



## PARTNERSHIP AGREEMENT

FN\_3/2/13-Irish\_Aid

Date: 13 July 2021

**Agreement to undertake the situational analysis for the Moata'a community and mangrove environment**

between

**The Secretariat of the Pacific Regional Environment Programme (SPREP)**

and

**University of Newcastle (the Partner)**

(together, "the Parties")

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This Agreement with the Secretariat of the Pacific Regional Environment Programme (SPREP) in accordance with the following terms and conditions.

This Agreement is made under and is subject to the MOU between SPREP and the University of Newcastle, signed by the latter on 26 July 2016 (the MOU).

### **Interpretation**

"Background IP" means a party's Intellectual Property which existed prior to the commencement of the Partnership Agreement which that party makes available for the carrying out of the Partnership Agreement, or which a party develops independently of the Partnership Agreement.

"Claims" means claims, loss, damages, costs and expenses including legal costs on a solicitor and own client basis

"Confidential Information" means any information (in any form) expressly marked or designated as "confidential" that the Partner discloses to SPREP or SPREP discloses to the Partner 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 Partner before disclosure by SPREP or rightfully known by SPREP before disclosure by the Partner, or (iii) independently created or obtained by the Partner 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 and that must be delivered to SPREP by the Partner under this contract.

"Dependency" means the state of relying on someone or something for something, especially when this is not normal or necessary.

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

"Extraordinary Event" An event that is beyond the reasonable control of the Party immediately affected by the event. An Extraordinary Event does not include any risk or event that the Party claiming could have prevented or overcome by taking reasonable care. Examples include:



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- a. acts of God such as lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster;
- b. acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilization, requisition or embargo;
- c. acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war,
- d. nationalization, government sanctions, travel bans, embargoes, labor disputes, strikes or lockouts
- e. contamination by radioactivity from nuclear substances or germ warfare or any other such hazardous events.

"Indirect Loss" means any special, indirect, consequential, incidental or punitive damages or economic loss, loss of profits, revenue, goodwill, bargain, lost opportunity, depreciation in value of equipment, anticipated savings or loss or corruption of data, and any costs or expenses incurred in connection with the foregoing.

"Intellectual Property" (IP) 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.

"Partnership Agreement IP" means the Intellectual Property which is created or developed jointly by the Partners in the course of carrying out the Partnership Agreement but excludes any IP in the Deliverables.

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

## 1. Terms of Reference for Services & Deliverables

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 from the date that this agreement is signed.
- b) The work will finish no later than 10 December 2021.

## 3. Remuneration

- a) The total value of this agreement is USD37,050.
- b) Payment schedule will be as follows based on SPREP approval of successful delivery of the deliverables as outlined in the TOR:
  - a. an initial payment of USD 14,820 (40%) upon submission of detailed workplan and signing of this agreement;
  - b. a second payment of USD 14,820 (40%) upon receipt (1) Human-mangrove relationship literature review report, (2) Mangrove ecosystem literature review report;
  - c. a final payment of USD 7,410 (20%) upon receipt of (1) Final Moata'a mangrove ecosystem analysis report including the hydro-sedimentological assessment of the catchment, assessment of climate change impacts on the mangrove environment and assessment of mangrove ecosystem resilience; (2) Human-mangrove household survey findings report. 3) Draft Journal article on human-mangrove relationship.
- c) The Partner is required to submit an invoice for each payment installment.



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## 4. Travel

- a) No travel is required under this Agreement.

## 5. Status of Partner

- a) The Partner shall be considered as having the legal status of an independent contractor and not the status of an official, agent or staff member of SPREP, nor will this contract be construed as the parties forming a partnership under the laws of Somoa or New South Wales, Australia, or an agreement to jointly undertake a business with a view to profit. Agents, employees or representatives of the Partner shall not be considered as being officials or staff of SPREP.
- b) The Partner is entitled only to those benefits stated in this Agreement.

