



NEPC SERVICE CORPORATION CONSULTANCY CONTRACT

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CONSULTANCY CONTRACT

THIS AGREEMENT is made between the Client and the Consultant for the Consultant's engagement to provide Services, for an agreed Remuneration, upon and subject to the following terms and conditions.

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement, unless the context otherwise requires:

"Project" means the Project described in the Schedule;

"Client" means **NEPC SERVICE CORPORATION** as identified in the Schedule;

"Consultant" means the party identified as the Consultant in the Schedule;

"Client's Representative" means the person identified as the Client's Representative in the Schedule, or any other person duly appointed to that office under this Agreement;

"NEPC Executive Officer" means the person from time to time holding the office or otherwise carrying out the duties of NEPC Executive Officer under the *National Environment Protection Council Act 1994*;

"Consultant's Representative" means the person identified as the Consultant's Representative in the Schedule, or any other person duly appointed to that office under this Agreement;

"Services" means the Services described and specified in the Schedule, including all services incidental thereto or which may become necessary for the completion thereof;

"Special Resources" means the particular resources identified in the Schedule, whether to be supplied by the Client or by the Consultant as specified in the Schedule;

"Approved Personnel" means the persons identified as Approved Personnel in the Schedule, and any other person from time to time approved as one of the Approved Personnel under this Agreement;

"Reports" means the particular Reports specified in the Schedule as being included in the Services;

"Program" means the Program (if any) identified as a separate document in the Schedule, and otherwise means the program as outlined by Commencement Date, Milestone Dates and Date for Completion as specified in the Schedule;

"Commencement Date" means the Commencement Date specified in the Schedule;

"Milestone Dates" means the Milestone Dates specified in the Schedule;

"Date for Completion" means the Date for Completion specified in the Schedule;

"Professional Indemnity Insurance" means:

- The Consultant's current professional indemnity insurance policy identified in the Schedule; or
- A policy meeting the general requirements for Professional Indemnity Insurance specified in the Schedule and such other requirements (if any) as the Client may reasonably stipulate.

"Remuneration" means the Remuneration (payable to the Consultant for the Services) as specified in the Schedule;

"Fees" means the Fees specified in the Schedule as Remuneration;

"Expenses" means the Expenses (if any) specified in the Schedule as Remuneration;

"Schedule" means the Schedule annexed hereto, which forms part of this Agreement.

1.2 In this Agreement, unless the context otherwise requires:

Words importing any gender include all other genders, and words importing the singular include the plural and vice versa;

A reference to a person may include the Commonwealth of Australia or a State or Territory of the Commonwealth, a body corporate, or any other entity recognised by law as a separate legal person, and if the context admits may also include a firm or other partnership, a joint venture or other unincorporated association or group of persons, in which case the reference shall be taken as a reference to all persons being members of such firm, partnership, joint venture, association or group;

All monetary amounts referred to herein, and all payments to be made hereunder, are in Australian currency unless some other currency is expressly designated.

1.3 In this Agreement, time is of the essence in respect of the Consultant's obligations to commence, perform and complete the Services.

1.4 The parties agree that the proper law of this Agreement is the law of the State of South Australia (which includes all applicable laws of the Commonwealth of Australia), and that this Agreement shall be governed and construed according to that law, and the parties submit to the jurisdiction of the courts of the State of South Australia in respect of all matters arising under or in connection with this Agreement.

2. ENGAGEMENT

2.1 The Client engages the Consultant to perform the Services upon and subject to the terms of this Agreement.

2.2 The Consultant accepts such engagement and undertakes to provide the Services in accordance with the provisions of this Agreement.

2.3 The Consultant is engaged as an independent contractor. If the Consultant is or includes a natural person, such person's engagement shall not be regarded as a

contract of service or as establishing a relation of employer and employee between the Client and that person.

2.4 The Consultant acknowledges that before accepting this engagement the Consultant has made such inquiries and examined such information as the Consultant has considered appropriate to be satisfied:

- as to the nature, scope and degree of difficulty of the Services to be provided under this Agreement;
- as to the Consultant's ability to perform the Services at a high professional standard appropriate for the purposes of the Project, and at a rate of progress as required for progressive completion of the Services in accordance with the Program; and
- as to the availability of suitably qualified and experienced personnel, and all facilities, equipment, materials, information and other resources required for the provision of the Services.

3. REPRESENTATIVES

3.1 The Client and the Consultant will each ensure, by appropriate appointments, that there are at all times a Client's Representative and a Consultant's Representative to represent them and manage their respective interests in this Agreement.

A party revoking the appointment of its Representative or appointing a new Representative shall give prompt written notice of such revocation or new appointment to the other party. Any such notice given by the Client shall be under the hand of the NEPC Executive Officer, and any such notice given by the Consultant shall be under the hand of the Consultant's senior, managing or chief executive or administrative officer.

3.2 The Client's Representative and the Consultant's Representative may each give any approval, consent or notice or do anything which may be given or done by their respective principals under or in connection with this Agreement, and shall be deemed to have the principal's full authority to do so.

Any notice or other communication given to the Client's Representative or to the Consultant's Representative shall be deemed to have been received by the Client or the Consultant as that Representative's principal.

4. PROVISION OF SERVICES

4.1 The Consultant will provide the Services and all resources required for that purpose, including all Special Resources to be supplied by the Consultant as specified in the Schedule but excluding any Special Resources to be supplied by the Client as specified in the Schedule.

4.2 The Consultant will procure that the professional and other specialist tasks comprised in the Services are carried out personally by the Approved Personnel, with appropriate technical and other support.

4.3 The Consultant will appoint a suitably qualified person, approved by the Client, to replace any one of the Approved Personnel who becomes unavailable.

4.4 If during the consultancy the Client's Representative forms the bona fide opinion that any one of the Approved Personnel:

- lacks the qualifications, experience or other competency or capacity to carry out adequately the tasks undertaken by that person;
- is not producing work of the standard required by this Agreement, or at a reasonable rate of progress to comply with the Program; or
- is responsible for any disruption of the Services or any conduct prejudicial to the Project;

then and in any such case the Client's Representative may notify the Consultant of such opinion and request that such person be replaced, and the Consultant will withdraw the services of that person and replace him or her with a suitably qualified person approved by the Client.

4.5 The Consultant will not without the Client's prior written consent sub-let the performance of all or any part of the Services. The Client will not unreasonably refuse or withhold consent to the Consultant sub-letting part of the Services to a sub-consultant approved by the Client if the Consultant does not have available and cannot otherwise readily procure particular specialist expertise required for performance of the Services.

4.6 Before appointing any replacement under either clause 4.3 or 4.4, or any sub-consultant under clause 4.5, the Consultant will request the Client's approval of the person proposed as a replacement or sub-consultant and will provide to the Client reasonable particulars (including a curriculum vitae) concerning the qualifications, experience, and availability of that person. The Client will not unreasonably refuse or withhold approval.

4.7 The Services include the provision of particular Reports as specified in the Schedule, and such other interim or ancillary reports as the Client may reasonably require.

4.8 As part of the Services, the Consultant will make available the Approved Personnel, and any specialist sub-consultant, to attend such meetings and to make such presentations as the Client may reasonably require.

5. INSTRUCTIONS

5.1 The Client may give such instructions to the Consultant as may be from time to time expedient to clarify any uncertainty or resolve any difficulty concerning the scope or detail of the Services, or for the better co-ordination of the Services with other aspects of the Project, or to deal with any inadequacy or delay in the provision of the Services or with any exigency affecting the provision of the Services.

All such instructions shall be given in writing or if given verbally shall be promptly confirmed in writing, and shall be complied with by the Consultant.

5.2 The Consultant shall not be entitled to any additional Remuneration or other payment on account of any instruction given by the Client unless it is agreed by the parties that the instruction requires the provision of services beyond the scope of the Services undertaken in terms of this Agreement.

6. PROGRAM

- 6.1 The Consultant will commence performance of the Services on or before the Commencement Date, and will perform the Services with all due diligence and despatch and at a rate of progress appropriate for progressive completion of the Services in accordance with the Program.
- 6.2 The Consultant will progressively complete the Services in accordance with the Program and any specified Milestone Dates, and will complete the Services by the Date for Completion.
- 6.3 The Consultant will keep proper records of performance of the Services, and will at the Client's request make such records available to the Client for appraisal of the Consultant's progress in performance of the Services.

7. STANDARD OF SERVICES

- 7.1 The Consultant will perform the Services with proper skill and care at a high professional standard appropriate for the purposes of the Project.

8. CONFIDENTIALITY

- 8.1 Subject to clauses 8.2 and 8.3, the Consultant will treat as strictly confidential all information acquired by the Consultant from the Client or from others for the purposes of the Services or otherwise in relation to the Project, and will not without the Client's prior written consent divulge or disclose any such information to any person.
- 8.2 Subject to any particular restrictions or conditions notified by the Client, the Consultant shall be at liberty to make all proper use of confidential information concerning or related to the Project as necessary for the performance of the Services including appropriate communication of such information to Approved Personnel and others engaged in performance of the Services.
- 8.3 Information which is of public knowledge when acquired by the Consultant shall not be regarded as confidential information under the preceding two clauses.
- 8.4 If so required by the Client, the Consultant will procure written undertakings from Approved Personnel and others engaged in performance of the Services to maintain confidentiality of information in accordance with this Agreement.
- 8.5 The Consultant will hold in safe custody to the Client's reasonable satisfaction any materials or information relating to the Services or the Project which the Client by written notice to the Consultant requires to be held in safe custody.

