

CONSULTANCY AGREEMENT

AP 1/4/3

1 January 2017

XYZ
Town
Country

Consultancy for [state the purpose]

between

The Secretariat of the Pacific Regional Environment Programme (SPREP)

and

XYZ

(together, "the Parties")

Dear XYZ,

I am pleased to offer you this Consultancy Agreement ("the Agreement") with the Secretariat of the Pacific Regional Environment Programme (SPREP) in accordance with the following terms and conditions.

Interpretation

"Confidential Information" means any information (in any form) expressly marked or designated as "confidential" that the Consultant discloses to SPREP or SPREP discloses to the Consultant or which, by its nature, may reasonably be regarded as being sensitive or of commercial value to the disclosing Party. Information cannot be marked or designated as "confidential" if it is: (i) publicly available, (ii) rightfully known by the Consultant before disclosure by SPREP or rightfully known by SPREP before disclosure by the Consultant, or (iii) independently created or obtained by the Consultant or by SPREP without reference or access to each other's Confidential Information.

"Deliverables" means completed work components or products (reports, outputs, and the like) as contained in the Terms of Reference.

"Director General" means the Director General of SPREP and includes "Officer-in-charge" and "Acting Director General".

"Intellectual Property" includes, but is not limited to, copyright (including future copyright and rights in the nature of, or analogous to, copyright), trademarks, trade names, designs, inventions (including patents), non-patentable processes and methods, Confidential Information, know-how and show-how, technical and other data or information, trade secrets, service marks, circuit layouts and the like.

"Services" means the work to be done under the Terms of Reference.

1. Terms of Reference for Services & Deliverables
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The Terms of Reference are set out in the Attachment which forms part of this Agreement.

Deliverables are to be submitted to SPREP in accordance with the Terms of Reference.

2. Duration

- a) The work will commence
- b) The work will finish on

3. Remuneration

- a) The Total Consultancy fee is USD xx,000.
- b) Payment schedule based on consultancy fees will be:
 - i. 30% upon signing of contract USD xxx;
 - ii. 30% upon delivery and acceptance of the final workshop and field trip programme USD xxxx;
 - iii. 40% upon acceptance by SPREP of the final report USD xxxx.
- c) A standard penalty clause of two percent (2%) of the total contract value will be deducted from the final contract amount for every 7 day overrun from the required delivery date in completion of all contract deliverables, other than where the delay is caused as a result of influences outside the control of the Consultant.
- d) The consultant is required to submit an invoice for each payment installment.

4. Travel

Travel cost included in Consultancy fee.

5. Status of Consultant

- a) The Consultant shall be considered as having the legal status of an independent contractor and not the status of an official or staff member of SPREP. Agents, employees or representatives of the Consultant shall not be considered as being officials or staff of SPREP.
- b) The Consultant is entitled only to those benefits stated in this Agreement.

6. Title Rights

- a) Other than material purchased by the Consultant from the Consultant's own funds, any material permanently obtained for the purpose of fulfilling this Agreement shall be the property of SPREP.
- b) Unless otherwise stated in this Agreement, intellectual property shall be the property of SPREP.

7. Delay

The Consultant must notify the Director General in writing as soon as the Consultant becomes aware of circumstances which may give rise to delay together with an estimate of further time required for the completion of the Services.

8. Confidentiality

Unless otherwise stated in this Agreement or as otherwise agreed in writing by the Parties, neither Party will disclose or use in any way any Confidential Information except to the extent that disclosure or use of such Confidential Information is necessary to enable the Services to be performed.

9. Financial responsibility

The Consultant agrees it is responsible for:

- a) payment of applicable taxes, superannuation and the like;
- b) relevant insurance cover such as medical, travel and professional liability.

10. Indemnity

- a) The Consultant shall perform the Services with due professional care and skill.
- b) The Consultant shall have full regard to SPREP's interests and not knowingly take any action that might adversely affect SPREP.
- c) The Consultant agrees to indemnify and hold harmless SPREP of and from any and all claims, demands, losses, causes of action, damage, lawsuits, judgments, including lawyer's fees and costs, arising from
 - (i) any negligent act or omission by the Consultant (including any of its personnel) in connection with this Agreement;
 - (ii) any breach by the Consultant (including any of its personnel) of its obligations under this Agreement;
 - (iii) any use or disclosure by the Consultant (including its personnel) of Confidential Information held or controlled in connection with this Agreement.
 - (iv) Intellectual property breaches.

11. Termination

- a) If the Consultant acts in a manner which in the reasonable opinion of the Director General has a serious negative impact upon SPREP, the Director General may immediately terminate this Agreement.
- b) Other than termination in accordance with sub-clause (a), either Party may terminate this Agreement at any time by giving the other ten days' notice in writing of its intention to do so.
- c) Upon receipt of a notice to terminate:
 - (i) the Parties will take all action necessary to cancel outstanding commitments relating to the Services under this Agreement and will use their best efforts to honour their respective prior commitments.
 - (ii) SPREP will make payment for work satisfactorily completed up to the time of termination, up to the stated maximum.
 - (iii) The Consultant will return all unexpended funds.
- d) Termination or expiry of this Agreement will not prejudice any rights or obligations of the Parties which exist, whether under this Agreement, at law or otherwise, prior to termination or expiry.
- e) Clauses 6, 8, 9, 10 and 11, and any other relevant provisions, will survive the termination or expiry of this Agreement.

12. Applicable Law

This Agreement shall be governed by the laws of Samoa and subject to the jurisdiction of Samoan Courts.

13. Dispute resolution

The Parties shall cooperate to carry out their obligations in good faith and shall endeavour to resolve any disagreement in an amicable manner, including through use of mediation and conciliation processes, prior to taking any Court action.

14. Variation of Agreement

This Agreement may be varied by written agreement of the Parties.

15. Contract Manager

a) [Insert staff member's name] of [Insert responsible department] and [Consultant's name] as the Contract Managers are responsible for managing the Contract, including:

- i) Managing the relationship between the Parties
- ii) Overseeing the effective implementation of this Contract
- iii) Act as a first point of contact for any issues that arise and,
- iv) Address and resolve any issues in a prompt manner.

b) Changing the Contract Manager

If a Party changes its Contract Manager it must tell the other Party, in writing, the name and contact details of the replacement within 5 business days of the change.

16. Counterparts

This Agreement may be executed in any number of counterparts (including by facsimile or electronic copies) each of which, when taken together, will constitute one and the same document.

Should these terms and conditions be acceptable to you, please sign below, also initial each page of the Agreement and its attachment, and return one copy of each to me.

Yours sincerely,

Kosi Latu
**Director General
SPREP**

Date:

XYZ
Consultant

Date: