out of any payment which would otherwise be payable to the Subcontractor such moneys as CATCON may reasonably require to meet any contingent claim, action, proceedings, loss,

damages, costs or expenses arising from or in connection with the indemnities given by the Subcontractor or any breach by the Subcontractor of its obligations under this Subcontract. Prior to any action taken as detailed under this Clause, both parties shall have at least once a conference discussing the method of reimbursement for the liabilities or potential liabilities as described under this clause with the intent to agree on method for such reimbursement

15. Insurance – Subcontractor

- 15.1 Without in any way detracting from its obligations to release to indemnify CATCON, the Subcontractor shall maintain with an insurer approved in writing by CATCON (which shall not be unreasonably withheld) and with terms conditions exclusions and endorsements that CATCON deems acceptable and for the entire duration of the Subcontract Works and defects liability period under the Head Contract:
- 15.1.1 such insurances as are necessary (and in such amounts as are from time to time specified by CATCON) to cover the liability of the Subcontractor assumed by the Subcontractor in the release and indemnities given in this Subcontract;
- 15.1.2 such insurances as are necessary (and in such amounts as are from time to time specified by CATCON) to cover its liabilities under or arising out of this Subcontract;
- 15.1.3 such insurances as are specified in the Contract Particulars;
- 15.2 The Subcontractor shall produce for inspection by CATCON, forthwith upon request evidence to the satisfaction of CATCON that the insurances required by or referred to in this Subcontract (and where relevant the Head Contract) are properly effected and maintained (including where required by producing the policy or policies and premium receipts in question), failing which CATCON may effect such insurances or insurances providing similar cover with any insurer of its choice and recover from the Subcontractor as a debt due premiums paid or payable in relation thereto.
- 15.3 All insurances required to be taken out shall be endorsed to the effect that;
- 15.3.1 they respond in priority to any insurance taken out by CATCON or the Principal in respect of the same or similar risk; and
- 15.3.2 any deductible or excess under any insurance taken out by the Subcontractor shall be borne wholly by the Subcontractor.
- 15.4 The Subcontractor shall not materially change the insurances without the prior approval from CATCON.
- 15.5 The Subcontractor shall not do or permit to be done any act or thing that may result in an increased premium payable in respect of any such insurance or the insurer determining to avoid or cancel the cover provided.
- 15.6 If any of the insurances required under this clause is cancelled or lapses, or the Subcontractor fails to procure them or keep them in force during the term of this Subcontract, CATCON shall have the right to procure or renew the same and the Subcontractor shall forthwith upon demand pay to CATCON as a debt the amount paid or payable.
- 15.7 The taking out of any insurance as herein provided shall not relieve the Subcontractor of any of its obligations under this Subcontract or at common law or pursuant to any statute, rule, regulation or other enactment.
- 15.8 The Subcontractor shall not commence performance of the Subcontract Works until all of the insurances required of the Subcontractor are in force and evidence satisfactory to CATCON, if requested by CATCON, has been received by CATCON.
- 15.9 If any goods are imported for the purpose of the works required under this Subcontract Agreement then the Subcontractor shall effect and maintain an Air/Marine Transit Insurance to provide cover at all times in respect of loss, destruction or damage to the Goods for their full reinstatement and replacement value during transit from their place of manufacture or supply until they have cleared customs in Australia.
- 15.10 Unless otherwise stated at item 15 of Annexure A, the insurance policies to be taken out by the Subcontractor are:
- 15.10.1 Public Liability:
- Cover:** Project specific insurance to cover the legal liability to third parties for damage to or loss of property (including loss of use of property not physically damaged), death or injury (except to the extent covered under workers' compensation insurance) arising out of the performance of the Subcontract Works, including the use of unregistered mobile plant.
- Minimum amount:** For public liability, AUD 20,000,000 per occurrence and unlimited in the aggregate. For products liability, AUD 20,000,000 per claim and in the aggregate during the insurance term.
- Maximum deductible:** AUD 50,000 for worker to worker liability claims and AUD 25,000 for all other claims, in each case for any one occurrence.
- Insured:** The Subcontractor
- Period required:** The Commencement until the end of the Defects Liability Period
- 15.10.2 Contract Works:
- Insured property:** The Subcontract Works, temporary works, the Subcontractor Goods and, if applicable, supplied items.
- Cover:** Project specific insurance to cover risks of physical loss, damage and destruction of the insured property, occurring to the insured property.
- Minimum amount:** The full replacement value of the insured property, plus a reasonable amount for demolition, the removal of debris, professional fees, claim preparation costs and expediting
- Maximum deductible:** AUD 50,000 for worker to worker liability claims and AUD 25,000 for all other claims, in each case for any one occurrence.
- Insured:** The Subcontractor
- Period required:** The Commencement until the end of the Defects Liability Period

15.10.3 Motor Vehicle and construction plant:

Cover: Legal liability arising out of the use of all registered motor vehicles, trailers and mobile plant used to perform the Work (whether owned by the Subcontractor, a Subcontractor's subcontractor or other).

Minimum amount: AUD 30,000,000 per occurrence and unlimited in the aggregate.

Insured: The Contractor and any third party that either owns or leases vehicles used to perform the Subcontract Work must be a named insured.

Period required: The Commencement until the end of the Defects Liability Period after that, whenever Work is performed at or near the Facility.

15.10.4 Workers Compensation:

Cover: Liability for death of or injury to workers performing Work (including occupations disease and whether employed by the Contractor, a Subcontractor or other) as required by Legislative Requirements.

Insured: The employer of the relevant workers must be a named insured.

Period required: In relation to the Contractor, before commencing the Work until the last Defects Liability Period expires and, after that, whenever Work is performed at or near the Subcontract Works. In relation to all others required to effect the insurance, before the relevant workers commence the Work and, after that, whenever the workers perform the Subcontract Work at or near the Subcontract Works.

15.10.5 Professional Indemnity:
Cover:

- 1) Liability of Subcontractor to CATCON and the Principal and third parties in relation to a breach of professional duty arising out of or in connection with the performance of the Subcontract Work.
- 2) Indemnity to CATCON and the Principal for any liability incurred vicariously by CATCON or the Principal as a result of the Subcontractor's performance of professional services in relation to the Works.

Minimum amount: AUD 10,000,000 per claim and in the aggregate during the insurance term.

Insured: The Subcontractor must be a named insured.

Period required: Before commencing the Work until 6 years after the Subcontractor ceases performing all the Subcontract Works.

16. Subcontractor's Risk in Materials, Goods, etc.

- 16.1 The risk of loss of the Subcontract Works and any goods or equipment intended for incorporation or use in the Subcontract Works remain with the Subcontractor until CATCON accepts handover of the Subcontract Works (including any materials or goods on site for the Subcontractor's use) shall remain at the risk of the Subcontractor until CATCON accepts handover of the Subcontract Works and the Subcontractor shall make good at its own expense and without payment any accidental or other loss or damage thereto howsoever caused (including theft, vandalism or other act of third parties) unless such loss or damage is caused by CATCON, the Principal, their staff or their representatives.
- 16.2 The Subcontractor shall take all reasonable steps to protect and maintain the Subcontract Works until the completion of the Head Contract Works.
- 16.3 The plant, tools, equipment or other property belonging to or provided by the Subcontractor, its employees or Subcontractors shall be at the sole risk of the Subcontractor, and any loss or damage to the same, shall be the sole liability of the Subcontractor who shall indemnify CATCON against any loss, claim or proceedings in respect thereof.
- 16.4 The Subcontractor having the sole risk of its plant, tools, equipment and other property shall of its own cost and expense effect its own insurances in respect thereof and keep the same insured at all times during the progress of the Subcontract Works.

17. Instructions of Employer/Directions of CATCON

- 17.1 CATCON shall within a reasonable time issue to the Subcontractor any instructions, directions or requirements of the Principal or the Principal's Representative under the Head Contract affecting the Subcontract Works (including the ordering of any variation therein) and may itself issue any direction to the Subcontractor in regard to the Subcontract Works including a variation.
- 17.2 CATCON may arrange for any instructions, directions or requirements of the Principal or the Principal's Representative to be issued directly by the Principal or the Principal's Representative, to the Subcontractor.
- 17.3 The Subcontractor shall forthwith comply with any instruction, direction or requirement given pursuant to clauses **17.1** and **17.2** within reasonable time.
- 17.4 Any instruction, direction or requirement of CATCON or the Principal or the Principal's Representative may be given to the Subcontractor's Representative to be kept on Site pursuant to this Subcontract and such instruction, direction or requirement when given shall be deemed to have been given to the Subcontractor.
- 17.5 If any instruction, direction or requirement given pursuant to this Subcontract is given verbally to the Subcontractor or the Subcontractor's Representative by the Principal, the Principal's Representative or CATCON then such instruction, direction or requirement shall be of no immediate effect but shall be confirmed in writing by the Subcontractor to CATCON within 3 days and if not dissented from in writing by CATCON within 7 days from receipt of the Subcontractor's confirmation, shall take effect as from the expiration of the said 7 days.
- 17.6 Provided always;

- 17.6.1 that if CATCON within 7 days of giving such oral instruction, direction or requirement shall itself confirm the same in writing, then the Subcontractor shall not be obliged to confirm the same and the instruction, direction or requirement shall take effect as from the date of CATCON's confirmation; and
- 17.6.2 if neither CATCON nor the Subcontractor shall confirm such an oral instruction, direction or requirement in the manner and at the time required but the Subcontractor shall nevertheless comply with the same, then CATCON may confirm the same in writing (and must if the Principal or the Principal's Representative has confirmed in writing in similar circumstances under the Head Contract) at any time prior to the final payment of the Subcontract Sum and the such instruction, direction or requirement shall thereupon be deemed to have taken effect on the date on which it was issued.
- 17.7 If within 7 days after service of a written notice from CATCON requiring compliance with an instruction, direction or requirement the Subcontractor does not comply therewith, then CATCON may engage and pay other persons to comply with such instruction, direction or requirement and all costs incurred in connection with such engagement shall be recoverable from the Subcontractor as a debt or may be deducted from any moneys due or to become due to the Subcontractor under this Subcontract.
- 17.8 The Subcontractor shall obey, carry out and give effect to all orders, instructions, directions, determinations, stipulations and approvals from time to time issued or made by CATCON, whether orally or in writing, and without in any way limiting the generality of the foregoing, including those relating to safety and security provided, however, that any such order, instruction, direction, determination, stipulation or approval which is repugnant to or inconsistent with this Subcontract or with any law, regulation, rule or direction of any authority or authorities having jurisdiction over the performance of the Subcontract Works shall, but only to the extent of such repugnance or inconsistency, be void and of no effect.

18. Performance Bond

- 18.1 The Subcontractor will prior to commencement of the Subcontract Works provide CATCON with a Performance Bond in the amount specified in item 7 of the Contract Particulars to secure the due performance by the Subcontractor of all its obligations under this Subcontract.
- 18.2 The Performance Bond shall unless otherwise stipulated by CATCON be in the form of a bank guarantee issued by an Approved Provider.
- 18.3 CATCON may make a demand under, and use the proceeds of the Performance Bond in respect of:
- 18.3.1 any amount which the Principal asserts is due and payable by the Subcontractor to CATCON under or in connection with this agreement which remains unpaid; and
- 18.3.2 any loss suffered or incurred by CATCON for which CATCON reasonably believes the Subcontractor liable as a result of a breach of this agreement or negligence; and
- 18.3.3 any Delay Liquidated Damages due and payable under clause **12**.
- 18.4 If CATCON terminates this agreement under clause **32**, CATCON may make demands under the Performance Bond and apply the process in respect of:
- 18.4.1 the additional costs of having the Subcontract Work completed itself or by others on its behalf; and
- 18.4.2 any other loss suffered or incurred by CATCON as a result of the termination.
- 18.5 The Subcontractor must replace a Performance Bond:
- 18.5.1 at least 15 Business Days before the Performance Bond is due to expire; and
- 18.5.2 within 15 Business Days after written request by CATCON if the issuer of the Performance Bond is no longer an Approved Provider as required by clause **18.2**.
- 18.6 Each Replacement Bond which the Subcontractor is required to provide to CATCON under clause **18.6** must be:
- 18.6.1 in the same amount as the Performance Bond it is replacing;
- 18.6.2 provided with an expiry date no earlier than 3 months post the expiry date of the Security it is replacing;
- 18.6.3 in the same form as the security it is replacing;
- 18.6.4 issued by an Approved Provider; and
- 18.6.5 the provisions of this clause **18** will apply in relation to any such replacement security.
- 18.7 CATCON shall not be bound to make any payment to the Subcontractor of any moneys whatsoever which may become due or payable under the Subcontract unless and until CATCON receives and holds a Performance Bond or Replacement Bond (if necessary) duly executed by the surety and in accordance with the foregoing provisions.
- 18.8 CATCON may elect to convert a Performance Bond to cash if it is not provided with a Replacement Bond in accordance with provisions **18.5** and **18.6** which it may then hold as security for the performance of the Subcontract Works.

19. Subcontract Sum

- 19.1 The price of the Subcontract Works (the 'Subcontract Sum') shall be the sum stipulated in item 5 of the Contract Particulars (or to be determined in accordance with provisions set out therein) or such other sum as shall become payable under the provisions of this Subcontract.
- 19.2 The Subcontractor acknowledges that the Subcontract sum is all inclusive and that the Subcontractors' rates and prices in (where applicable) any schedule of rates or bills of quantities (as the case may be) drawn up for the purposes of costing the Subcontract Works shall be deemed to be inclusive of all ancillary and other works and expenditure, whether separately or specifically mentioned or described in the Subcontract documents or not which are either indispensably necessary to carry out and bring to completion the Subcontract Works or which contingently become necessary to overcome difficulties before completion.
- 19.3 Unless otherwise stated, the Subcontractor 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 Subcontractor.

20. Variations

- 20.1 The Subcontractor shall not vary the Subcontract Works except as directed by CATCON and confirmed in writing by CATCON.
- 20.2 CATCON may at any time direct variations to the Subcontract Works and no variation required by CATCON shall vitiate this Subcontract.
- 20.3 CATCON may omit any part of the Works for the purpose of having that part of the Works executed either by itself or by another Subcontractor
- 20.4 If a variation results in a reduction in the quantity, the Specification or the method of fabrication of the Goods, the Subcontractor will not be entitled to any payment, including any payment for overhead and profit, in respect of such reduction.
- 20.5 If a variation is made necessary due to any act, omission or default of the Subcontractor or its Personnel:
- 20.5.1 the Subcontractor will not be entitled to claim any additional cost or expense or any adjustment to the Subcontract Price or to make any claim under or in connection with this Subcontract any applicable Law or otherwise;
- 20.5.2 the Subcontractor will not be entitled to claim any extension to the Subcontract Completion Date; and
- 20.5.3 the Subcontractor's warranties, obligations or liabilities under or in connection with this Subcontract will not be affected.
- 20.6 The parties agree that normal design developments, whether made at CATCON 's request or on the Subcontractor's initiative, do not constitute extra or additional Works.
- 20.7 The parties must endeavour to agree on the value of a variation, which directs extra or additional work, prior to the commencement of the work comprising the variation and if there is a failure by the parties to agree to the valuation of the variation prior to the commencement of the work comprising the variation, the Subcontractor must proceed to carry out the variation without delay in the execution of the work under the Subcontract.
- 20.8 Without detracting from the effect of clause **20.5** any additions to the Subcontract Works shall be executed, and any omissions from the work omitted only after the written confirmation of CATCON has first been obtained and CATCON shall not be liable to the Subcontractor for the cost of executing such extra work if CATCON has not given prior confirmation in writing to the work being undertaken.
- 20.9 The price of all variations shall be valued as follows:
- 20.9.1 by agreement between the parties;
- 20.9.2 where the extra work is of the same or similar character to the Subcontract Works, by reference only to affected resources within the schedule of rates or the bills of quantities upon which the Subcontract Sum is based as priced herein;
- 20.9.3 where the extra work is not of the same or similar character to the Subcontract Works, or there is no schedule of rates or bill of quantities the actual prime cost to the Subcontractor for the materials transport and labour concerned plus the percentage stated in item 11 of the Contract Particulars (if any); or
- 20.9.4 where the extra work cannot be, or is unable to be measured or valued the price shall be determined as a fair and reasonable price by CATCON.
- 20.10 It is a condition precedent to the Subcontractor being entitled to any payment (under this Subcontract or under any applicable Law at common law, in equity or otherwise) for any variation that the Subcontractor;
- 20.10.1 has been directed to perform the variation in accordance with clause **17.1**;
- 20.10.2 has provided and maintained a Performance Bond or Replacement Bond required to be provided under clause **18**;
- 20.10.3 has supplied vouchers specifying the daily time spent upon the work /and, if required by CATCON, particulars of the workmen involved);
- 20.10.4 has provided reasonable supporting evidence of the actual prime cost of any plant equipment or materials employed (including quotations from suppliers or subcontractors where necessary)
- 20.11 The Subcontractor acknowledges that any partial or otherwise incomplete payment of a variation does not constitute agreement or acceptance by CATCON of the Subcontractor's entitlement to the variation.

21. Goods and Service Tax and Value Added Tax

- 21.1 Any reference to the Subcontract Sum or any part thereof shall be regarded as such sum exclusive of any Goods and Services Tax.
- 21.2 CATCON shall pay or reimburse to the Subcontractor any Goods and Services Tax chargeable on the supply by the Subcontractor to CATCON of any goods and services under this Subcontract and the Subcontractor's Progress Claim and Final Claim shall comply with the requirements of the legislation in relation to a valid Tax Invoice.

