



Appendix A – Confirmation of Engagement Form

Project Details:

Project Name:

Project Number:

Client Details:

Company:

ACN: ABN:

Contact Name:

Phone / Mobile: Email:

Invoice to be addressed to:

Company:

ACN: ABN:

Contact Name:

Phone / Mobile: Email:

Comments:

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Note : Any comments that seek to amend the terms of this proposal are subject to review and acceptance by Civil Engineering

Instruction:

I/we hereby appoint Civil Engineering Assignments to undertake the services in accordance with the details outlined in this proposal and the attached Terms of Agreement.

Authorised signature / initials

Authorised person:

Date:



Appendix B – Terms of Agreement

This agreement between Civil Engineering Assignments (ABN 29 941 067 530) and the Client (as defined in this document) sets out the terms for the provision of consulting engineering services.

1. The contract between the Client and Civil Engineering Assignments comprises these terms of agreement, the accompanying proposal and any other documents stated in writing as being incorporated in the contract. Subject to the terms of the contract, Civil Engineering Assignments must provide to the Client the consulting engineering services described in the accompanying letter together with such other services as may be agreed in writing from time to time (the “Services”).
2. Civil Engineering Assignments shall provide the Services with such skill, care and diligence as is generally exercised by competent members of the engineering profession performing services of this nature, at the time the Services are provided.
3. Unless stated in the accompanying letter, Civil Engineering Assignments will perform the Services at its offices, the site of the project ('Site') or at any other place nominated in writing by the Client. Where the locations of Civil Engineering Assignments' work are not under Civil Engineering Assignments' control (including the Site), the Client must provide reasonable access to allow Civil Engineering Assignments to fulfil its obligations (including to provide the Services), pay Civil Engineering Assignments' expenses associated with working at the location(s), provide and pay for any site and safety inductions required in order to allow Civil Engineering Assignments' personnel to work at the location(s) and provide and pay for any accommodation in the event that Civil Engineering Assignments' personnel are required to remain at the location(s) for longer than 1 working day
4. Before Civil Engineering Assignments provides the Services, the Client must:
 - (A) Sign and return a copy of the contract (Civil Engineering Assignments Proposal) to Civil Engineering Assignments. If the Client does not return a copy of the contract to Civil Engineering Assignments but continues to provide information or instructions to Civil Engineering Assignments, the Client will be deemed to have accepted the terms of the contract.
 - (B) At its own cost, deliver to Civil Engineering Assignments all information, documents and other particulars relating to the Client's requirement for the project as is necessary for Civil Engineering Assignments to carry out the services as expressly set out in this Agreement (the “Requirements”). The Client's information, documents and other particulars it provides to Civil Engineering Assignments in connection with this Agreement must be accurate. Civil Engineering Assignments is entitled to rely upon the Client's information, documents and other particulars as being accurate. Civil Engineering Assignments will not be liable for any inaccurate information, documents or particulars provided by the Client.
 - (C) Provide Civil Engineering Assignments with instructions so that Civil Engineering Assignments can provide the Services
5. The Client must pay to Civil Engineering Assignments:
 - a. The Fee and the Reimbursable Expenses as set out in the accompanying letter together with such other amounts in respect of other services agreed to be provided



- b. The Fee and the Reimbursable Expenses as set out in the accompanying letter together with such other amounts in respect of other services agreed to be provided
- c. Reasonable adjustments to the Fee and the Reimbursable Expenses to reflect the additional costs, expenses, liabilities, losses or other amounts incurred or suffered by Civil Engineering Assignments in the performance of the Services and arising out of or in connection with any event or matter beyond Civil Engineering Assignments' control;
- d. All debt recovery costs including all legal, administration and debt collection costs; and
- e. To the extent that amounts payable under this Agreement are not expressed to be GST inclusive, an additional amount for the GST incurred by Civil Engineering Assignments in relation to the supply of the Services ("GST").

The Client and Civil Engineering Assignments acknowledge that payment is a fundamental term of the contract.

- 6. Civil Engineering Assignments may claim payment of the amounts in clause 5 above at the times set out in the accompanying letter or, if no time is set out, then within 10 days after the end of each month. If the Client disputes the amount payable to Civil Engineering Assignments in respect of a claim for payment, then it must within 7 days of receipt of the claim for payment issue to Civil Engineering Assignments a Notice of Dispute pursuant to clause 11 of this Agreement. Whether or not the claim for payment has been disputed, the Client must pay to Civil Engineering Assignments, without set-off or deduction, the amount claimed in Civil Engineering Assignments' claim for payment within 14 days of the date of the claim. Civil Engineering Assignments may, at its sole discretion, withhold deliverables until any outstanding invoices are paid in full.

