

AMPS LAW

Template consultancy
agreement for anthropologists



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This document is intended as a guide only. This does not constitute legal advice. There may be additional and important considerations that should be taken into account in your specific circumstances. If you or your organisation has a legal issue, you should obtain professional advice from a legal practitioner.

This Agreement dated [insert date] is made by and between:

[Corporation Name] of [address]

and

[insert consultant] [Corporation Name] of [insert street address], [insert suburb], [insert state], [insert postcode] (Consultant)

RECITALS

A. [Corporation Name] wishes to receive the anthropological services as set out in Specification (Consultancy Services).

B. The Consultant is an anthropologist possessing the required background, skills and experience required to deliver the Consultancy Services.

C. [Corporation Name] wishes to engage an independent contractor to provide the Consultancy Services to **[Corporation Name]**.

D. The Consultant is willing to provide the Consultancy Services and **[Corporation Name]** is willing to appoint the Consultant to provide the Consultancy Services, all in accordance with the provisions of this Agreement.

The parties agree:

1. Definitions and interpretation

1.1 Definitions

In this Agreement unless the context indicates otherwise, the following words will have the following meanings:

1.1 (a) Agreement means this agreement and all schedules, annexures and attachments hereto;

1.1 (b) Claims means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise);

1.1 (c) Commencement Date means the day this Agreement is executed;

1.1 (d) Completion Date means the completion date set out in the Specification;

1.1 (e) Confidential Information includes any information marked as confidential, any information advised by ABC as confidential, and any information received or developed by the Consultant in connection with this Agreement, which is not publicly available and relates to the provision of the Consultancy Services;

1.1 (f) Consultant's Personnel means any person(s) that the Consultant designates to perform the Services on the Consultant's behalf in accordance with this Agreement;

1.1 (g) Facilities means facilities as required by the Consultant in performing the Consultancy Services, in accordance with clause 6 of this Agreement;

- 1.1 (h) Fee(s)** means the fee and expenses as set out in the Specification;
- 1.1 (i) GST Law** means the same as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- 1.1 (j) Intellectual Property** includes trademarks, patents, copyrights, processes, know-how, registered designs or other like rights or any right to apply for registration of any of the former;
- 1.1 (k) Losses** means all losses including financial losses, damages, legal costs and other expenses of any nature whatsoever;
- 1.1 (l) Parties** means the Consultant and ABC, and Party will mean either one of them;
- 1.1 (m) Purpose** means the purpose as set out in the Specification.
- 1.1 (n) Related Body Corporate** has the meaning given in [s 50 of the Corporations Act 2001 (Cth)];
- 1.1 (o) Specification** means the specific Consultancy Services to be provided by the Consultant under this Agreement. The Specification is set out in Schedule 1 of this Agreement;
- 1.1 (p) Termination Date** means the earlier of:
- the date of termination of this Agreement by ABC or the Consultant; and
 - the date of expiry of this Agreement.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- 1.2 (a)** words importing any gender include every gender;
- 1.2 (b)** words importing the singular number include the plural number and vice versa;
- 1.3 (c)** words importing persons include firms, companies and corporations and vice versa;
- 1.4 (d)** references to numbered clauses, paragraphs and schedules are references to the relevant clause or paragraph in or schedule to this Agreement;
- 1.5 (e)** reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- 1.6 (f)** any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- 1.7 (g)** the headings to the clauses and schedules of this Agreement are not to affect the interpretation;
- 1.8 (h)** any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.9 (i)** the word "including" (and related forms including "includes") will be understood as meaning "including without limitation".

2. Consultancy services

- (a) The Consultant will provide the Consultancy Services for the Purpose to **[Corporation Name]** in consideration for **[Corporation Name]** paying the Fee to the Consultant, subject to the provisions of this Agreement.
- (b) The Consultant and **[Corporation Name]** will agree the time and place for the performance of the Consultancy Services.
- (c) The Consultant will complete the Consultancy Services by the Completion Date, or on other dates as agreed by the Parties.
- (d) The Consultancy Services to be performed as agreed by the Parties, the time estimates for the provision of the particular Consultancy Services, and the Fee(s) will be set out in the Specification.

3. Location

The Consultant will provide the Consultancy Services in such places and locations as agreed by the Parties.

4. Fee(s)

- (a) In consideration of the provision of the Consultancy Services in accordance with this Agreement, **[Corporation Name]** will pay the Consultant the Fee(s).
- (b) The Consultant will provide **[Corporation Name]** with a tax invoice in accordance with the GST Law in relation to fees payable under this clause 4.
- (c) The invoice referred to in above paragraph (b) must include the following details before payment can be approved and forwarded:
 - i. date of Consultancy Services;
 - ii. description of Consultancy Services provided;
 - iii. time allocated per task; and
 - iv. the ABN of the Consultant.
- (d) The Consultant is permitted to charge for the costs incurred in performing the Consultancy Services, including the expenses set out in Specification and as otherwise agreed by the Parties.