22. Payment

- 22.1 CATCON and the Subcontractor shall agree by the end of the first month after the Subcontract Commencement Date on a timeframe for the submission of the Subcontractor's Progress Claim that allows for the timely inclusion of the value of the Subcontract Works in CATCON's progress claim for the Head Contract Works but subject thereto the following provisions will apply by default to the submission of the Subcontractor's Progress Claim; in all cases the Subcontractor's Progress Claim must be received at CATCON's address stated in the Annexure

- no later than on the seventh day of the month following the month in which the works claimed were carried out.
- 22.2 The Subcontractor shall by the 2nd day of each calendar month, agree the Subcontractor's Progress Claim to CATCON setting out the total value of work (including authorised variations) and goods or materials properly executed or delivered by the Subcontractor which claim shall be made up to the last day of the preceding calendar month, for inclusion in CATCON's request to the Principal for payment under the Head Contract.
- 22.3 The Subcontractor shall include with each Subcontractor's Progress Claim all details and documentation necessary to substantiate the Subcontractor's Progress Claim and assigning the value of each item of the Subcontract Works to which it relates.
- 22.4 The Subcontractor's Progress Claim shall comprise the total value of the Subcontract Works (including authorised variations) properly executed and of the materials and goods properly delivered on site for incorporation in the Subcontract Works but CATCON shall be entitled to take into account any dispute, withholding, claim, set-off, defence or counterclaim of the Principal or of CATCON in respect of or arising out of the Subcontract Works or any act or omission of the Subcontractor, its employees or Subcontractors.
- 22.5 Any payment is on an 'on-account' basis.
- 22.6 Within 30 days of completion of the Subcontract Works, the Subcontractor shall submit to CATCON the Final Claim. CATCON shall not be liable for any claim which is not included in the Final Claim. CATCON shall not be liable to make payment of the balance due under the Final Claim unless the Subcontractor simultaneously delivers to CATCON a duly executed valid and enforceable Release.
- 22.7 The Subcontractor's Tax Invoice shall clearly state that the invoiced total amount is subject to a retention deduction. CATCON may deduct any retention money from the approved total invoice value in accordance with the retention requirements under this Subcontract Agreement.
- 22.8 The Subcontractor is only entitled to one payment claim per month;
- 22.9 The Subcontractor agrees that the service of invoices, payment claim, or payment request shall only be served by post to CATCON's Head Office or by email to invoices@catcon.com.au addressed to the attention of 'accounts payable'. Communication of these documents to any other CATCON representative will not be deemed a valid service of these documents;
- 22.10 Failure by the Subcontractor to submit a claim in the form of the tax invoice, payment claim or payment request to CATCON's head office by the 7th calendar day of the month will result in the claim being deemed a claim for work performed in the month of receipt of that claim and the applicable payment terms become 45 days from the end of month in which the claim is received;
- 22.11 No interest shall be payable on any monies that remain unpaid after the expiration of this 45-day period. The Subcontractor herewith indemnifies CATCON against any costs or charges associated with collection agency fees or any other fees levied by the Subcontractor as a result of non-adherence to the payment terms noted herein;
- 22.12 Invoices submitted later than one (1) month after the period in which the Goods were provided will be subject to an extended payment term of 90 days. Additional time in excess of the agreed payment terms will apply for a final claim to allow for complete and final assessment of all previous claims;
- 22.13 Any payments made by electronic funds transfer (EFT) will only be made to the account details nominated on the tax invoice received.
- 22.14 Conditions precedent to payment:
- 22.14.1 The Subcontractor shall submit a claim including a valid Tax Invoice to CATCON's Head Office by close of business the 7th day of the following month in which the Goods, Materials and/or Services were provided. CATCON shall pay the Contractor, subject to adherence to the conditions of the PO and the terms and conditions contained herein by the Contractor, within 45 days of the end of the month in which the Goods, Materials and/or Services were provided
- 22.14.2 A duly signed statutory declaration is provided in the form supplied by CATCON confirming payment of all service providers, subcontractors and suppliers used to deliver Goods under the PO and that that all Worker's entitlements and all statutory charges have been paid by the Subcontractor in connection with the labour required to complete the works under this agreement. For the avoidance of doubt this includes superannuation, long service leave, worker's compensation, PAYG and payroll tax;
- 22.14.3 The Subcontractor has provided Performance Security (if called for by this Subcontract Agreement) which is valid and enforceable to at least 30 days post the payment due date;
- 22.14.4 The Subcontractor has provided evidence of effective insurance cover as called for by this Subcontract Agreement;
- 22.14.5 The Subcontractor having fully complied with the terms and conditions of this agreement;
- 22.14.6 Original invoices shall be accompanied by matching delivery dockets relating to the provision of Goods, Materials and/or Services;
- 22.14.7 The Subcontractor having quoted relevant PO number onto each invoice;
- 22.14.8 The Subcontractor having included with each invoice a detailed claim breakdown assigning a value to each individual work activity claimed and adequate proof of purchase and performance of each of the claimed work activities is provided (including third party invoices); and
- 22.14.9 In relation to a final balance of payment: until the Subcontractor delivers to CATCON a duly executed valid and enforceable release form being a document prepared by CATCON evidencing the release and discharge of CATCON from any claims of the Subcontractor pursuant to this PO.

23. Retention Moneys

- 23.1 CATCON may retain out of any amount which would otherwise be payable to the Subcontractor, such Retention Moneys as are set out in item 13 of the Contract Particulars.

- 23.2 Retention Moneys will be paid to the Subcontractor subject to any right of set-off or deduction to which CATCON may be entitled, and subject to the following provisions;-
- 23.2.1 part of the Retention Moneys will be released to the Subcontractor in the amount and at the date/period specified in item 13 of the Contract Particulars following the request by the Subcontractor to do so; and
- 23.2.2 the remaining part of the Retention Moneys shall be released to the Subcontractor within 30 days from the date of any Final Maintenance Certificate issued in respect of the whole of the Head Contract Works or the date of release by the Principal of CATCON of all its defects liabilities obligations in respect of the Subcontract Works following a request by the Subcontractor for such release.
- 23.3 The Subcontractor shall claim the value of works performed. The associated Tax Invoice shall clearly state the retention value applicable to the claimed value. CATCON will pay the approved invoiced value less the retention requirement.

24. CATCON'S Right to Set Off

- 24.1 CATCON shall be entitled to deduct and set off from any moneys (including any Retention Moneys) otherwise due under this Subcontract or due under any other any Purchase Order or Subcontract Agreement including those relating to other projects agreed by the Subcontractor as due to CATCON, or finally awarded in arbitration, adjudication or litigation in favour of CATCON, and which arises out of or in connection with this Subcontract.
- 24.2 CATCON shall be entitled to deduct and set-off against any money (including any Retention Moneys) otherwise due under this Subcontract or due under any other Purchase Order or Subcontract Agreement for works performed for CATCON, the amount of any claim for loss, damages, costs or expense which has been or may be incurred by CATCON by reason of any breach of or failure to observe the provisions of this Subcontract by the Subcontractor.
- 24.3 Any amount set-off under the previous sub-clauses is without prejudice to the rights of CATCON in any subsequent negotiations, arbitration or litigation to seek to vary the amount set-off.
- 24.4 CATCON's right to set-off shall be cumulative and in addition to any other rights and remedies which it may have at law or in equity.