9. INTELLECTUAL PROPERTY

- 9.1 The Consultant will not in the provision of the Services infringe any patent, registered design, trade mark, copyright or other intellectual property right of any person.

- 9.2 The Consultant warrants that publication or other use by the Client, for the purposes of the Project, of materials and things produced or otherwise supplied by the Consultant in the course of the Services will not infringe any intellectual property right of any person.
- 9.3 The Consultant warrants that it has and will have full and unrestricted copyright in all works and other things (capable of being subject matter of copyright) produced or otherwise supplied by any of the Approved Personnel or by any sub-consultant in the course of the Services for the purposes of the Project, and the Consultant hereby assigns to the Client all the Consultant's present and future copyright in all works and other things produced or otherwise supplied by the Consultant in the course of the Services for the purposes of the Project.

The Consultant will procure from any sub-consultant, as a condition of engagement, an assignment to the Consultant of the sub-consultant's present and future copyright in works and other things produced or otherwise supplied by the sub-consultant in the course of the Services for the purposes of the Project.

10. INSURANCE

- 10.1 Unless otherwise agreed by the Client and evidenced in the Schedule, the Consultant will effect and maintain professional indemnity insurance, with a registered insurer in Australia, providing cover in respect of the conduct of the Consultant and its employees and sub-consultants in the provision of the Services from commencement until completion of the Services, or until any sooner determination of the Consultant's engagement, and for six (6) years thereafter.
- 10.2 The insurance will be the Professional Indemnity Insurance identified or described in the Schedule being either:
- The Consultant's current professional indemnity insurance policy identified in the Schedule, or any subsequent policy providing substantially the same cover; or
 - A policy meeting the general requirements specified in the Schedule and such other requirements (if any) as the Client may reasonably stipulate.
- 10.3 The Consultant will from time to time furnish to the Client such evidence and information as may be reasonably required by the Client in order to be kept fully informed as to the amount of cover and the terms and conditions of the insurance, and as to its currency.
- 10.4 The foregoing provisions of this Section 10 shall continue operative until expiry of the period of six (6) years specified in clause 10.1.
- 10.5 The Consultant will comply with the requirements of the *Workers Rehabilitation and Compensation Act 1986* (SA) or any other statute from time to time applicable in any relevant place concerning workers' compensation insofar as the statute imposes obligations upon the Consultant as an employer or deemed employer of all or any of the Approved Personnel or other persons working for the Consultant in and about or in connection with the provision of the Services.

11. SUPPLY OF RESOURCES BY THE CLIENT

- 11.1 The Client will provide to the Consultant, for the purposes of the Services, the Special Resources (if any) which are specified in the Schedule as Special Resources to be supplied by the Client.
- 11.2 The Client will ensure that all Special Resources supplied by it may be freely used by the Consultant for the purposes of the Services, or will duly inform the Consultant of any restrictions upon or conditions affecting such use (whether for protection of intellectual property rights, or for confidentiality, or for any other reason).

12. REMUNERATION

- 12.1 The Client will pay to the Consultant, for the Services, the Remuneration comprising the Fees, and the Expenses (if any), as specified in the Schedule.
- 12.2 The Fees shall accrue owing, and may be claimed by the Consultant, in the manner and at the times stipulated in the Schedule.
- 12.3 The Expenses (as specified, if any) shall accrue owing when properly incurred by the Consultant, and may be claimed in the Consultant's next claim thereafter for any of the Fees.
- 12.4 The Consultant will submit all claims for Remuneration in writing to the Client, and will provide to the Client all such information as the Client may reasonably require for appraisal and checking of each claim.
- 12.5 The Client will pay Remuneration owing to and duly claimed by the Consultant within fourteen (14) days after receipt of the Consultant's claim, or such further period as the Client may reasonably require to obtain further information and complete its checking and appraisal of the claim.