(e) Payment of an invoice issued in compliance with this clause 4 will be made by **[Corporation Name]** within [28 days of receipt]. When making a payment ABC will quote relevant reference numbers and the invoice number.

(f) If **[Corporation Name]** does not make a payment within 28 days of receiving the invoice issued in accordance with this clause 4, the Consultant will be entitled to not perform any further Consultancy Services (or any part of the Consultancy Services).

5. Consultant's obligations

(a) The Consultant must provide, and procure that the Worker identified in the Schedule will provide on its behalf (as applicable), the Services to **[Corporation Name]** under the terms of this Agreement:

- i. in accordance with all reasonable instructions issued by the **[Corporation Name]**;
- ii. to the reasonable satisfaction of **[Corporation Name]**, having regard to the Purpose for which the Consultancy Services are sought;
- iii. in a thorough, professional, timely and competent manner with the degree of skill, care and diligence expected of a Consultant experienced in providing the same or similar Consultancy Services, and in compliance with all applicable principles and standards; and
- iv. in accordance with all relevant work, health and safety legislation and any work health and safety practices or policies of **[Corporation Name]** and so that the Consultancy Services are fit for their intended purpose;

(b) The Consultant must not engage, and must ensure that its employees or subcontractors do not engage (as applicable), in conduct that would limit, interfere with or prejudice the proper performance of the Consultant's obligations under this Agreement.

(c) The Consultant must not engage any person other than the Worker identified in the Specifications to perform the Consultancy Services without the **[Corporation Name]** prior written consent.

(d) The Consultant warrants that:

- i. it has the expertise in and is in the business of providing the types of services that are being contemplated under this Agreement;
- ii. it and the Worker is legally able to provide the Consultancy Services and holds all required qualifications, licenses and approvals in the state and/or territory where the Consultancy Services will be performed; and
- iii. it has complied and will, for the term of this Agreement and in delivering the Consultancy Services, comply with all laws applicable to its business operation and the Consultancy Services, including without limitation all laws that apply with respect to its employment of its employees and its engagement of its subcontractors, and acknowledges that **[Corporation Name]** in entering this Agreement has relied on the warranties in this Agreement.

6. [Corporation Name] obligations

- (a) During the preparation of the Specification and performance of the Consultancy Services [Corporation Name] will:
 - i. co-operate with the Consultant as the Consultant reasonably requires;
 - ii. provide the information and documentation that the Consultant reasonably requires;
 - iii. make available to the Consultant such Facilities as the Consultant reasonably requires; and
 - iv. ensure that [Corporation Name] staff and agents co-operate with and assist the Consultant.
- (b) [Corporation Name] will not charge for the Consultant's use of the Facilities made available by [Corporation Name]

7. No partnership/employment relationship and other work

(a) Nothing in this Agreement constitutes the relationship of employer and employee between [Corporation Name] and the Consultant or between [Corporation Name] and the Consultant's Personnel. It is the express intention of the parties that any such relationships are denied.

(b) The Consultant may engage in other work and consulting assignments during the term of the Agreement. However, the Consultant must immediately and fully disclose to the [Corporation Name] any obligation or interest that the Consultant may have at any time during the term of this Agreement that conflicts, or that may conflict, with the Consultant's obligations to the [Corporation Name].

8. Ownership of intellectual property

(a) The Consultant agrees that any Intellectual Property rights in relation to any information, materials or documentation, whether oral or in any other form, provided to the Consultant for the purposes of this Agreement (including the Confidential Information) will be and remains the property of the original source of the information, material or documentation as the case may be.

(b) The Consultant acknowledges that [Corporation Name] (or its associated entities or persons) owns all Intellectual Property created by the Consultant in connection with the Consultancy Services, that now exists or that later comes into existence.

(c) The Consultant agrees to indemnify [Corporation Name] fully against all liabilities, costs and expenses which ABC may incur as a result of any breach of this clause by the Consultant or the Consultant's Personnel.

(d) The obligations accepted by the Consultant under this clause survive termination or expiry of this Agreement.

9. Confidentiality

- (a) The Consultant must keep Confidential Information of, **[Corporation Name]**, any Related Body Corporate of **[Corporation Name]** and any client of **[Corporation Name]**, confidential and not deal with it in any way that might prejudice its confidentiality.
- (b) In addition to being confidential, the Confidential Information may be subject to legal professional privilege. The Consultant must not waive such privilege without the prior written consent of **[Corporation Name]**.
- (c) **[Corporation Name]** and the Consultant acknowledge that information resulting from the activities of the Consultant pursuant to this Agreement will also be regarded as Confidential Information and the Consultant agrees that the Consultant's obligations in above paragraph (a) extend to this category of information.
- (d) The Consultant's obligations with regard to the Confidential Information will continue for so long as the Confidential Information is maintained on a confidential basis by **[Corporation Name]**.
- (e) At the Termination Date, or when earlier directed by **[Corporation Name]**, all Confidential Information must be returned to **[Corporation Name]**, including all copies of the Confidential Information or any extracts or summaries of the Confidential Information that the Consultant makes including any other material the Consultant creates based on the Confidential Information (including through adaptation, incorporation, or alteration).
- (f) Above paragraph (a) does not apply to:
- i. information that is generally available in the public domain otherwise than as a result of a breach of paragraph (a) by the Consultant; or
 - ii. information that was already lawfully known by the Consultant prior to **[Corporation Name]** disclosing the information to the Consultant; or
 - iii. the disclosure of information in order to comply with any applicable laws or legally binding order of any court or government body.
- (g) The Consultant agrees that **[Corporation Name]** may require any of the Consultant's Personnel to sign a confidentiality agreement in a form that **[Corporation Name]** approves, as a condition of ABC's acceptance of any of the Consultant's Personnel.
- (h) The Consultant agrees to indemnify ABC fully against all liabilities, costs and expenses which **[Corporation Name]** may incur as a result of any breach of this clause by the Consultant.
- (i) The obligations accepted by the Consultant under this clause survive termination or expiry of this Agreement.

10. Warranties, liability and indemnities

- (a) The Consultant warrants that it will use reasonable care and skill in performing the Consultancy Services and to the standard generally accepted within the industry, sector or profession in which the Consultant operates for the type of Consultancy Services provided by the Consultant.
- (b) If the Consultant performs the Consultancy Services (or any part of the Consultancy Services) negligently or materially in breach of this Agreement including any part of the Specification, then, if requested by **[Corporation Name]**, the Consultant will re-perform the relevant part of the Consultancy Services, subject to paragraphs (h) and (i) below.
- (c) **[Corporation Name]** request referred to in above paragraph (b) must be made within 7 days of the date the Consultant completed performing the Consultancy Services.
- (d) The Consultant will effect all insurance required to be effected by law including worker's compensation insurance as prescribed by law for the Consultant's Personnel, professional indemnity insurance in accordance with the applicable state legislation and best practice standards in which Consultancy Services are being performed, and public liability insurance for a minimum of an amount to be agreed for each occurrence.
- (e) The Consultant covenants that the Consultant will be solely responsible for the payment to the Consultant's employees and agents of all amounts due by way of salary, superannuation, annual leave, long service leave and any other benefits to which they are entitled as the Consultant's employees or agents and to otherwise comply with legislation applicable to the Consultant's employees and agents.
- (f) Throughout the continuance of this Agreement the Consultant will comply at the Consultant's own cost and expense with all Acts, ordinances, rules, regulations, other delegated legislation, codes and the requirements of any Commonwealth, State and Local Government departments, bodies, and public authorities or other authority so far as the same may affect or apply to the Consultant or to the Consultancy Services, and the Consultant will indemnify **[Corporation Name]** from and against all actions, costs, charges, claims and demands in respect thereof.
- (g) The Consultant provides no warranty that any result or objective can or will be achieved or attained at all or by a given completion date any other date, whether stated in this Agreement or elsewhere.
- (h) Except in the case of death or personal injury caused by the Consultant's negligence, the liability of the Consultant under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise will not exceed the Fee(s) paid by **[Corporation Name]** to the Consultant under this Agreement. The provisions of this paragraph (h) will not apply to paragraphs (f) and (j).

(i) Neither Party will be liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill. The provisions of this paragraph (i) will not apply to paragraphs (f) and (j).

(j) **[Corporation Name]** will indemnify and hold harmless the Consultant from and against all Claims and Losses arising from loss, damage, liability, injury to the Consultant, its employees and third parties, infringement of third party intellectual property, or third party losses by reason of or arising out of any information supplied to **[Corporation Name]** by the Consultant, its employees or consultants, or supplied to the Consultant by **[Corporation Name]** within or without the scope of this Agreement.

(k) Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.

(l) The Consultant must supply **[Corporation Name]** with evidence of the Consultant's ABN and must include this number on any statement provided to **[Corporation Name]**. The Consultant acknowledges that if the Consultant fails to provide an ABN, then **[Corporation Name]** is entitled to withhold any proportion of the Fee(s) to the Consultant as may be required under the relevant law for tax purposes.

