



**CSBP Limited ABN 81 008 668 371**  
**TERMS AND CONDITIONS OF CONSULTANCY SERVICES**

**1. ENGAGEMENT AND TERM**

- (a) **Engagement** - The Company engages the Consultant to perform the Work and such other related matters or ancillary work as the Consultant may from time to time be requested to provide to the Company, to the best of its ability.
- (b) **Commencement** - The Consultant will commence the Work on the Commencement Date, will devote sufficient time and attention to the proper performance of the Work and, subject to receiving a written waiver by the Company, will complete the Work on or before the Completion Date.
- (c) **Completion** - This Contract will terminate on the completion of the work specified herein to the satisfaction of the Responsible Officer, subject to any earlier termination pursuant to this Contract.

**2. CONSULTANT'S OBLIGATIONS**

- (a) **Warranty** - The Consultant warrants that it and its Personnel are skilled, trained, qualified and competent to perform the Work and that they will perform the Work in a competent, skilled and efficient manner.
- (b) **Requirement to Adhere to Quality Assurance Programs and to Complete the Work** - The Consultant will:
  - i) comply with Work priorities determined by the Company;
  - ii) complete all Work commenced by the Consultant, unless the Responsible Officer expressly authorises temporary suspension of such work under Clause 10; and
  - iii) adhere to all Quality Assurance Programs and Quality Control Procedures.
- (c) **Requirement to Submit Proposed Programming of Work** - The Consultant shall submit all proposed programming of the Work to the Responsible Officer for approval prior to undertaking any Work.
- (d) **Compliance with Law** - The Consultant shall, at its cost, comply with the provisions of all laws (federal, state or municipal) and to all lawful requirements and regulations of the Company in any way affecting, or applicable to the performance of the Work.
- (e) **Compliance with Regulations** - Without limiting the generality of sub-Clauses 2(c) and 2(d), the Consultant shall:
  - i) comply with the Site Instructions and Safety Regulations issued by the Company from time to time;
  - ii) ensure that its Personnel agree also to be so bound by the provisions of Clause 2(e)i); and
  - iii) obtain all applicable permits and licences and give all notices required to be given and shall pay all fees, deposits and taxes in connection with the Work;
  - iv) comply with all applicable environmental laws and the Environmental Regulations and will adopt methods of performing the Works that will reduce to the greatest extent practicable disruption to the environment caused by or during the Works; and
  - v) take all reasonable steps to protect the environment and prevent environmental contamination and shall comply with and observe all restrictions and limitations on the right to enter and leave the Site and ensure that the place where it performs the Work is left in a clean and tidy state to the satisfaction of the Responsible Officer.

- 3. **PERSONNEL** - The Consultant may engage in the performance of the Work, such employees, contractors or agents as may first be approved in writing by the Company, and will remove and replace at the request of the Responsible Officer any such employees, contractors or agents who fail to perform work satisfactorily, misbehave or are absent from the site or fail to comply with instructions of the Responsible Officer.

**4. INDEPENDENT CONTRACTOR**

- (a) **Independent Contractor** - The Consultant is engaged as an independent contractor and nothing in this Contract will be deemed to constitute the Consultant as an agent or employee of the Company and the Consultant will have no authority to incur and will not incur any obligation on the part of the Company, except with the written approval of the Company.

- (b) **Acknowledgement of Status** - The Company and the Consultant acknowledge that:
  - i) the Consultant is not an employee of the Company within the meaning of the Income Tax Assessment Act 1936, the Superannuation Guarantee Charge (Administration) Act 1992 or the Payroll Tax Assessment Act 1971;
  - ii) the Consultant is not a worker employed by the Company for the purposes of the Workers' Compensation Rehabilitation Act 1981 (WA);
  - iii) the relationship between the Company and the Consultant is that of principal and independent consultant.

**5. QUALITY ASSURANCE PROGRAM**

- (a) **Quality Assurance Program** - The Consultant will establish and maintain a quality assurance program and quality control procedures to adequately ensure that the quality of the Work provided is delivered and maintained at a consistently high standard.
- (b) **Approval by Company** - Such procedures are to be submitted to the Company following execution of this Contract and the Consultant acknowledges that the Company may request changes to the program and/or procedures in the event that it does not consider them to be satisfactory.