13. GOODS AND SERVICES TAX

- 13.1 Except as provided by this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement shall be borne by the Consultant.
- 13.2 The Consultant will forward their Australian Business Number (ABN) to the Client at the commencement of the Agreement. Where no ABN is supplied, the Client will withhold from any payments an amount of 48.5% in accordance with the *Goods and Services Tax Act 1999* (the "GST Act") unless appropriate documentation is provided.
- 13.3 The amounts payable to the Consultant as determined in accordance with the Schedule do not include an amount to cover any liability of the Consultant for Goods and Services Tax (GST) on any supplies made under this Agreement which are taxable supplies within the meaning of the "GST Act".
- 13.4 If a supply made by the Consultant under this Agreement is a taxable supply under the GST Act, the Consultant may, by notice in writing to the Client, increase the Remuneration payable by the Client by the amount of GST that is payable by the Consultant on that part of the Remuneration which relates to the taxable supply as if

that part of the Remuneration is the value of the supply for the purposes of the "GST Act".

- 13.5 In relation to taxable supplies made under this Agreement, the Consultant agrees to issue the Client with GST Tax Invoices in accordance with the "GST Act".
- 13.6 The Consultant warrants and undertakes that at the time any supply on which GST is imposed is made by it to the Client under this Agreement it is or will be registered under the "GST Act".

14. ASSIGNMENT

- 14.1 The Consultant will not without the Client's prior written consent assign the Remuneration or any other right or benefit accruing under this Agreement.

The Agreement itself (comprising the benefits and the obligations of the consultancy for each of the parties) is not assignable except by novation that is to say no other party can take over the rights and obligations of either the Client or the Consultant (and thus become a party to this Agreement in substitution for one of them) except by tripartite agreement between the Client and the Consultant and the other party.

15. TERMINATION OF ENGAGEMENT

- 15.1 Without prejudice to other rights and remedies, the Client may terminate the Consultant's engagement under this Agreement as provided in this Section 15.

- 15.2 If the Consultant or any person comprised in the Consultant being a natural person shall become bankrupt, or being a body corporate shall have a provisional liquidator appointed or shall have a winding up commenced (except for the purpose of reconstruction or amalgamation), then and in any such case the Client may by written notice to the Consultant terminate the Consultant's engagement under this Agreement.

- 15.3 If the Consultant in breach of this Agreement:

- fails to commence performance of the Services on the Commencement Date; or
- fails to complete the Services progressively in accordance with the program and any specified Milestone Dates; or
- fails to complete the Services by the Date for Completion;

or if the Consultant commits any other breach of this Agreement which in the bona fide opinion of the NEPC Executive Officer is or may be seriously prejudicial to the Project, then and in any such case the Client may give written notice to the Consultant specifying the breach or breaches and requiring the same to be remedied to the Client's reasonable satisfaction within fourteen (14) days (or such lesser reasonable time as the Client may specify in the notice). If the Consultant fails so to remedy any such breach within the time stipulated in the Client's notice, the Client may by further written notice terminate the Consultant's engagement under this Agreement.

- 15.4 Upon any termination of the Consultant's engagement under clause 15.2 or 15.3:

- The Consultant will forthwith return to the Client all equipment, materials, data and other things supplied by the Client, and will forthwith deliver to the Client

all documentation and other records comprising the work-in-progress of the Services; and

- The Consultant will be liable to the Client for all loss and expense caused by the termination of the Consultant's engagement in like manner as if this Agreement had been repudiated by the Consultant and rescinded by the Client's acceptance of such repudiation.

15.5 If on account of withdrawal or other lack of funding, or any decision to abandon, defer or alter the Project, or for any other reason whatsoever the NEPC Executive Officer is of the opinion that the Services should be discontinued, the Client may by written notice to the Consultant terminate the Consultant's engagement under this Agreement, and in such case:

- The Consultant's engagement shall terminate upon receipt of the Client's notice or upon any later date as may be stipulated in the notice;
- The Consultant will upon such termination forthwith return to the Client all equipment, materials, data and other things supplied by the Client, and will deliver to the Client all documentation and other records comprising the work-in-progress of the Services; and
- In addition to any claim for Remuneration accrued owing at or before termination of the engagement, the Consultant shall be entitled to a reasonable share of the Fees in respect of any stage of the Services only partially completed, being a fair proportion of the Fees payable on completion of that stage having regard to the amount of the work completed in relation to the whole of the work required for that stage.

16. NOTICES

16.1 Without prejudice to other modes of service and the application of any statutory provisions relating to service and/or deemed service of notices (as for example under the Corporations Law), any written notice given by a party or its Representative to a party or its Representative pursuant to or in connection with this Agreement may be sent by post addressed to the recipient party or to the recipient Representative at such party's or Representative's address as stated in the Schedule or other notified address, and if so addressed and duly posted in Australia shall be deemed to have been received by the addressee at the time when the same ought to have been delivered in the ordinary course of post.