25. Defects, Nonconformities and Other Faults

- 25.1 The Subcontract Works are subject to a Defects Liability Period of 12 months commencing from the date of Practical Completion unless more stringent requirements are set out in this Subcontract.
- 25.2 The Subcontractor guarantees that the Subcontract Works will be free from defects up to the end of the Defects Liability Period.
- 25.3 The Subcontractor shall be liable to make good all defects, non-conformities or other faults which may appear in the Subcontract Works which CATCON is liable to make good under the Head Contract. All defects, non-conformities and other faults for which the Subcontractor is liable shall, subject to the next sub-clause be made good at the Subcontractor's own cost and in accordance with the request of the Principal and in all respects to the satisfaction of CATCON provided always notice of such defects, non-conformities and other faults has been notified to the Subcontractor by the Principal, the Principal's Representative or CATCON.
- 25.4 Any remedial work carried out during the Defects Liability Period must not unreasonably disrupt or inconvenience the activities of the occupants of the Project. Subject to any restrictions on the access to the Project and associated facilities that CATCON may determine to be necessary for the execution of remedial work by the Subcontractor, the use of the Project and associated facilities by its occupants will not relieve the Subcontractor from any liability or obligation under this Subcontract.
- 25.5 Should the Subcontractor fail promptly to proceed with the execution of works to make good any such defects, non-conformities or other faults and to complete the same within 10 days after receipt of notice to do so, CATCON may, without prejudice to any other rights or remedies which it may have, make other arrangements for the execution of such work and the cost of the execution of such work shall be paid to CATCON or be otherwise recovered from the Subcontractor as a debt. The cost and expenses, including incidental costs and expenses incurred by CATCON as a result making good such Defects will be a debt due and payable to CATCON and may be deducted from any payments otherwise due from CATCON to the Subcontractor. CATCON may also have recourse to the Performance Bond provided under this Subcontract and may, at its sole discretion, pay to the Principal or allow the Principal to deduct from monies due to CATCON the value or other agreed sum (not exceeding the cost of the execution of such work) in respect of such work instead. The Subcontractor shall pay to CATCON such value or other agreed sum as aforesaid.
- 25.6 Where CATCON is liable under the Head Contract to make good defects, nonconformities or other faults but not at its own cost CATCON shall grant a similar indulgence to the Subcontractor.
- 25.7 The Defects Liability Period will extend from the date of completion of rectification or making good any Defect or associated damage. to the Subcontract Works or part thereof to CATCON 's approval. but only regarding that part of the Subcontract works rectified or made good. Where the Subcontractor makes good any Defect in accordance with this clause **25**, a separate Defects Liability Period in respect of that rectification work will commence on the date that the rectification work is complete and will expire 12 months from that date.
- 25.8 Where required of CATCON under the Head Contract, the Subcontractor shall promptly provide in favour of the Principal or such other person as CATCON directs, a written guarantee or warranty in relation to the Subcontract Works in such form and substance as required under the Head Contract or as approved by CATCON.
- 25.9 The obligation to make good all such defects non-conformities for faults shall be coextensive with the defects liability period imposed on CATCON under the Head Contract and any extension thereof.

26. Clean Up Site

- 26.1 In addition, and without prejudice, to the Subcontractor's other obligations under this Subcontract the Subcontractor shall;
- 26.1.1 at all times during the execution of the Subcontract Works promptly clear away and remove from the Site all rubbish resulting from its execution of the Subcontract Works and keep the Site clean, and in good order;
- 26.1.2 upon completion of the Subcontract Works, the Subcontractor shall leave the Site in a clean and tidy condition and in good order and shall, at its expense, remove from the Site all equipment and any other property or surplus materials supplied by the Subcontractor under this Subcontract. If the Subcontractor fails to comply with the provisions of this clause, CATCON shall be entitled to carry out such work by its own employees or other contractors and the Subcontractor shall be liable for the cost of such cleaning, tidying and orderliness and removal of such equipment, any other property and surplus materials. Such equipment and surplus materials removed as aforesaid may (at CATCON's sole discretion) be stored at the Subcontractor's risk and expense. CATCON shall be entitled to sell such equipment and surplus materials, after the expiry of 14 days from the date of expiry or sooner termination of this Subcontract without being liable for any claim whatsoever by the Subcontractor. The Subcontractor shall indemnify CATCON against any claim whatsoever in respect of such equipment, other property or surplus materials sold as aforesaid.
- 26.1.3 In execution of the requirements of this clause **26**, ensure no plant, materials and equipment owned and operated by CATCON are damaged or unjustifiably removed from Site by the Subcontractor

27. Right of Access of CATCON, etc.

CATCON, the Principal and the Principal's Representative and all persons duly authorised by them or any of them shall at all reasonable times have access to any work which is being prepared for or will be utilised in the Subcontract Works and to inspect the same.

28. Safety and Environment

- 28.1 The Subcontractor shall at all times maintain safe and environmentally compliant working conditions on the Site and in particular shall comply fully with all requirements of CATCON's Project Management Plan applicable to the Head Contract Works and any other rules procedures or directions from time to time issued by CATCON or the Principal.
- 28.2 The Subcontractor shall comply with the control measures listed in the CATCON Project Risk Register and Register of Environmental Aspects and Impacts. The Subcontractor shall prepare, submit for review and implement control measures for the works identified as the Subcontractor's responsibility.
- 28.3 The Subcontractor shall prior to the commencement of the Subcontract Works and as and when necessary, at its own cost, obtain from the governmental and other competent authority all necessary approvals, consents, licences and permits whatever which may be from time to time required for or in connection with the execution of the Subcontract Works or any other matter relating to this Subcontract, and shall at its own cost keep on foot and promptly renew from time to time all such necessary approvals, consents, licences and permits and promptly deliver to CATCON on demand certified true copies of all such approvals, consents, licences and permits and documentary evidence of payment of all fees, duties and or impositions levied by the relevant authorities. The Subcontractor shall at all times exhibit all such notices, certificates, licences and permits referred to in the foregoing provision in such manner as required by law.
- 28.4 The Subcontractor shall for all its employees prior to commencement of the Subcontract Works, provide documentary evidence of compliance with all statutory and site provisions. The documentary evidence required shall include hazard identification and risk assessment statements, safe work method statements and safety & environmental management plans.
- 28.5 Where the Subcontract requires the use of plant or equipment to carry out all or part of this Subcontract Works, the Subcontractor shall ensure:
- 28.5.1 the plant or equipment shall comply with the manufacturer's specification, shall be in good repair and shall be fit for the purpose and suitably licensed for operation;
- 28.5.2 if the plant or equipment requires the operator to be positioned upon the machine, it shall be fitted with appropriate devices including but not limited to seat belts, roll over protection structures (ROPS), and falling object protection structures (FOPS) as required by CATCON, legislation and the relevant Australian Standards. The Subcontractor shall produce on demand by CATCON appropriate documentation to confirm that the plant or equipment has been inspected within the previous 12 months by a duly qualified person and is in a safe, serviceable condition and complies with the relevant legislation and Australian Standards;
- 28.5.3 the plant or equipment shall be properly maintained and or repaired by the Subcontractor throughout the period of hire such that the plant or equipment shall be available to operate in an efficient, effective and safe manner at all times during the progress of the Subcontract Works and any defects liability period under the Head Contract. Methods used to store and maintain the plant or equipment shall comply with CATCON safety and environmental requirements.
- 28.6 Where the Subcontractor requires the use of an operator for plant or equipment, the Subcontractor shall ensure that the operator is:
- 28.6.1 experienced, competent and fit to operate the plant or equipment;
- 28.6.2 holds appropriate licenses and certificates;
- 28.6.3 complies with legislation and project site specific safety and environmental requirements;
- 28.6.4 complies with legislative and project site specific Industrial relations requirements;
- 28.6.5 complies with relevant Australian Standards;

- 28.6.6 complies with CATCON's directions; and
- 28.6.7 paid in accordance with the payment conditions, and receives the working conditions, applicable to the project site;
- 28.6.8 carries out and documents inspections of the plant or equipment prior to each shift.
- 28.7 The contractor will submit to CATCON evidence of the licenses and certificates referred to in the preceding sub clause prior to commencement of the Sub-Contact Works.
- 28.8 The Subcontractor is required to submit to CATCON copies of documents completed by the Subcontract consequent upon the inspection of the plant or equipment prior to each shift.
- 28.9 Where an unsafe working condition exists or an unsafe act is being or is about to be committed, CATCON in its discretion may serve notice to that effect on the Subcontractor requiring the Subcontractor to stop work and to rectify the situation within the time stipulated in the notice. If the unsafe condition existing or arising out of the unsafe act is not made good by the Subcontractor at its own cost within the time stated in the notice, CATCON may by itself or by its contractors or agents remedy the condition at the costs of the Subcontractor. If the Subcontractor suffers any loss as a result of a stop work notice under this clause, the Subcontractor is not entitled to any cost of compensation except where the unsafe work condition giving rise to the stop work notice was caused wholly by CATCON.
- 28.10 The Subcontractor shall not do or permit to be done any act or thing which may become a nuisance to or give cause for reasonable complaint from the occupiers of neighbouring premises or of other parts of the Site.
- 28.11 The Subcontractor shall observe the requirements of the CATCON procedure for drugs and alcohol which provides for, among other things, random testing for drugs and alcohol, and a zero BAC reading (blood alcohol, as measured by a breathalyser).

29. Quality

- 29.1 The Subcontractor shall, if required by any Contract plan, establish and maintain a quality system which conforms to the Contract requirements. The Subcontractor will also provide CATCON with access to the Subcontractor premises and quality system and with access to the premises and quality systems of its secondary Subcontractors to permit verification activities and quality auditing.
- 29.2 If this subcontract requires the Subcontractor to work to the CATCON quality system, the Subcontractor shall:
 - 29.2.1 Prepare, as directed by CATCON, and submit to CATCON for approval an inspection and test plan. An inspection and test plan for the purpose of this provision is a plan describing how, when and where during the execution of the Works, parts of the Works will be inspected, tested or measured to provide objective evidence that design and other contractual and regulatory requirements have been satisfied; and
 - 29.2.2 Cooperate with and assist CATCON in the preparation of documents required under the CATCON quality system insofar as the system relates to the Works.
- 29.3 Compliance with such system shall not relieve the Subcontractor of responsibility for complying with the Subcontract.
- 29.4 Failure by the Subcontractor to take remedial action in accordance with the requirements of a non-conformance notice served on the Subcontractor within a reasonable time after such service, may result in the withholding of payments otherwise due to the Subcontractor.
- 29.5 Where the Subcontract calls for the provision of operation and maintenance manuals, within the time specified in the Appendix the Subcontractor must provide CATCON with the number as stated in the Appendix of complete originals of the operation and maintenance manuals in a form and including such details as acceptable to CATCON.
- 29.6 Where the Subcontract calls for the provision of work as-constructed drawings, during the execution of the work under this Contract the Subcontractor must progressively complete and submit to CATCON for approval as-executed drawings in respect of the work under this Contract. Prior to completion of the work under this Contract the Subcontractor must lodge with CATCON final copies of the approved executed drawings of the work under this Subcontract in the form and in the quantities specified in the Appendix.

30. Hours of Work

- 30.1 No part of the Subcontract Works shall be carried out by the Subcontractor outside of the Prescribed Working Hours unless the prior written approval of CATCON has first been obtained which may be given subject to such conditions as may be imposed by CATCON.
- 30.2 Without detracting from the generality of the preceding sub clause, CATCON may direct the Subcontractor at the Subcontractor's own costs to work overtime provisions of this Subcontract relating to the execution of the Subcontract Works with diligence and due expedition.
- 30.3 The Subcontractor will keep and maintain proper and accurate returns of man hours expended on the Subcontract Works and all information related to Health and Safety and statistics concerning man hours lost due to illness and injury as CATCON may require.
- 30.4 In the instance that hourly rates are charged to CATCON, such hours shall be adjusted for time not worked including for lunch time and pre-start activities.

31. Breach

- 31.1 Without detracting from the rights and remedies from CATCON otherwise arising under this Subcontract and the indemnities given by the Subcontractor. The Subcontractor shall indemnify and save harmless CATCON from and against any loss, damages, costs (including legal costs on an indemnify basis) and expenses, arising from or in connection with any breach of its obligations under this Subcontract or Law.

- 31.2 The subcontractor is not entitled to any plant, labour or delay costs for any hours worked in addition to the Prescribed Working Hours without written approval from CATCON.
- 31.3 CATCON shall be entitled to retain out of any payment which would otherwise be payable to the Subcontractor such moneys as CATCON may reasonably require to meet any contingent claim, action, proceeding, loss, damages, costs or expenses arising from or in connection with any breach by the Subcontractor of its obligations under this Subcontract or Law.
- 31.4 CATCON shall be entitled to retain out of any payments which would otherwise be payable to the Subcontractor under this Subcontract Agreement such moneys as CATCON may reasonably require to meet any contingent claim, action, proceeding, loss, damage, cost or expenses arising from or in connection with any breach by the Subcontractor of its obligations under any previous or future Purchase Orders or obligations under Law for works performed for CATCON including those related to other projects.
- 31.5 The following events are deemed material breaches of this agreement by the Subcontractor: (1) Failure to comply with the requirements of this agreement within the agreed time; (2) Failure to rectify defective or non-compliant Goods within reasonable time; (3) Failure to provide or maintain security (if applicable); (4) Reaching the delay damages cap (as applicable); (5) A default event such as the Subcontractor entering into external administration or liquidation; (6) Any other conduct by the Subcontractor that substantially and adversely affect the interest of CATCON.

32. Determination

- 32.1 If the Subcontractor:
- 32.1.1 repudiates this Subcontract;
 - 32.1.2 fails to commence or proceed with the Subcontract Works in accordance with this Subcontract;
 - 32.1.3 suspends without reasonable cause the carrying out of the Subcontract Works;
 - 32.1.4 at any time fails to carry out the Subcontract Works to the reasonable satisfaction of CATCON;
 - 32.1.5 refuses or fails to comply with an instruction, direction or requirement of the Principal, the Principal's Representative or CATCON within 7 days after service of a written notice from CATCON as obliged by this Subcontract;
 - 32.1.6 commits any other breach of this Subcontract and fails to remedy the same within a reasonable time after notice in writing from CATCON to do so; or
 - 32.1.7 becomes bankrupt or makes a composition or arrangement with its creditors or having a proposal for a voluntary scheme of arrangement or having a composition of debts or scheme of arrangements approved by the Court, or having an administrator appointed or having a winding up summons served upon it, or winding up order made (except for the purposes of amalgamation or reconstruction) or a resolution for voluntary winding up passed or having a provisional liquidator, receiver or manager of its business or undertaking duly appointed, or having an administrative receiver appointed, or having possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the floating charge, then in any such event, and without prejudice to any other rights and remedies including the right to treat this Subcontract as repudiated by the Subcontractor under the general law, CATCON may, by written notice to the Subcontractor, determine forthwith the Subcontractor's engagement under this Subcontract and may expel the Subcontractor from the Site and take over all the plant, equipment and materials provided by or on behalf of the Subcontractor which are on the Site or are being used in connection therewith and may use the same to complete or have completed the Subcontract Works.
- 32.2 The Subcontractor shall pay to CATCON the amount of any and all losses, damages, costs and expenses caused to CATCON by reason of such determination.
- 32.3 Until after completion of the Subcontract Works, CATCON shall not be bound to make further payment to the Subcontractor but upon such completion and within a reasonable time thereafter CATCON shall ascertain the amount of expense reasonably incurred in completing the Subcontract Works and the amount of loss, damages, cost and expense caused to CATCON by reason of the determination and if such amounts when added to the moneys paid to the Subcontractor before the date of determination exceed the total amount which would have been payable on due completion in accordance with this Subcontract the difference shall be a debt payable to CATCON by the Subcontractor; and if the said amounts when added to the said moneys do not exceed the said total amount then the money payable to the Subcontractor shall be the lesser of:
- 32.3.1 the difference between:
 - (a) the said amounts when added to the moneys; and
 - (b) the said total amount; or
 - 32.3.2 the aggregate of:
 - (a) the value of any work actually and properly executed and not paid for at the date of such determination, such value to be calculated according to clause **20.9**;
 - (b) the value of any unfixd goods and materials which were taken over by CATCON on determination and used by CATCON and a fair payment for hire of such of the Subcontractor's plant as were used by CATCON, in completing or having completed the Subcontract Works; and
 - (c) Notwithstanding anything else herein, no sums shall be payable to or credited to the Subcontractor following determination under clause **32.1**, until CATCON is in receipt from the Principal of a payment which includes such sums.
- 32.4 If for any reason CATCON's engagement under the Head Contract is determined (whether by CATCON or the Principal and whether due to any default of CATCON or otherwise) then the engagement of the Subcontractor under this Subcontract shall thereupon also be determined automatically.
- 32.5 CATCON may at any time and for its sole convenience determine this Subcontract Agreement.

- 32.6 Unless the determination or suspension of the Head Contract was caused or contributed to by any default or breach of contract by the Subcontractor (in which event the Subcontractor shall be liable to CATCON for damages on the same basis as if the Subcontractor had wrongfully repudiated the Subcontract) or unless CATCON was entitled at time of determination of the Head Contract to exercise its right of determination under clause **32** (whether or not any act or default of the Subcontractor caused or contributed to the determination of the Head Contract, the Subcontractor shall be paid (after allowing for any previous payment);
- 32.6.1 the value of the Subcontract Works completed at the date of determination, such value to be calculated according to clause **32.1**;
- 32.6.2 the value of work begun and executed but not completed at the date of such determination, such value to be calculated according to clause **32.1**;
- 32.6.3 the value of any unfixed goods and materials delivered upon the Site for use in the Subcontract Works the property in which has passed to the Principal under the terms of the Head Contract;
- 32.6.4 the cost of materials or goods properly ordered for the Subcontract Works for which the Subcontractor shall have paid or of which it is legally bound to accept delivery. On such payment by CATCON, the property in the goods and materials so paid shall be transferred by the Subcontractor to CATCON;
- 32.6.5 the reasonable cost of removal from the Site of its temporary buildings, plant, machinery, tools, goods and materials insofar as this has not already been included in payments made or the value of work or materials; and
- 32.6.6 The reasonable cost of storage; provided that
- 32.6.7 No percentage of profits applies to works not performed.
- 32.7 CATCON may, at its sole discretion, instead of determining the Subcontractor's engagement under clause 32.1 or 32.5 suspend the obligations of the Subcontractor or any part thereof and CATCON may upon such suspension at the cost of the Subcontractor move in and undertake directly or through other contractors the management or supervision or carrying out of the whole or any part or parts of the Subcontract Works to the extent and for such time or times as CATCON deems necessary. Any suspension of the Subcontractor's obligations hereunder shall not in any way relieve or affect its obligations under the Subcontract.

33. Approval not to Relieve Subcontractor of Liability

No approval or consent of CATCON, the Principal or their respective employees or agents or Principal's Representative shall be taken as relieving the Subcontractor of any liability arising out of or in any way connected with the performance of its obligations under this Subcontract.

34. Notices

Any notice necessary or required to be given by CATCON to the Subcontractor shall be deemed to be sufficiently given if sent by pre-paid post, facsimile transmission, email or hand delivered, addressed to the Subcontractor at any the address stated in the Annexure.

35. Site Agreements

All or any site agreements made or to be made between CATCON and any union or other organisation of workers shall be made in accordance with the relevant state and federal legislation. Industrial relations on site shall be managed in accordance with the CATCON Employee Relations Management Plan for the project.

36. Assignment or Subletting

- 36.1 The Subcontractor shall not assign or sub-let the Subcontract Works or any part thereof without the prior written consent of CATCON provided always that (in the case of sub-letting) such consent shall not be withheld unreasonably and further provided always that the consent of CATCON to any assignment or subletting shall not reduce or affect in any way the Subcontractor's obligations to complete this Subcontract to the intent that the Subcontractor shall at all times be responsible to CATCON for the acts and defaults of any assignee or Subcontractor and any workman, contractor or other person engaged in connection with the assigned or sub-let works.
- 36.2 The Subcontractor acknowledges that CATCON may be required under the Head Contract to assign this Subcontract to the Principal or the Principal's nominee. The Subcontractor hereby irrevocably consents to any such assignment in the form required by the Principal or the Principal's nominee and to the release of CATCON upon any such assignment of all further obligations under the Subcontract and agrees to execute any instrument or other document to give effect to any such assignment and release.
- 36.3 CATCON may, upon written notice to the Subcontractor and without its consent assign all or any part of its rights and benefits hereunder or transfer all or any part of its obligations hereunder to an Affiliate. The Affiliate receiving such an assignment transfer will hereafter be liable solely for the performance of the obligations hereunder. 'Affiliate' in this Subcontract means any company of which more than 50% of the outstanding voting shares are held, directly or indirectly, by Civil and Allied Technical Construction Pty Ltd, a company incorporated under the laws of Australia.

37. Compliance with Statutory and Other Regulations

The Subcontractor shall in the execution of the Subcontract Works comply with the requirements of all relevant statutory enactments and acts of parliament and of all ordinances, regulations, by-laws, orders and proclamations made or issued under any such enactment or Act and with any lawful requirements thereunder and with the lawful requirements of governmental, public, municipal and other authorities in any way affecting or applicable to the work under this Subcontract Agreement. Before making any departure from the terms of the Subcontract which may be necessary to comply with any such requirements the Subcontractor must give CATCON prior written notice specifying the proposed departure and the reason therefore. The Subcontractor

must not proceed with such departure until it has received from CATCON consent to such course which may include instructions on the work to be performed in relation to such departure.

38. Governing Law

This Contract shall be governed by and construed in all respects in accordance with the laws stated in the Schedule, or (if none is stated) the laws of South Australia. The Parties agree to submit to the jurisdiction of the Court of the State of South Australia.

39. Approval by CATCON

Unless otherwise stated expressly in the Contract, each reference in the Subcontract to CATCON reviewing, examining, approving or checking means, methods, techniques, designs, drawings, plans, diagrams, measurements, sequences, tests and procedures or other matters employed or to be employed by the Subcontractor in the execution of the Subcontract will mean only that those matters will be reviewed by CATCON for the purpose of administering the Subcontract and the Subcontractor's responsibility for those matters will not thereby be diminished.

40. Supply of Spares

Where the Subcontract calls for the supply of spare materials, on or before the date 4 weeks prior to completion of the work under this Subcontractor such other date instructed by CATCON in writing, the Subcontractor must supply CATCON with the spare materials nominated in the Appendix (the '**Spare Materials**').

- 40.1 The Subcontractor must adequately pack the Spare Materials for long term storage and deliver, unload and store as directed by CATCON.
- 40.2 The Subcontractor must clearly and permanently mark on the exterior of the packaging of the Spare Materials the following details:
- (a) the contents;
 - (b) the Supplier's name;
 - (c) the Client's name.

41. Confidentiality

- 41.1 Except as provided in this clause, the Subcontractor must not without CATCON's prior written consent divulge or communicate to any person, any information:
- 41.1.1 In respect of the contents of this Subcontract Agreement;
 - 41.1.2 As to the existence, operation or performance of the Subcontract Agreement; or
 - 41.1.3 Which may come to its knowledge in the course of carrying out this Subcontract Agreement as to the operations, business dealings or financial affairs of CATCON or the Client.
- 41.2 The restriction imposed in this clause does not apply to any disclosure of information;
- 41.2.1 Which at the time of the disclosure was in the public domain other than by breach of the Subcontract Agreement;
 - 41.2.2 Which is required by law to be communicated to a person who is authorised by law to receive that information;
 - 41.2.3 That is necessarily made to a court or an arbitrator or an administrative tribunal in the course of proceedings to which CATCON is a party provided that in the case of any arbitration proceedings the Subcontractor first obtains from each other party to those proceedings an undertaking, enforceable by CATCON, that each such party will similarly not divulge or communicate, without CATCON's prior written consent, any information referred to in this clause; or
 - 41.2.4 Which subject to this clause is made available to an officer, employee, agent Subcontractor or supplier of the Subcontractor on a need-to-know basis only.
- 41.3 The Subcontractor must not disclose any information concerning the overall project or the facilities to be provided through any communications media without the prior written approval of CATCON, which may be granted or refused at the sole option and discretion of CATCON. The Subcontractor must refer to the company any enquiries from any media concerning such facilities, the project, the Subcontract Agreement or the hire of the Equipment.
- 41.4 The Subcontractor must ensure that the provisions of this clause are extended to its officers, employees, agents, Subcontractors and suppliers and that they comply with such provisions. The Subcontractor must not disclose any of the information referred to in this clause to such persons unless they have agreed to the extension of the provisions and give the Subcontractor an undertaking to comply with the provisions. Any breach of the undertakings in this clause by the Subcontractor and without in any way limiting CATCON's entitlements otherwise at law, at the direction of CATCON the Subcontractor must institute proceedings or do whatever CATCON reasonably directs to prevent or contain the breach.
- 41.5 The Subcontractor indemnifies CATCON, its officers, employees and agents against all claims, losses, actions, damages, cost (including legal cost) and expenses of any kind whatsoever that CATCON may incur either directly or indirectly, due to any breach (including any deemed breach in accordance with clause **31**) of a provision of clause **41** by the Subcontractor, Subcontractors, suppliers, or their respective officers, employees, representatives or agents. CATCON may recover from the Subcontractor as a debt due and owing to CATCON, any such costs, losses, expenses or damages.
- 41.6 Without in any way whatsoever limiting any other provisions of the Subcontract Agreement, the provisions of this clause **41** continue for a period of six (6) years after the first to occur of the expiration or the termination of the Subcontract Agreement.

42. Title and Risk of Loss

- 42.1 The Head Contractor shall have title to all completed and partially completed portions of the Works at the Site and any materials delivered to and stored at the Site, which are intended to become part of the Works. Despite the transfer of ownership of the Works the responsibility for care, custody and control together with the risk of loss remains with the Subcontractor until the date of Practical Completion. The Subcontractor shall have the risk of loss or damage to the Subcontractor's property used in the performance of the Works but which does not become a part thereof.
- 42.2 CATCON retains its right to rejection of the Goods in the event that the Goods are discovered to not comply with the terms of this Subcontract Agreement.
- 42.3 The provision of this clause shall apply notwithstanding The Head Contractor becoming insolvent within the meaning of the Construction Contracts Act 2004 during the term of this Contract.

43. Warranties

- 43.1 The Subcontractor warrants to CATCON that:
- (i) all payments for royalties, patent rights and governmental fees due or payable for the Goods are included in the Contract Sum and will be paid by the Supplier;
 - (ii) the Goods will not infringe any Australian or foreign patent, copyright, registered design or other protected right;
- 43.2 The Subcontractor must:
- (i) ensure that upon request by CATCON and at its own cost warranties are provided for any items supplied under this Subcontract Agreement.
 - (ii) ensure that any warranties provided or to be provided by manufacturers or suppliers of the Goods are provided to CATCON naming CATCON and the Client jointly as beneficiaries; and
 - (iii) ensure that the benefit of each warranty required to be provided under the Contract is capable of assignment at CATCON's option to CATCON, the Client, their assigns or any of them; and
 - (iv) assign the benefit of each warranty to CATCON, their assigns or any of them as CATCON may direct.

44. Non Waiver and Amendment

- 44.1 Any waiver or relaxation by CATCON partly or wholly of any term or condition of the Subcontract Agreement is valid only if in writing and signed by CATCON. Any such waiver or relaxation is restricted to its written terms and unless expressly stated otherwise applies to a particular occasion only. Is not continuing and does not constitute a waiver or relaxation of any other term or condition.
- 44.2 The Subcontract Agreement can only be amended, modified, varied, released or discharged by written agreement of the parties.

45. Severability

If any provision in the Subcontract Agreement is voidable or unenforceable that provision will be severed and the rest of the Subcontract Agreement will remain in full force and effect.

46. Security of Payment Legislation

- 46.1 For the purpose of this clause, a reference to:
- 46.1.1 A Subcontractor: refers to any party engaged by the Subcontractor to carry out works which forms part of this Subcontract Agreement; and
- 46.1.2 The Act means, as the case may be:
- 1) The Building and Construction industry Security of Payment Act (NSW)
 - 2) The Construction Contracts (Security of Payment) Act (NT)
 - 3) The Building Industry Fairness (Security of Payment) Act (Qld)
 - 4) The Building and Construction industry Security of Payment Act (Vic)
 - 5) The Construction Contracts Act (WA)
 - 6) Analogous legislation enacted in any other state or territory of Australia

Claims by Subcontractors of the Subcontractor

- 46.2 Notwithstanding any other provision of this Subcontract Agreement, the Subcontractor must:
- 46.2.1 Immediately give CATCON a copy of any written communication of whatever nature in relation to the Act (including a copy of any adjudication application, notice judgement of debt) as may be amended from time to time, that the Subcontractor served on any party involved in the project associated with this Purchase Order or which it received from a Subcontractor; and
- 46.2.2 Ensure that each Subcontractor gives CATCON a copy of any written communication of whatever nature in relation to the Act that the Subcontractor receives from another party.
- 46.2.3 The Subcontractor indemnifies CATCON against all claims, losses, actions, damages and cost (including legal cost) and expenses whatsoever arising out of or in connection with:
- 46.2.3.1 A failure by the Subcontractor to comply with its obligations under clause **46.2**;
 - 46.2.3.2 A suspension pursuant to the Act by a Subcontractor of work which forms part of the Subcontract Agreement.
- 46.2.4 The provisions under clause **46.2** will survive the expiration or termination of the Subcontract Agreement.

Suspension of work by the Subcontractor under the Act

- 46.3 If the Subcontractor suspends the whole or any part of the hire of Equipment or work under the Subcontract Agreement pursuant to the Act, then to the extent permitted by law:
- 46.3.1 CATCON shall not be liable for any cost, loss, expense or damage suffered or incurred by the Subcontractor as a result of such suspension; and
- 46.3.2 CATCON may direct the Subcontractor to omit the whole or any part of the suspended hire of the Equipment or work under the Subcontract Agreement and thereafter provide such Equipment and or undertake such work itself or engage others to carry out the omitted hire of the Equipment and or work.

Appointment of Adjudicator

- 46.4 If an application for adjudication is made under the Act, the authorised nominating authority or the prescribed appointer under the Act (as the case may be) in respect of the appointment of an adjudicator, shall be the institute of Arbitrators and Mediators Australia)

47. Proportionate Liability Legislation

- 47.1 For the purpose of this clause, a reference to proportionate Liability Acts means each of:
- 1) The Civil Law (wrongs) Act 2002 (ACT) and the Building Act 2004 (ACT);
 - 2) The Civil Liability Act 2002 (NSW);
 - 3) The proportionate Liability Act 2005 (NT) and the Building Act 1996 (NT);
 - 4) The Civil Liability Act 2003 (Qld);
 - 5) The Law Reform (Contributory Negligence and Apportionment of Liability (Proportionate Liability) Amendment Act 2005 (SA);
 - 6) The Civil Liability Act 2002 amended by the Civil Liability Amendment (Proportionate Liability) Act 2005 (Tas) and, upon commencement, the Building Act 2000 (Tas)
 - 7) The Wrongs Act 1958 (Vic); and
 - 8) The Civil Liability Act 2002 (WA)
- 47.2 To the maximum extent permitted by law:
- 47.2.1 The parties agree that the proportionate Liability Acts will not have any application to the Subcontract Agreement, the performance of the work or services under the Subcontract Agreement, or any of the obligations of the Subcontractor under the Subcontract Agreement or at law;
- 47.2.2 Despite the provisions of the proportionate Liability Acts, the Subcontractor acknowledges that Subcontractor is solely responsible for and indemnifies CATCON in respect of any loss, damage, cost, claim, expense or proceeding CATCON suffers or incurs, arising out of or in connection with any wrongful or negligent act or omission on the part of the Subcontractor, its officers, employees, agents and contractors, in performance of this Subcontract Agreement or on the part of any Subcontractor, consultant or supplier engaged by the Subcontractor in performance of the relevant subcontract or consultancy or supply arrangement; and
- 47.2.3 The parties agree that their rights, obligations and liabilities will be those which exist if the proportionate Liability Acts did not apply.
- 47.3 If despite the previous clause, one or more of the proportionate Liability Acts does apply then:
- 47.3.1 The Subcontractor acknowledges and agrees that, for the purpose of the Proportionate Liability Acts, the Subcontractor is entirely and solely responsible for any failure to take reasonable care on the part of any of its Subcontractors, suppliers, consultants, officers, employees and agents; and
- 47.3.2 The Subcontractor undertakes to CATCON, as a separate and independent obligation, to:
- 1) Rectify or complete any of the work or services under the Subcontract Agreement:
 - (a) Which is defective or incomplete or which is not in conformance with the requirements of the Subcontract Agreement; and
 - (b) Which would otherwise be a breach of the Subcontractor's obligations under the Subcontract Agreement; or
 - 2) Compensate CATCON for any cost, loss or expense incurred as a result of having such work rectified or completed.
- 47.4 The provisions of Clause 30 will survive the expiration or any termination of the Subcontract Agreement.

48. Arbitration

- 48.1 The parties shall in good faith negotiate any dispute or difference of any kind whatsoever arising out of or in connection with this Subcontract or any part thereof) or the carrying out of the Subcontract Works.
- 48.2 If the parties are unable to resolve the dispute or difference within 28 days of the Matter being referred by one party to the other, then CATCON will determine, at its discretion, whether the dispute is to be resolved by court or arbitration as set out below. If CATCON makes no determination on the means of further dispute resolution, then the means of further dispute resolution shall be deemed by arbitration as set out below.
- 48.3 If CATCON determines that the dispute is to be resolved by arbitration it shall be referred to arbitration by a single arbitrator to be appointed by agreement or (failing agreement within 14 days after receipt of notification by one party to the other of the intended reference) by an arbitrator to be appointed on the written request of either party by or on behalf of the President (the 'appointing authority') of:
- 48.3.1 the trade/institutional body, and in accordance with the provisions of the arbitral legislation/rules, specified in the Schedule; or
- 48.3.2 (if none is specified) by the Institute of Arbitrators or failing such appointment within 28 days after receipt of such written request, such person as may be appointed by the Court, in accordance with the provisions of the then current Commercial Arbitration Act (SA).

- 48.3.3 The place of arbitration shall be as specified in the Schedule or (if none is Specified) Adelaide. The decision of the arbitrator shall be final and binding upon CATCON and the Subcontractor.
- 48.4 Where an arbitrator has already been appointed under the Head Contract to deal with matters in dispute between the Principal and CATCON, then if some or all of such matters arise out of the same facts as matters in dispute under this Subcontract between CATCON and the Subcontractor, both parties shall use their best endeavours to secure the appointment of the same arbitrator to decide the dispute under this Subcontract, and either party shall be entitled to request the appointing authority of the Courts to appoint the same arbitrator to do so, if necessary in place of an arbitrator already appointed under this Subcontract, whose authority shall, to the extent of any common dispute only, be deemed to have been revoked upon any such new appointment. Any arbitrator with jurisdiction under both contracts shall have power to hear evidence of the dispute under this Subcontract either immediately before or immediately after or at the same time as the evidence of the matters in dispute under the Head Contract and generally to act as closely as possible in both arbitrations in accordance with the general principles of third party procedure in the Courts.
- 48.5 If for any reason in a case where a dispute under this Subcontract arises out of the same facts as a dispute under the Head Contract, the same arbitrator cannot be or is not appointed to hear both disputes, or if the Courts and not an arbitrator become seized of the dispute under the Head Contract, then in either event and in the absence of contrary agreement between the parties this arbitration clause, shall to that extent only, cease to have effect and any such dispute under this Subcontract shall be dealt with in the Courts. In any such case where an arbitrator has already been appointed under this Subcontract, his appointment shall be deemed to be revoked and shall lapse in regard to any such dispute.
- 48.6 None of the provisions of this clause 30 shall be construed so as to limit or prevent either party from exercising their right to request the Courts to exercise their discretion and either revoke the appointment of any arbitrator or refuse a stay of proceedings in any case where third parties (including in particular the Principal under the Head Contract) are also involved either directly or indirectly in a dispute between the parties to this Subcontract.
- 48.7 In any case where a dispute under this Subcontract is commenced by way of arbitration but is for any reason subsequently required to be dealt with in the Courts, or vice versa, the later proceedings shall be deemed to have been commenced for purposes of limitation of actions at the date when the earlier proceedings were commenced, provided that there has been no unreasonable delay by the claimant or plaintiff, as the case may be, in pursuing the later proceedings.
- 48.8 If, for any reason whatsoever, in a claim by the Subcontractor against CATCON which arises out of the same facts as a claim or dispute under the Head Contract, the Subcontractor does not wish to be, or is otherwise not, a party to the arbitration or litigation between CATCON and the Principal: -
- 48.8.1 The Subcontractor shall give CATCON all reasonable assistance in the prosecution of CATCON's claim or dispute and shall make available all relevant information, documents and evidence within its possession or control.
- 48.8.2 CATCON shall prosecute its claim or dispute with due diligence.
- 48.8.3 The Subcontractor shall be bound by the findings of fact and by the decision or decisions made in respect of CATCON's claim or dispute to the extent that the same involves any issue or issues which are the same or substantially the same as issues which are relevant to the Subcontractor's claim and the Subcontractor's claim shall be determined in a manner consistent with all such findings and decisions.

49. Special Conditions

In the event that any of the provisions of Clause 1-38 (Inclusive) conflict with any Special Conditions stated in Annexure G then such Special Conditions shall take precedence to the extent of such conflict.

Annexure A Contract Particulars

DATED: _____ day of _____ 20 _____

Parties

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

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

Site location/delivery address: _____

1. Head Contract:

 Date: _____
 Parties: _____
 and _____

2. Head Contract Works: _____

3. Principal: _____

4. Subcontract Works: _____
(more particularly described in Annexure B, if applicable)
5. Subcontract Sum: _____

6. Subcontract Documents:

- a) The Purchase Order
- b) Subcontract Agreement
- c) The Annexures to this Subcontract Agreement
- d) All Head Contract documents in so far as they relate or affect directly or indirectly to the subcontract works
- e) CATCON *Project Management Plan* (Form GF-21) and *Project Risk Register* (Form SF-35)

7. Performance Bond: _____

8. Subcontract Commencement Date: _____

9. Subcontract Completion Date: _____

10. Liquidated Damages: _____

11. Value of Variations (including Subcontractors margin as a percentage): _____ %

12. Payment Terms: 45 days from end of month in which invoice was received (or as agreed)

13. Retention Moneys and Release Dates: _____

14. Service and/or materials to be provided by CATCON: _____
(more particularly described in Annexure B, if applicable)

15. Insurances to be effected by the Subcontractor

- | | | |
|--|--------------------|---|
| a) Motor Vehicle Legal Liability Cover | _____ | Evidence of motor vehicle registration |
| b) Amount of Public Liability cover in respect of any one occurrence | \$20 _____ million | |
| c) Contract Works | _____ | To the value of the subcontract works |
| d) Construction Plant | _____ | Evidence of insurance |
| e) Workers Compensation | _____ | Evidence of insurance or registration |
| f) Professional Indemnity (if design involved) | _____ | \$10 million per event and to be maintained 6 years post practical completion if design is included in the Subcontractor's works. |
| g) Air/Marine Transit (if goods are imported) | _____ | |
| h) Other | _____ | |

16. Type of Contract: _____

17. Special Conditions: _____

18. Applicable Law: _____ South Australia
(more particularly described in Annexure G, if applicable)

19. Arbitration: _____

20. Subcontractor's Supervisor: _____

Annexure B Scope of works

Details of the following elements, as appropriate, that apply to the Subcontractor and to the subcontract.

- a) Scope of Works:
- b) Design Requirements:
- c) Programming Requirements:
- d) Specification:
- e) Drawings:
- f) Quality Assurance:
- g) Safety & Environmental Management Systems:
- h) Operations and Maintenance Manuals:
- i) As-Constructed Drawings:
- j) Supply of Spares:
- k) Other:

Annexure C Head Contract Requirements

Without in any way detracting from Subcontractor's obligations to comply with all Head Contract conditions, CATCON draw particular attention to the following Head Contract Conditions applicable to this Subcontract Agreement to which full compliance is a requirement under this Subcontract Agreement:

- a) Notification time for delays (notification shall be received by CATCON one (1) day before due date under Head Contract):
- b) Notification time for variation works (notification shall be received by CATCON one (1) day before due date under Head Contract):
- c) Special Access Requirements:
- d) OHS Requirements:
- e) Environmental Requirements:
- f) Work Place Agreements/Site Allowances:
- g) Limitations of Liabilities:
- h) Auditing Requirements:
- i) Warranty Requirements:
- j) Other:

Annexure D Services and Facilities

FACILITY	PROVIDED BY		AT THE COST OF		COMMENTS
	[HC] Head Contractor [M] Mandatory		[SC] Subcontractor [IR] if Required		
	HC	SC	HC	SC	
1. SERVICES					
1.1 Artificial lighting for access					
1.2 Flood lighting for work operations					
1.3 Water					
1.4 Connected switchboards within 30m of work area					
1.5 Single phase 240V outlets					
1.6 3 phase 415V Outlet					
2. AMENITIES					
2.1 Site Office and Storage Sheds					
2.2 Space for erection and location of Site Office and Storage Shed					
2.3 Statutory Amenities					
3. HOISTING/CRANAGE					
3.1 Including Dogman and Operator when required by Subcontractor to be kept in position for Subcontractor's own works					
4. SCAFFOLDING					
4.1 Including supply, erection and removal for effecting the subcontract works					
5. TELEPHONE/FAX					
6. SAFETY					
6.1 Safety Officer					
6.2 First Aid Officer					
6.3 Check for overhead obstructions during site establishment, operations and implement protective measures					
6.4 Check for any underground services					
6.5 Safety inductions					The Subcontractor compliance with the site established processes is deemed included in the price or rates for the works.
6.6 Hazchem Register					
6.7 Safety Meeting					The Subcontractor compliance with the site established processes is deemed included in the price or rates for the works.
6.8 Storage of dangerous goods					
6.9 Copies of applicable legislation, codes of practice and standards					

FACILITY	PROVIDED BY		AT THE COST OF		COMMENTS
	[HC] Head Contractor [M] Mandatory		[SC] Subcontractor [IR] if Required		
	HC	SC	HC	SC	
6.10 Stock of standard safety equipment available (i.e. gloves, safety glasses, ear plugs, sunscreen)					
6.11 Safety signage					
6.12 Subcontractor Safety Plan and SWMS/JSEA					
6.13 Public protection (i.e. barricading, fencing, signage installed)					
6.14 Safe work method for high risk construction work					
6.15 Employee PPE					
7. QUALITY					
7.1 Quality Plan					The Subcontractor compliance with the site established processes is deemed included in the price or rates for the works.
7.2 Method Statement					
7.3 Construction Procedures/ITP					
8. ENVIRONMENT					
8.1 Environmental Control Plan					The Subcontractor compliance with the site established processes is deemed included in the price or rates for the works.
8.2 Dilapidation Survey					
9. CLEAN-UP					
10. PERSONNEL					
10.1 LSL requirements, WorkCover, Superannuation					
10.2 Site Agreement					
10.3 General Induction (White Card)					

Annexure E Schedule of Rates/Bill of Quantities

Annexure F Release Form and Form of Statutory Declaration
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 <Subcontractor Name> was affixed to this document in the presence of:

..... (Director/Secretary Name) (Signature)

..... (Director Name) (Signature)



FORM OF STATUTORY DECLARATION

Project: _____

Client: _____

Civil and Allied Technical Construction Pty Ltd

Contractor: _____

Claim reference: _____

Payment Claim Date: _____

1. I hold the position of _____ and am duly authorised by the Contractor to make this declaration on its behalf. I herewith declare that:
2. All amounts which:
 - a) are then due and payable by the Contractor to its Subcontractors; and
 - b) have been included in the calculation of previous payments paid by the Client to the Contractor, have been duly paid by the Contractor to the relevant Subcontractors;
3. The Contractor has paid or made provisions for all legislative and statutory requirements in respect to its business (which where applicable include; Payroll tax, Workcover levies, Superannuation, Long Service Leave) in respect of employees or deemed employees who have at any time performed work in connection with the Contract;
4. The Contractor has maintained current its insurances as required under the Subcontract;
5. No Subcontractor or any other person engaged by the Contractor arising out of or in connection with this Agreement has a lien or similar entitlement to any of the Works or Materials and Equipment.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oath Act 1936*.

SUBSCRIBED and DECLARED:

At: _____

Dated the _____

day of _____

20 _____

Signed: _____

Print Name: _____

BEFORE ME:

Justice of the Peace

Annexure G Special Conditions

None Applicable

Annexure H 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 **SUBCONTRACTOR**

Name of Signatory

Position

In the presence of:

Signature of Witness

Name of Witness