**6. PAYMENT**

- (a) **Payment by Invoice** - The Consultant may only invoice the Company upon completion of the Work.
- (b) **Form of Invoice** - Invoices must be in the form approved by the Company, set out clearly the work to which the invoice relates and any other information required by the Responsible Officer and be accompanied by any verification requested by the Responsible Officer.
- (c) **Time of Payment** - Subject to compliance by the Consultant with the provisions of this Contract, the Company will make payment to the Consultant within THIRTY (30) days from the end of the calendar month during which the invoice is received, provided that the Work has been approved by the Company and nothing is in dispute.
- (d) **Resolution of Disputes** - If the Company disputes any item or items invoiced, the Company will notify the Consultant specifying the reasons for the dispute and payment of the disputed item or items will be withheld until settlement of the dispute and the Company will pay the undisputed portion of the invoice.
- (e) **Currency of Payment** - Unless otherwise provided in this Contract the Consultant will be paid in Australian dollars.
- (f) **Failure to Pay Moneys Due and Payable** - Any moneys which become due and payable to the Company by the Consultant or in which the Consultant becomes indebted or liable to the Company may be deducted from any moneys that may then or may thereafter become due or payable to the Consultant under this Contract.

**7. MATERIALS, TOOLS AND PERSONNEL**

- (a) **Supply by Consultant** - Subject to Clause 7(b), the Consultant will supply all materials, tools and personnel required to perform the Work. The Consultant warrants that all materials used to perform the work will be new and of the best quality and workmanship of their respective kinds.
- (b) **Materials Supplied by Company Defective or Unsuitable** - If the Company is to provide any materials or tools necessary for the performance of the Work, the Consultant will satisfy itself that the materials or tools provided by the Company are suitable for the performance of the Work, and will immediately notify the Responsible Officer if the Consultant believes that any materials or tools supplied are defective or unsuitable for the performance of the Work. The Consultant will be deemed to have accepted any materials or tools provided by the Company as suitable for the performance of the Work if the Consultant fails to notify the Responsible Officer that any materials or tools provided by the Company are defective or unsuitable before using such materials or tools in the performance of the Work.
- (c) **Return of Company's Property** - On the completion of the Works or upon the termination of this Contract the Consultant will return to the Company any materials,