- 7. If the Client does not pay Civil Engineering Assignments in accordance with this agreement, then, without prejudice to any other rights or remedies Civil Engineering Assignments may have, a penalty of \$50 per day will be payable from the date of invoice until payment.
- 8. To the maximum extent permitted by law:
 - a. Subject to paragraphs (b), (c), (d), (e) and (f) below, Civil Engineering Assignments' liability to the Client arising out of or in connection with this Agreement (including the performance or non-performance of the Services), whether under the law of contract, in tort, in equity, under statute or otherwise, shall be limited in aggregate to the lesser of \$10,000 or the value of the fee charged under this Agreement;
 - b. The liability of Civil Engineering Assignments to the Client arising out of the performance or non-performance of the Services whether under the law of contract, tort or otherwise shall be limited to the cost of rectifying the works which are the subject of the commission;
 - c. The liability of Civil Engineering Assignments to the Client arising out of an error or omission by Civil Engineering Assignments shall be limited to the portion of the costs of rectifying the works that would not have been incurred if the error or omission had not occurred;
 - d. Civil Engineering Assignments is not liable to the Client in respect of any indirect, consequential or special losses (including loss of profit, loss of business opportunity and payment of liquidated sums or damages under any other agreement);
 - e. Civil Engineering Assignments shall be deemed to have been discharged from all liability in respect of the Services whether under contract, in tort, in equity, under statute or otherwise, at the expiration



of the period specified in the accompanying letter, or if no date is specified, at the expiration of one (1) year from the issue of the Final Certificate to the Contractor by Civil Engineering Assignments or where there is no Final Certificate at the expiration of one (1) year from the date of the final or last invoice issued by Civil Engineering Assignments under the Contract, and the Client (and persons claiming through or under the Client) shall not be entitled to commence any action or claim whatsoever against Civil Engineering Assignments (Director, officer, consultant or any employee of Civil Engineering Assignments) in respect of the Services after that date;

- f. If, and to the extent that, any of this clause is determined to be void as a result of any provision of the Competition and Consumer Act 2010 (Cth) or any other written law, then Civil Engineering Assignments' liability for a breach of a condition or warranty is limited to:
- (i) the supply of the relevant Services again; or
 - (ii) the payment of the cost of having the Services supplied again.

9. Subject to the Client paying Civil Engineering Assignments all amounts due and owing under the contract, Civil Engineering Assignments grants to the Client a non-exclusive, royalty-free and irrevocable licence to use (and allow others to use) any intellectual property (including all drawings, reports, specifications, bills of quantity, calculations and other documents, including "works" as defined in the Copyright Act 1968 (Cth) created or produced by Civil Engineering Assignments) arising out of provision of the Services ("IP Rights") for the purposes of completing the Project. As between the Client and Civil Engineering Assignments, the ownership of the IP Rights vests in Civil Engineering Assignments.

10. either the Client nor Civil Engineering Assignments shall disclose to third parties or use for any purpose (other than providing or benefiting from the Services) any information provided by the other unless:
- (a) required by law;
 - (b) the information is already generally known to the public; or
 - (c) the other consents to the disclosure.

All documentation and materials containing confidential information provided by one party to the other shall be returned upon the written request of that party.

11. Any dispute or difference ("Dispute") between the Client and Civil Engineering Assignments, including a dispute as to payment arising under clause 6 of this Agreement, may be notified by a party to the other party by a Notice of Dispute. The parties shall:
- (a) within 28 days of the date of the notice, meet to negotiate, in good faith, a resolution of the Dispute. Each party is to be represented at the meeting by a person who has authority to negotiate and resolve the Dispute; and
 - (b) if the parties fail to achieve a resolution of the Dispute within 14 days from the date of the meeting in 11(a) above, the parties must arrange for and attend a mediation, administered in accordance with procedures as set out by the Resolution Institute of Australia. Each party is to be represented at the mediation by a person who has authority to negotiate and resolve the Dispute.

Where a Notice of Dispute is issued by the Client pursuant to clause 6 of this Agreement, the Notice of Dispute must be accompanied by a detailed statement setting out the amount the Client considers to be payable in respect of a payment claim, the calculations used to arrive at that amount and the reasons for the differences between the amount claimed in Civil



Engineering Assignments' payment claim and the amount the Client considers to be payable. Clause 11 above shall not prevent Civil Engineering Assignments from instituting legal action at any time to recover moneys owing by the Client to Civil Engineering Assignments.

12. If Civil Engineering Assignments considers it appropriate to do so, it may, with the Client's prior written approval, which shall not be unreasonably withheld or delayed, engage other consultants to assist Civil Engineering Assignments in specialist areas. All consultants engaged under this clause will be engaged by Civil Engineering Assignments acting as the Client's agent and the Client will remain responsible for the consultant's costs and expenses as well as the performance of the consultant.
13. The Client may not novate, assign, transfer or sublet any obligations under this Agreement without the written consent of Civil Engineering Assignments. Unless stated in writing to the contrary, no novation, assignment, transfer or subletting shall release the assignor from any obligation under this Agreement.
14. In the event of a variation being raised, the client has 7 days to dispute the claim. Should no dispute be raised, the variation is deemed accepted as part of the works.