

PROJECT NAME (the "Project")	
AGON PROJECT NUMBER	
PROJECT ADDRESS	

BETWEEN Agon Environmental Pty Ltd ("Agon") (ACN: 167 746 063)
 OF 3/224 Glen Osmond Road, Fullarton, SA 5063 **Attention:**
Address for Service: 3/224 Glen Osmond Road, Fullarton, SA 5063

AND (the "Client") (ACN:)
OF **Attention:**
Address for Service:

CONDITIONS OF AGREEMENT

This QFB-008 *Consultancy Agreement* forms the basis on which Agon will undertake the consultancy services. They may be supplemented by the special terms and conditions and Agon’s fee proposal as per the attached schedules.

1 THE SERVICES

- a) Agon will perform the consulting services as described in the attached schedules, including Agon’s fee proposal if any (the "Services").
- b) Despite any other term of this Agreement or any legal requirement to the contrary, and to the extent permitted by law, the Agon’s sole and overriding obligation is to perform the Services to the standard of skill, care and diligence as is generally exercised by competent members of the Agon’s profession performing services of a similar nature at the time the Services are provided.
- c) The Client will take all steps reasonably necessary to enable Agon to perform the Services.
- d) The Client must at its own cost make available to Agon all information and documents as are necessary or reasonably required to carry out the Services. Agon is entitled to rely on such information and documents.
- d) Agon may claim payment in accordance with the times set out in the attached schedules, or if no time is set out, monthly in arrears, and upon termination of the Agreement. The Client must pay to Agon, without set-off or deduction the amount payable (including GST) under this Agreement for the Services provided during the relevant period, within the times set out in the attached schedules, or if no time is set out within 14 days of receiving a valid tax invoice.
- e) If the Client does not pay Agon in accordance with this Agreement, then without prejudice to any other rights or remedies Agon may have, interest will be payable on any outstanding amount from the date of invoice until payment at a rate per annum as stated in the attached schedules or, if no rate is set out, a rate equal to the benchmark interest rate as most recently published by the Australian Taxation Office, plus 2% per annum.
- f) Non-account Clients are required to pay the balance of the contract value prior to the release of the final Report. A deposit prior to works commencing may also be required.

2 FEES

- a) The Client will pay to Agon:
 - i) the fee and the reimbursable expenses as set out in the attached schedules (as adjusted in accordance with clause 2.b); and
 - ii) an additional amount for the goods and services tax ("GST") required to be charged by Agon in relation to the supply of the Services to the extent that amounts payable under this Agreement are not expressed to be GST inclusive.
- b) The fee and reimbursable expenses will be adjusted ("Variation") to reflect:
 - i) additions to or omissions from the Services as notified in writing by the Client and accepted by Agon;
 - ii) any change in legislative requirements and/or standards that apply in any way to the Services; and/or
 - iii) any change in the Services as is reasonably necessary.
- c) Agon will advise the Client of the Variation and any impact on the programme as reasonably practicable of it becoming aware of the circumstances set out in clause 2.b. The amount of a Variation will be calculated by reference to applicable rates and amounts in the attached schedules or, if none are specified, to reasonable rates and amounts.

3 INTELLECTUAL PROPERTY

- a) Subject to the Client complying with its obligations under this Agreement, including but not limited to full payment being made, Agon grants to the Client a non-exclusive, royalty-free and irrevocable licence to use (and allow others to use) the intellectual property for the deliverables of the Services created or produced by Agon ("IP Rights") for the purposes of completing the Project. As between the Client and Agon the ownership of the IP Rights vests in Agon.

4 CONFIDENTIALITY

- a) Neither the Client nor Agon shall disclose to any third party or use for any purpose (other than for the purpose for which the Services are to be performed) any information including, but not limited to, business, financial, commercial, and technical information provided by the other unless:
 - i) required by law;
 - ii) the information is or becomes generally known to the public other than as a result of a breach of this Agreement;
 - iii) the disclosure is made to a party’s financial, legal or insurance advisers or to its insurers; or

- iv) the other consents to the disclosure, such consent not to be unreasonably withheld.