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- tools or other property supplied by the Company to the Consultant in the same condition that it was supplied save allowance for fair wear and tear.
8. **HOURS** - The Consultant will perform the Work during such hours and on such days as the Company will from time to time require.
9. **TERMINATION**
- (a) **Right to Terminate** - If the Consultant fails to perform or observe any obligation, term, condition or stipulation contained in this Contract or fails or refuses or neglects to comply with any instruction or direction which the Company is entitled to give, then the Company may, without prejudice to any other right which it may have, give written notice to the Consultant that unless the default is remedied within THREE (3) days, this Contract will be terminated and the engagement of the Consultant under this Contract determined.
- (b) **Insolvency** - The Company may terminate this Contract by written notice to the Consultant if the Consultant commits an act of bankruptcy or, being a company, has a liquidator, receiver or receiver and manager appointed to it or any of its assets, enters into a scheme of arrangement (other than for the purposes of a solvent reconstruction) or has execution levied against any of its property.
- (c) **Consultant's Entitlement to Payment** - In the event of termination by the Company, the Consultant will, provided that it is not in default, be entitled to payment for Work performed up until the date of termination. No compensation to the Consultant will be allowed, however to cover any damages for loss of actual or anticipated profits or any consequential, special, contingent or penal damages whatsoever.
10. **SUSPENSION OF WORK**
- (a) **Notice to Suspend Work** - The Consultant will suspend the whole or any portion of the Work on receipt of notice from the Responsible Officer to do so. Following receipt of the notice the Consultant will do all things possible to reduce any expense or cost consequent upon the suspension including, without limitation, rescheduling the Work.
- (b) **Suspension not to Affect Validity** - The suspension will not invalidate this Contract.
- (c) **Direction to Recommence** - The Responsible Officer will, when the reason for any suspension no longer exists, direct the Consultant to recommence the Work or the relevant part of the Work and the Consultant will comply with the direction promptly.
- (d) **Costs and Expenses of Suspension** - The Company will not be responsible for any costs or expenses incurred by the Consultant in respect of any suspension of the Work unless the Company is solely responsible for the cause of the delay leading to the suspension and in no event will the Company be liable to compensate the Consultant for loss of actual or anticipated profits or any consequential, special, contingent or penal damages whatsoever.
11. **PATENTS** - The Consultant will pay all royalties and fees on patented or copyrighted articles, processes and registered designs. The Consultant warrants that sale or use of any goods incorporated in the Work does not and will not infringe any patent, copyright, trademark or trade secret related to such goods and shall indemnify the Company from all actions, demands, damages or claims arising from or incurred by reason of any breach of warranty by the Consultant under this Clause.
12. **PROPRIETARY INFORMATION** - All patterns, drawings and materials supplied by the Company will remain its property and must be returned in good order and condition on completion of the Work and the Consultant agrees to replace free of charge any patterns, drawings or materials (the property of the Company) which may be lost, damaged or destroyed whilst in charge of the Consultant.
13. **CONFIDENTIALITY**
- (a) **Drawings, Specification and Information** - All drawings, specifications and information relating to the Work, the Company's site, the Company's operations or affairs or the operations or affairs of a related corporation of the Company or the rates of wages and conditions for workmen and employees whether the same be oral printed or graphic obtained by the Consultant from the Company or created by the Consultant are confidential to the Company and shall not be used by the Consultant other than for the purpose of performing the Work..
- (b) **Reproduction** - The Consultant shall not copy or reproduce any information except when and then to the extent reasonably necessary for the purpose of performing the Work.
- (c) **Photographs** - The Consultant shall not for any purpose whatsoever take any photographs or make any sketches of the Work performed by it on the Company's premises, property or operations without the prior written consent of the Responsible Officer and any photograph or sketch obtained in contravention of this sub-Clause shall be liable to confiscation and destruction by the Responsible Officer.
- (d) **Consultant's Personnel Bound** - The Consultant shall procure that any of its Personnel or any other person to whom it supplied information as permitted by this Clause 13 be bound by terms no less onerous than those contained in this Clause 13. In addition, when required by the Company, the Consultant shall ensure that the nominated Personnel execute a confidentiality undertaking in the form nominated by the Company.
- (e) **Indemnity** - The Consultant indemnifies the Company from all damages, losses, expenses, claims or actions arising out of a breach by the Consultant of any obligation under this Clause or a breach by any other person of any obligation imposed on that person by the Consultant pursuant to this Clause.
- (f) **Survival of Provisions** - The provisions of this Contract relating to secrecy or confidentiality of information will survive any completion of the Contract or any other termination of the Contract, in accordance with the respective terms and conditions of the Contract for a period of FIVE (5) years.
14. **INTELLECTUAL PROPERTY RIGHTS**
- (a) **Disclosure of any Design, Discovery, Invention** - Any design, discovery, invention or secret process or improvement in procedure made or discovered by the Consultant while carrying out the Work, or thereafter as a result of any discovery, invention, secret process or improvement in procedure conceived or work done by the Consultant while carrying out the Work for the Company, in connection with or in any way affecting or relating to any of the products or businesses of the Company or any related corporation of the Company shall immediately be disclosed to the Company and shall belong to and be the absolute property of the Company with no additional reward or financial entitlement being due to the Consultant in respect thereof unless the Parties otherwise agree.
- (b) **Joint Application** - If and whenever required so to do by the Company (whether during the continuance of the Consultant's engagement by the Company or after its termination) the Consultant shall at the expense of the Company:
- i) apply or join with the Company or its nominate in applying for any design, patent or other similar protection in Australia or any other part of the world for any such discovery, invention, process or improvement; and
- ii) execute all documents and do all things necessary for vesting the design, patent or other similar protection when obtained and all right and title to and interest in the same in the Company or its nominee absolutely as sole beneficial owner.
- (c) **Clause not to Apply to Current and Accumulated Skills** - The Parties acknowledge that the provisions of Clauses 14 and 15 do not apply to the current and accumulated skills and experience that the Consultant possesses at the commencement of this Contract.
15. **COPYRIGHT WORK**
- (a) **Assignment to Company** - Insofar as any copyright in work carried out by the Consultant during the course and in the scope of the Consultant's engagement initially vests in or may from time to time vest in the Consultant (the "Copyright"), the Consultant assigns to the Company the Copyright together with all claims, demands, causes or rights of action, (past, present and future) arising out



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- of or under the Copyright, together with the right to sue for and recover and retain the same for the Company's own use and benefit.
- (b) **Obligations of Consultant** - The Consultant shall:
- i) immediately communicate full details of the Copyright to the Company and to no other person;
  - ii) without expense to the Consultant, sign all such documents and do all such acts as may be required by the Company to record the vesting in the Company of legal title in the Company of legal title in the work in which the Copyright vests; and
  - iii) assist the Company in defending or prosecuting any action for breach of the Copyright and shall make available to the Company any relevant records, papers or information and shall co-operate in such defence as reasonably requested by the Company.
16. **VARIATIONS**
- (a) **Variation of Work** - The Company may make any revision of the form, quality or quantity of the Work, or any part of it, that may in its opinion be necessary or desirable, and the Consultant will do any of the following:-
- i) execute additional Work of any kind necessary for the completion of the Work;
  - ii) increase or decrease the quantity of any Work;
  - iii) omit any Work;
  - iv) change the character or quality or kind of any such Work, provided that such variation will not have the effect of fundamentally changing or altering the nature or character of the Work.
- (b) **Valuation of Variation** - Unless otherwise agreed all variations will be valued by applying the rates set out in Schedule 2, if any.
- (c) **Variation in Accordance with Written Direction** - The Consultant will not vary the form, quality or quantity of the Work, or any part of them, except in accordance with a written direction given by the Responsible Officer under Clause 16(a).
- (d) **Variation in Writing** - All variations will be incorporated into this Contract in writing and no variation will in any way vitiate or invalidate this Contract, but the value (if any) of all variations will be taken into account in ascertaining any variation to the remuneration compensation payable to the Consultant.
17. **INDEMNITY** - The Consultant will be liable for, and must indemnify and keep indemnified the Company and the Company's directors, employees, agents and contractors against:
- (a) loss or damage to property of the Company, including without limitation property upon which the Work is carried out;
  - (b) claims by any person against the Company or the Company's directors, employees, agents or contractors in respect of loss of or damage to any property;
  - (c) claims by any person against the Company or the Company's directors, employees, agents or contractors in respect of personal injury, disease, illness or death; and
  - (d) any liability, loss and/or damage, claims, actions, suits, demands, expenses or proceedings of whatever nature, either directly or indirectly arising out of, or in connection with, any act, omission, negligence, breach of statute or breach of contract by the Consultant, however the Consultant's liability to indemnify the Company will be reduced in proportion to the extent that such claims, damages or losses were directly caused by or contributed to by the negligence of the Company.
18. **CONSULTANT'S INSURANCES**
- 18.1 **Worker's Compensation** - The Consultant must, at its own cost, effect and maintain throughout the term of this Contract, Workers Compensation Insurance covering liability to employees of the Consultant under all applicable workers compensation legislation and will ensure that any sub-contractor is similarly insured. The common law employer's liability cover must not be less than FIFTY MILLION DOLLARS (\$50,000,000) for any one person or number of persons arising out of any one event. Such insurance must include an extension for "Principals Liability" and name the Company as principal.
- 18.2 **Public and Products Liability** - The Consultant must, at its own cost, effect and maintain throughout the term of the Contract insurance covering legal liability to the Company and/or third parties arising out of the Consultant's, its employees, agents or subcontractors activities, acts, omissions, or their supply of goods and or products. Cover shall be for a minimum amount of not less than \$10,000,000 for losses arising from any one event.
- 18.3 **Motor Vehicle** - The Consultant must, at its own cost, effect and maintain throughout the term of this Contract, Motor Vehicle Third Party Property and Liability Insurance (including "gap" coverage for claims in respect of personal injury or death not covered nor able to be covered by the insurance referred to in Clause 18.2 in respect of all mechanically propelled vehicles used by the Consultant in connection with the performance of the work under the Contract for an amount of not less than TWENTY MILLION DOLLARS (\$20,000,000) any one occurrence.
- 18.4 **Professional Indemnity** - The Consultant shall at its own cost effect and maintain throughout the term of this Contract and for a period of SIX (6) years after completion of the Work a professional indemnity insurance policy in an amount of FIVE MILLION DOLLARS (\$5,000,000).
- 18.5 **Insurances Specified by the Company** - The Consultant must, at its own cost, effect and maintain during the term of this Contract any other insurances required to be taken out by the Consultant pursuant to the Special Conditions of Contract.
- 18.6 **Evidence of Insurance Cover** - On request by the Company, the Consultant must provide evidence of the currency of insurance cover required pursuant to this Clause 18.
- 18.7 **Requirements of each Policy** - The Consultant must ensure that any policies of insurance referred to in Clauses 18.2 and 18.3 effected by it pursuant to this Contract contain provisions acceptable to the Company that will require the insurer to issue a policy in the name of the Consultant including the interest of the Company and to accept the term "insured" as applying to each of the Consultant and the Company and as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased).
19. **ASSIGNMENT** - Neither Party may assign its rights under this Contract to any person, firm or corporation without the prior written consent of the other, which consent shall not unreasonably be withheld.
20. **SUB-CONTRACTING** - The Consultant will not let or sub-contract out any part of the Work without the written permission of the Company.
21. **REPRESENTATIVES**
- (a) **Company Representative** - The Company will nominate in writing to the Consultant a person to act as the Company's representative in commercial matters, known as the Company Representative and a person to act as the Company's representative in technical matters, known as the Responsible Officer, for the purposes of this Contract. The initial Company Representative and the initial Responsible Officer are the persons nominated as such in items 6 and 8 of Appendix 1. All directions on behalf of the Company, unless otherwise provided, will be given by the Company's Representative or the Responsible Officer and will be binding upon the Company. The Responsible Officer shall be responsible for the day-to-day operation of this Contract.
- (b) **Responsible Officer's Representative** - The Responsible Officer may from time to time nominate in writing to the Consultant a person to act as the Responsible Officer's Representative to exercise any functions of the Responsible Officer under the Contract.
- (c) **Consultant's Representative** - If the Consultant is a natural person, then he or she will be the Consultant's Representative. If the Consultant is not a natural person, then the person nominated in item 7 of Appendix 1 as the Consultant's Representative will be authorised to receive instructions on behalf of the Consultant and to act as representative of and by the Consultant for the purposes of the Contract. All acts of the Consultant's Representative will be binding upon the Consultant.
- (d) **Consultant's Representative Responsible** - The Consultant's Representative will be primarily responsible for performing the Work and will not be replaced by the Consultant without the prior written consent of the Company.
22. **RECORDS**
- (a) **Consultant to Maintain Records** - The Consultant will maintain a true and correct set of records in connection with the Work and all related matters.
- (b) **Consultant to Retain Records** - The Consultant will