(m) The Consultant warrants that the Consultant has no authority to engage the services of any person as an employee or agent of **[Corporation Name]**.

(n) The Consultant warrants that the Consultant will not incur any liability on behalf of **[Corporation Name]** or in any way pledge or purport to pledge **[Corporation Name]** credit or accept any other or make any contract binding upon **[Corporation Name]** without prior approval being given by **[Corporation Name]**.

(o) The obligations accepted by the Consultant and **[Corporation Name]** under this clause survive termination or expiry of this Agreement.

11. Termination

(a) Either Party may terminate this Agreement by notice in writing to the other if the other Party notified fails to observe any term of this Agreement and fails to rectify this breach, to the satisfaction of the notifying Party, following the expiration of 7 days' notice of the breach being given in writing by the notifying Party to the other Party.

(b) Either Party may terminate this Agreement upon the happening of any of the following events:

- i. the giving of written notice of at least 7 days by one Party to the other Party of the intention to terminate this Agreement;
- ii. if **[Corporation Name]** enters into a deed of arrangement or an order is made for it to be wound up;
- iii. if an administrator, receiver or receiver/manager or a liquidator is appointed to **[Corporation Name]** pursuant to the Corporations Act 2001 (Cth); or
- iv. if **[Corporation Name]** would be presumed to be insolvent by a court in any of the circumstances referred to in the Corporations Act 2001 (Cth).

(c) [Corporation Name] may, at its discretion, pay to the Consultant the equivalent amount of the fees payable by [Corporation Name] to the Consultant during the notice period in lieu of any notice period relating to termination of this Agreement under paragraph (b) (i).

(d) [Corporation Name] may terminate this Agreement without prior notice if at any time the Consultant:

- i. is guilty of any gross neglect of duty or professional misconduct;
- ii. commits a serious or persistent breach of this Agreement; or
- iii. becomes unsound of mind or becomes permanently incapacitated by accident or illness from performing the Services.

(e) If this Agreement is terminated under above paragraph (d), the Consultant may only invoice [Corporation Name] for any outstanding amount in respect of the Consultancy Services provided before the effective date of termination.

12. General

(a) **Force majeure:** Neither Party will have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances will promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 6 months, either Party may terminate this Agreement by written notice to the other Party.

(b) **Variation:** This Agreement may only be varied in writing signed by the Parties.

(c) **Assignment:** Neither Party may assign, delegate, subcontract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party, and if such agreement is obtained, provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under this Agreement.

(d) **Entire agreement:** This Agreement contains the whole agreement between the Parties in respect of the subject matter of the Agreement and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to such subject matter.

(e) **No Waiver:** If a Party does not exercise, or delays in exercising, any of its rights under this Agreement or at law, that failure or delay does not operate as a waiver of those rights. A single or partial exercise by a Party of any of its rights under this Agreement or at law does not prevent the further exercise of any right.

(f) **Relationship of Parties:** This Agreement will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

(g) **Further assurance:** Each Party to this Agreement will at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of this Agreement or to make it easier to enforce.

(h) Severance: If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and will not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

(i) Disclosure: Unless required by law, neither Party will issue or make any public announcement or disclose any information regarding this Agreement without the prior written approval of the other Party.

(j) Notices: A notice or other communication connected with this Agreement has no legal effect unless it is in writing. In addition to any other method of service provided by law, the notice may be sent by pre-paid post to the address of the addressee as set out in this Agreement, or as otherwise agreed by the Parties.

(k) Survival: Clauses 1, 8, 9, 10, 11, and 12 survive the termination of this Agreement.

(l) Applicable law: This Agreement takes effect, is governed by, and will be construed in accordance with the laws from time to time in force in [South Australia, Australia]. The Parties submit to the non-exclusive jurisdiction of the courts of South Australia.

(m) Counterparts: This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Executed as an Agreement on [insert date of execution]

Executed by ABC in accordance with [section 127 of the Corporations Act 2001]:

Director/ Company Secretary

Director

Director/ Company Secretary

Director

Executed by [insert name of consultant], in accordance with [section 127 of the Corporations Act 2001]:

Director/ Company Secretary

Director

Director/ Company Secretary

Director

SCHEDULE 1 SPECIFICATIONS

a) Purpose

[insert a summary of how why ABC is engaging the consultant]

b) Consultancy Services

The Consultant is required to provide the following expert anthropological services:

- i. [insert specific requirement]
- ii. [etc].

c) Completion Date

[inset date].

d) Worker

[insert name of the worker to perform the services].

e) Fee

[insert fee structure i.e. hourly fee or project fee etc.].

f) Expenses

13) [insert expenses that will be covered by MPS].