5 LIABILITY

- a) To the maximum extent permitted by law:
 - i) Subject to subclauses (5.a.i), (5.a.ii) and (5.a.iii) below, Agon's 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 (including negligence), in equity, under statute or otherwise, will be limited in aggregate to an amount specified in the schedules or \$300,000 if no amount is specified;
 - ii) Agon is not liable to the Client in respect of any indirect, consequential or special losses including, but not limited to, loss of profit, loss of business opportunity, payment of liquidated sums or damages under any other agreement, and loss relating to any delay to the project or enterprise the subject of the Services;
 - iii) Agon will be deemed to have been discharged from all liability in respect of the Services whether under contract, in tort (including negligence), in equity, under statute or otherwise, at the expiration of the period specified in the attached schedules, or if no date is specified, on the expiration of 3 years from the earlier of the date of completion of the Services or the date of termination of this Agreement;
 - iv) if, and to the extent that, any of this clause is void as a result of section 64 of the Australian Consumer Law, then the Agon's liability for failure to comply with a guarantee under that law is limited to:
 - (1) the supplying of the relevant Services again; or
 - (2) the payment of the cost of having the Services supplied again.
- b) Agon's liability for injury or loss arising from any toxic, irritant, pollutant or waste gases, liquids, solid material exposure, radiation, nuclear reaction, or radioactive substances or conditions resulting from Agon's performance or non-performance of the Services shall not exceed one hundred thousand dollars.
- c) The Client agrees to defend, indemnify and hold harmless Agon from any claim, liability or defence costs in excess of the limits determined above for injury or loss sustained by any party from the exposures as described in Clause 5.b above and allegedly caused by Agon's performance or non-performance of the services. In the event the Client makes a claim against Agon, at law or otherwise, for any alleged error, omission or other act arising out of the performance or non-performance of the services, and to the extent the Client fails to prove such claim, then the Client shall pay all costs, including legal fees, incurred by Agon in defending against the claim.

6 DISPUTES

- a) If a party claims that a dispute has arisen in connection with this Agreement ("Dispute"), it must deliver to the other party a notice in writing outlining the Dispute ("Dispute Notice"). The parties must:
 - i) within 7 days of delivery of the Dispute Notice, meet to negotiate, in good faith, resolution of the Dispute;
 - ii) if they do not resolve the Dispute in accordance with subclause (6.a.i), then within 28 days of delivery of the Dispute Notice, attend mediation before a mediator appointed by the Resolution Institute and subject to procedures as determined by the mediator; and
 - iii) if they do not resolve the Dispute by mediation, be entitled thereafter to refer the Dispute to litigation.
- b) This clause does not prevent Agon from taking legal action at any time to recover moneys owing by the Client to Agon.

7 TERMINATION & SUSPENSION

- a) The Client may, without prejudice to any other rights or remedies it may have, by written notice served on Agon to terminate this Agreement:

- i) if Agon is in breach of the terms of the Agreement and the breach has not been remedied within 21 days of the Client serving on Agon a written notice (or such longer period as the Client may specify in that notice) providing details of the breach and requiring the breach to be remedied ("Breach Notice"); or
- ii) upon the Client giving Agon not less than 28 days' written notice of its intention to do so; or
- iii) subject to the statutory stay provisions of the Corporations Act 2007 (Cth), if AGON becomes bankrupt, or becomes subject to any official management, receivership, liquidation, provisional liquidation, voluntary administration, winding up or external administration ("Insolvency Event").
- b) Agon may, without prejudice to any other rights or remedies it may have, by notice in writing served on the Client suspend its obligations under this Agreement:
 - i) if the Client has breached its obligation to make a payment to Agon in accordance with this Agreement, and the payment has not been made in full within 7 days of Agon serving on the Client a Breach Notice (or such longer period as Agon may specify in that notice) in respect of that breach; or
 - ii) if the Client is in breach of any other term of the Agreement and the breach has not been remedied within 21 days of Agon serving on the Client a Breach Notice (or such longer period as Agon may specify in that notice) in respect of that breach.
- c) Agon may, without prejudice to any other rights or remedies it may have, terminate this Agreement:
 - i) if the breach referred to in subclause 7.1(b) has not been remedied within 7 days of Agon serving on the Client a Breach Notice (or such longer period as Agon may specify in that notice) in respect of that breach; or
 - ii) if the Client is in breach of any of the other terms of this Agreement and the breach has not been remedied within 21 days of Agon serving on the Client a Breach Notice (or such longer period as the Agon may specify in that notice) in respect of that breach; or
 - iii) upon Agon giving the Client not less than 28 days' written notice of its intention to do so; or
 - iv) subject to the statutory stay provisions of the Corporations Act 2007, if an Insolvency Event occurs in relation to the Client.