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- retain all such records for a period of not less than TWENTY FOUR (24) months after the date of completion of the Work.
23. **SEVERANCE** - Each provision of this Contract will be deemed to be separate and severable from the others of them. If any provisions of this Contract are determined to be invalid or unenforceable in any jurisdiction, such determination and the consequential severance (if any) will not invalidate the rest of this Contract which will remain in full force and effect as if such provision had not been made a part thereof, nor will it affect the validity or enforceability of such provision in any other jurisdiction.
24. **CHANGES TO BE BY WRITTEN INSTRUMENT AND LIMITED WAIVER**
- (a) **Variation in Writing** - Subject to Clause 16, this Contract may not be released, discharged, abandoned, changed or modified in any manner except by an instrument in writing signed by each of the Parties.
- (b) **Waiver** - The failure of any Party to enforce at any time any of the provisions of this Contract or to exercise any right will not be construed to be a waiver nor in any way to affect the validity of this Contract or any part of it or the right of any Party to enforce each and every provision and to exercise any right.
25. **LAW OF CONTRACT** - This Contract will be governed by and construed according to the laws in force in Western Australia from time to time and the Parties submit to the exclusive jurisdiction of the courts of that State and those courts having the right to hear appeals from them.
26. **SETTLEMENT OF DISPUTES**
- (a) **Notice of Dispute** - In the event of any dispute or difference arising between the Consultant and the Company, or the Company's Representative or the Responsible Officer on its behalf, as to the construction of this Contract or as to any matter or thing of whatever nature arising under the Contract or in connection with the Contract, then either Party will give to the other notice in writing adequately identifying the matters and subject of that dispute or difference.
- (b) **Dispute Resolution** - If, after THIRTY (30) days from the date of receipt of the notice of dispute, the dispute has not been settled, either Party may require by written notice to the other Party that the matter be referred to for determination by an expert mutually agreed by the Parties (or failing agreement, as nominated by the President of the Institute of Engineers) ("Expert"), who shall act as an expert and not as an arbitrator. In determining the dispute the Expert shall not be bound by the provisions of the Commercial Arbitration Act 1985 (WA) and the decision of the Expert shall be final and binding upon the Parties. [The commencement of expert determination pursuant to this Clause 26(b), shall be a pre-condition to either Party seeking relief before the courts of any place.]
- (c) **Continuance of Performance of Obligations** - Notwithstanding the existence of a dispute, the Consultant will continue to perform its obligations under the Contract.
27. **NOTICES**
- (a) **Service** - Any instructions or notices to be given by one Party to the other may be given by personally delivering the same, by facsimile or by security mail addressed to the other Party as specified in item 5 of Appendix 1 or at such other address as may be notified in writing to the other Party from time to time.
- (b) **Receipt** - Any instructions or notices so sent will be deemed to have been duly given, served and received if by:
- i) personal delivery, on the day of delivery;
  - ii) facsimile, on the day following its despatch;
  - iii) mail within Australia, on the FOURTH (4th) day following the date of posting; and
  - iv) airmail from outside Australia into Australia, or vice versa, or by wholly outside Australia, on the SEVENTH (7th) day following the day of posting.
28. **ENTIRE CONTRACT** - The Contract, as amended from time to time, represents the entire agreement between the parties and supersedes all prior arrangements whether written or oral and all letters, letters of intent, notices of award, purchase orders, understandings, representations and documents (if any) in relation to the Works or its performance given prior to the date of this Contract