DATED the _____ day of _____ 200_____

SIGNED for and on behalf of the Client with due authority by NEPC Executive Officer in the presence of:

.....

Witness

) NEPC Service Corporation
)
)
)
)
) **Dr Bruce Kennedy,**
) **NEPC Executive Officer**
)

SIGNED for and on behalf of the consultant with due authority by:

..... (name)

..... (office)

in the presence of:

.....

Witness

)
)
)
) **Consultant**
)
)
) Per
)
)
) **Signatory**
)

SCHEDULE

PROJECT

#1 General description of the Project, including designation of any particular name by which it is or will be known.

CLIENT

NEPC Service Corporation a body corporate by virtue of the *National Environment Protection Council Act 1994*, Level 5, 81 Flinders Street, Adelaide, South Australia 5000

CONSULTANT

#2 Full correct name(s) and address(es), ACN, of any corporate body. Identify correct legal entity if Consultant is a "Department" or "Division" of a larger institution or organisation.

CLIENT'S REPRESENTATIVE

#3 Name, work status and address - e.g. Ms. Jean Jones, Research Officer, NEPC Service Corporation, Level 5, 81 Flinders Street, Adelaide South Australia 5000

CONSULTANT'S REPRESENTATIVE

#4 Name, work status and address.

SERVICES

#5 Provide here a specification of the Services required of the Consultant for the purposes of the Project. This item may be much lengthier than other items of the Schedule. It should include some reference to the Reports (which can be specified in more detail in the "Reports" item of this Schedule) and should also give a fair indication of the likely requirements for Approved Personnel to attend at meetings or other functions.

SPECIAL RESOURCES

1. To be supplied by the Client

#6 Specify particular resources to be supplied by the Client, indicating source if any resources are to be obtained by the Consultant from an institution or organisation making the resources available at Client's request, and indicating also any restrictions on or conditions concerning use of any of these resources. If resources are "lent" and are to be returned after use in connection with the Services, this should be stated.

2. To be supplied by the Consultant

#7 Specify particular resources to be supplied by the Consultant. The Consultant is under a general obligation to supply everything necessary for provision of the Services: this Schedule item is accordingly for particular resources which are in some way "special" and regarded as being of some special advantage for the effective provision of the Services.

APPROVED PERSONNEL

#8 Name, work status and address - for each.

REPORTS

The Services include provision of the following specific reports:

#9 Specify particular reports required from the Consultant in performance of the Services.

Watch correlation with next item PROGRAM if Milestone Dates are dates for submission of these reports.

PROGRAM

#10 Here identify any separate document, e.g. a bar chart, setting out the Program. This document, or a copy of it, should be attached to the Agreement. It should identify Commencement Date, Date for Completion, and Milestone Dates (if any) in order that the following items #11, #12, #13 can be filled in consistently with the Program document.

If there is no Program document, delete this #10 and simply adopt #11, #12 and #13 as the Program.

- Commencement date #11
- Date for completion #12
- Milestone dates #13

PROFESSIONAL INDEMNITY INSURANCE

#14 If satisfied, after considering the policy of insurance, that the Consultant has professional indemnity cover (or "civil liability" cover), from an insurer registered in Australia, of adequate amount, and which covers the Consultant's liability for any negligence of the Consultant or its employees or sub-consultants in the provision of the Services, here set out particulars of the policy, e.g. Professional Indemnity Policy No.....issued by to..... for cover up to \$..... including cover for liability in respect of sub-consultants.

Alternatively (although it is preferable to insist, if practicable, upon cover being in place before the Agreement is signed) here set out insurance requirements, e.g. Professional indemnity policy for cover of not less than \$2 million in respect of the Consultant's liability for negligence of the Consultant or its employees or sub-consultants in the provision of services (including Services under this Agreement).

REMUNERATION

FEES

#15 Here set out the total amount of all Fees, and the timing of instalments, for example:

Total Fees amount to \$....., to which the Consultant shall become entitled as follows:

- Upon commencement of Services \$.....
- Upon receipt and Client's acceptance of Interim Report \$.....
- Upon receipt, and Client's acceptance of draft Final Report \$.....
- Upon Client's acceptance of Final Report and completion of the Services \$.....

EXPENSES

The following Expenses, if incurred with the Client's prior written approval:

#16 Here set out reimbursable expenses (if any), for example:

Interstate travel from usual work-place to attend meetings in Adelaide:

- Fares incurred,
- Reasonable hotel accommodation.

Cost of any advertising for the purposes of the Project.

If no reimbursable expenses are contemplated, state NIL.