8 GENERAL

- a) Agon may, with the Client's prior written approval, which shall not be unreasonably withheld or delayed, engage other consultants to assist Agon in providing the Services.
- b) Neither party may novate, transfer or sublet any obligations or assign any benefit under this Agreement without the written consent of the other. Unless stated in writing to the contrary, no novation, transfer, subletting, or assignment shall release the party from any obligation/liability under this Agreement.
- c) Notices referred to in this Agreement must be served at the Address for service stated on the first page of this Agreement.
- d) References to days in this Agreement refer to calendar days. In counting the number of days, the dates between 22 December and 10 January inclusive, and between Good Friday and Easter Monday inclusive, are not to be counted.
- e) Where the schedules includes or refers to the Client's Brief and the Agon's Fee Proposal, to the extent of any ambiguity, Agon's Fee Proposal takes precedence.
- f) These Terms will be construed according to the laws of South Australia and the Parties submit themselves to the non-exclusive jurisdiction of the courts of South Australia and any competent appellate courts.
- g) The Client may accept the terms of this Agreement by:
 - i) signing and returning a copy of this document; or
 - ii) commencing or continuing to provide instructions and / or payment to Agon in relation to the Services.
- h) This Agreement may be executed in counterparts (including by facsimile and PDF copies of this Agreement) and all executed

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counterparts together are deemed to be an original of these Conditions of Agreement.

EXECUTED as an Agreement by or on behalf on the parties:

CLIENT – [INSERT CLIENTS REGISTERED NAME]

(ACN: _____)

SIGNED for and on behalf of the Client by its duly authorised delegate:

Signature of the duly authorised delegate of the Client

Name:

Position:

Dated:

AGON – AGON ENVIRONMENTAL PTY LTD

(ACN: 167 746 063 _____)

SIGNED for and on behalf of Agon by its duly authorised delegate:

Signature of the duly authorised delegate of Agon

Name:

Position:

Dated:

SCHEDULES

A. SPECIAL CONDITIONS

The following Special Conditions, Add, Amend, Replace and/or Delete to the Conditions of Agreement:

A1. The following special conditions additionally apply to all Agon Services.

1) Reliance on Information Provided by Others

The Client acknowledges and agrees that the investigations will rely on information provided to the Agon by the Client or other third parties. Agon makes no representation or warranty regarding the completeness or accuracy of any descriptions or conclusions based on information supplied to it by the Client, its employees or other third parties during provision of the Services. The Client releases and indemnifies Agon from and against all Claims arising from errors, omissions or inaccuracies in documents or other information provided to Agon by the Client, its employees or other third parties.

2) Limitation of Reports

All Reports are prepared for the Client in general accordance with industry recognised standards and procedures recognised at the time of the work. Each Report presents the results of the assessment based on the quoted Scope of Services (unless otherwise agreed in writing) for the specific purposes of the commission. No warranties expressed or implied are offered or provided to any third parties and no liability will be accepted for use of any report by any third parties. Information provided by third parties was assumed to be correct and complete. Agon does not assume any liability for misrepresentation of information by any party or for matters not visible, accessible or present on the subject property during any site works conducted during the time of the work. Each report should be read in full. No responsibility is accepted for use of any part of a report in any other context or for any other purpose or by third parties. Opinions and judgments expressed in any report are based on Agon's understanding of current regulatory standards and should not be construed as legal opinions.

A2. The following special conditions additionally apply if the Services relate to or include asbestos and/or hazardous materials investigation.

1) Scope of Works

The Client acknowledges and agrees that the Services relate only to the identification of hazardous materials (as specified in the Proposal) used in the construction of the building(s) and does not include the identification of dangerous goods or hazardous substances in the form of chemicals used, stored or manufactured within the building, plant or site. Hazardous materials covered by the investigation will include asbestos containing materials and, where specified in the Proposal, hazardous building materials. Hazardous building materials include synthetic mineral fibre (SMF) insulation materials; polychlorinated bi-phenyl (PCB) oil capacitors and indicative check of selected lead-painted surfaces.

2) Sampling Program

The Client acknowledges and agrees that:

- a) while the investigation undertaken by Agon will attempt to locate the hazardous materials (as specified in the Proposal) within the site, Agon's investigation is predominantly a visual inspection and only a limited sampling program will be conducted by Agon.
- b) Agon will only collect representative samples of suspected hazardous building materials for analysis. Other hazardous building materials of similar appearance may be assumed by Agon to have a similar composition.
- c) only minor destructive investigation and sampling techniques will be employed to gain access to building or site areas; and
- d) without substantial demolition of the building(s), it may not be possible for Agon to detect every source of hazardous materials in the building(s).

3) Latent Conditions and Inaccessible Areas

- a) It is acknowledged and agreed by the Client that only those hazardous building materials that are physically accessible can be located and identified by Agon. Therefore, it is possible that hazardous building materials, which may be concealed within inaccessible areas/voids, and behind equipment/fittings may not be identified during the investigation undertaken by Agon. Such inaccessible areas fall into a number of categories, including but not restricted to:
 - i) Locations behind locked doors.
 - ii) Inset set ceilings or wall cavities.
 - iii) Those areas accessible only by dismantling equipment or performing minor localised demolition works.
 - iv) Service shafts, ducts, etc, concealed within the building structure.
 - v) Energised services, gas, electrical, pressurised vessel and chemical lines.
 - vi) Voids or internal areas of machinery, plant, equipment, air-conditioning ducts etc.
 - vii) Totally inaccessible areas such as voids and cavities created and intimately concealed within the building structure. These voids are only accessible during major demolition works.
 - viii) Height restricted areas.
 - ix) Areas deemed unsafe or hazardous at time of audit.
- b) It is acknowledged and agreed by the Client that where an investigator has a reasonable belief that hazardous building based products or materials may be present inside inaccessible spaces and voids, then those spaces will be deemed to contain hazardous building materials
- c) These locations will require further investigation prior to opening nominated specific areas by the investigator at additional cost to the Client.

4) Practicability of Investigation

- a) It is acknowledged and agreed by the Client that, in addition to areas that are not accessible, the possible presence of hazardous building materials may not be assessed because it is not considered practicable by Agon as:
 - i) it would require unnecessary dismantling of equipment; and/or
 - ii) it was considered disruptive to the normal operations of the building or site; and/or
 - iii) it may have caused unnecessary damage to equipment, furnishings or surfaces; and/or
 - iv) the hazardous building material was not considered to represent a significant exposure risk; and/or
 - v) it was clearly unsafe for the investigator to gain access to the height-restricted space, restricted sub-floor or hazardous work space; and/or
 - vi) the time taken to determine the presence of the hazardous building material was considered prohibitive.
- b) Access restriction may be due to physical solid barrier, occupancy of the tenancy or other circumstances listed above.

5) Obligation of Client to Inform Company

- a) The Client must furnish or cause to be furnished to Agon all documents and information known to the Client that relate to the identity, locations, quantity, nature or characteristics of any hazardous building materials or suspected hazardous building materials, on or within the building or site, or have previously existed. Where this information is known to exist, the Client will advise Agon prior to commencement of the Services by Agon.
- b) Key documentation includes former records of asbestos abatement activities, asbestos audit/surveys or clearance certification reports.

- c) Where no information is provided, Agon will assume that the Client is not aware of or in possession of any information relating to existing or historic hazardous materials on site. The Client represents and warrants that the Client has informed Agon of any hazardous material which it knows or has reason to believe exists on the site.

6) Settled Dust and Mastics

It is acknowledged and agreed by the Client that unless specifically required by the Client, settled dust and surface swab samples will not be taken as part of the investigation by Agon in order to check for asbestos residue or fibres. Similarly, testing of caulking and mastic jointing compounds will not be undertaken throughout the site.

A3. The following special conditions additionally apply if the Services relate to or include any environmental investigation (including any asbestos and/or hazardous materials investigations):

1) Sampling Risks

- a) The Client acknowledges and agrees that:
- i) professional judgment has been used by Agon to interpret the data obtained from site sampling and subsequent laboratory testing in order to characterise contamination that is present on site;
 - ii) even a comprehensive sampling and testing program, implemented with the appropriate equipment and experienced personnel under the direction of a trained professional who functions in accordance with a professional standard of care, may fail to detect certain conditions because they are hidden;
 - iii) the extent of soil sampling and analysis has been targeted towards areas where contamination is considered to be most likely based on site history and visual assessment;
 - iv) the methods adopted by Agon are in accordance with recognised industry standards;
 - v) investigations may not identify contamination that occurs in unexpected locations or from unexplained sources;
 - vi) soil contamination can be expected to be non-homogenous across the stratified soils where present on site and the concentrations of contaminants may vary significantly within areas where the contamination has occurred. As such, results should be regarded as indicative only;
 - vii) contaminant movement within the soil and within groundwater can follow paths of high permeability and it is possible that sampling will not have intersected these preferential pathways;
 - viii) sampling of soil or groundwater may result in contamination of certain sub-surface areas, as when a

probe or boring device moves through a contaminated area, linking it to an aquifer or other water body not previously contaminated. Agon will use reasonable endeavours to minimise and eliminate such cross contamination during the conduct of any sub-surface investigation.

- b) The Client releases and indemnifies Agon in respect of all Claims which may arise from the sampling risks identified at clause 1.1 above and as a result of alleged cross contamination caused by sampling undertaken by Agon.

2) Production of Drilling By-Products

Where drill cuttings and drilling fluids are produced as a by-product of sampling sub-surface conditions, these will remain the property of the Client. The Client acknowledges and agrees that drill cuttings and drilling fluids should be handled as if contaminated. Agon will advise the Client of the presence of such materials and will take reasonable measures to label and containerise such materials for the Client. The Client acknowledges and agrees that it is the Client's responsibility to ensure such materials are disposed of in accordance with relevant Laws.

3) Location of Hazardous Material or Suspected Hazardous Materials

The Client must provide or cause to be provided to Agon any previous reports or information which may provide information on hazardous materials or suspected hazardous materials on site. Where this information is known to exist, the Client will advise Agon prior to commencement of the Services by Agon. Where no information is provided, Agon will assume that the Client is not aware of or in possession of any information relating to existing or historic hazardous materials on site. The Client represents and warrants that the Client has informed Agon of any hazardous material which it knows or has reason to believe exists on the site.

4) Underground services

Provided that Agon takes reasonable measures to locate existing underground services, including utilising service locators and procuring dial before you dig information, the Client will indemnify Agon and keep Agon indemnified against any liability, loss, claim or proceedings of any kind – whether arising under statute or common law, arising from services which are buried or unseen being disturbed or damaged. Agon will not be liable for any repair work and any repair work required will be the responsibility of the Client. Such liability, loss, claims or proceedings includes but is not limited to: damage to the property, real or personal, or consequential, indirect or special loss of any kind.

B. AGON'S FEE PROPOSAL

Refer to Agon's Fee Proposal which is deemed to form part of this Agreement.