## 6. Title Rights

- a) The parties agree that ownership of the Background IP is unaffected by virtue of its use under this contract.
- b) Each party grants the other a non-exclusive, irrevocable, fee-free, licence to use, reproduce and adapt the other's Background IP to the extent necessary to undertake the activities contemplated under this contract.
- c) The parties agree that the Partnership Agreement IP will vest in, and by virtue of this contract is assigned to, the Partner upon creation. The Partner grants SPREP a non-exclusive, irrevocable, fee-free world-wide licence to use the Partnership Agreement IP to the extent necessary for SPREP to exercise its rights to the Deliverables for any purpose.
- d) The parties agree that ownership of the Deliverables, including the IP therein, will vest, and virtue of the contract is assigned to, SPREP. SPREP grants the Partner a non-exclusive, irrevocable, fee-free, royalty-free, world-wide licence (including the right to sub-licence) to use, reproduce, amend, adapt, publish, and communicate the Deliverables for the purposes of education, research, and academic publication.

## 7. Delay

The Partner must notify the Contract Manager in writing as soon as the Partner becomes aware of circumstances (including any Dependency or an Extraordinary Event) which may give rise to delay together with an estimate of further time required for the completion of the Services and the Parties will consult in good faith as to how to proceed.

In event of any Dependency affecting the Partner's ability to provide the Services and notified under this clause, then the Parties will, as appropriate, also consult in good faith to agree an extension of time, variation to the Services and/or variation to the Remuneration accordingly.

Neither Party will be liable for a breach of its obligations under this Agreement to the extent that the performance of such obligations is prevented by an Extraordinary Event. If an Extraordinary Event affects a Party's ability to perform its obligations under this Agreement for a period of sixty (60) consecutive Business Days, then either Party may (subject to the cessation of the Extraordinary event) terminate this Agreement upon ten (10) Business Days' notice.

The Parties agree that the following are Dependencies under this Agreement:

- Travel restrictions or bans affecting the Partner's ability to travel;
- The ability of the Partner to secure reasonable input from experts and identified stakeholders due to their inability to use video-conferencing facilities;
- Timely provision of all information, approvals and assistance by SPREP that the Partner reasonably requires to provide the Services.

## 8. Confidentiality



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Unless otherwise stated in this Agreement or as otherwise agreed in writing by the Parties, neither 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 Partner agrees it is responsible for:

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

## 10. Indemnity

- a) The Partner shall perform the Services with due professional care and skill.
- b) Each Party shall have full regard to the other Party's interests and not knowingly take any action that might adversely affect the other Party.
- c) Each Party uses the Deliverables at its own risk
- d) The Partner (Indemnifier) must indemnify, and keep indemnified, the SPREP and its Personnel (collectively, Indemnified Persons) from and against any and all Claims suffered or incurred by, or brought or made against, Indemnified Persons resulting from any:
  - (i) malicious, fraudulent, negligent, unlawful or wilful act or omission by the Indemnifier or its Personnel; or
  - (ii) damage to property, or injury or death to any person, to the extent caused or contributed to by the Indemnifier or its Personnel.
- e) To the extent permitted by law, the parties exclude:
  - (i) all liability to each other for Indirect Loss; and
  - (ii) from this Agreement all conditions, warranties and terms implied by statute and general law.
- f) An Indemnifier's liability under clause 10(d) will be reduced proportionately to the extent that any negligent act or omission of the Indemnified Person contributed to the Claim.
- g) The Partner's aggregate liability under this contract, including under any indemnity, will be limited to AUD250,000.
- h) Research is inherently uncertain and SPREP acknowledges and agrees that particular outcomes and results of the work under this Agreement are not guaranteed.

## 11. Termination

- a) If the Partner 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 11(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 use their best endeavours 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 undertaken up to the time of termination, up to the stated maximum.



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- (iii) The Partner will return all unexpended funds, excluding funds that were committed by the date of the notice to terminate and could not be cancelled.
- 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.

## 13. Dispute resolution

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

## 14. Variation of Agreement

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

## 15. Contract Manager

- a) Ms. Filomena Nelson of SPREP and Dr. Sascha Fuller of the University of Newcastle 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;
  - (iv) Address and resolve any issues in a prompt manner; and
  - (v) Changing the Contract Manager
- b) 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.

## 17. 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 and return to SPREP.

  
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**Kosi Latu**

Director General  
SPREP

Date: 24/8/2021

  
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**(Brett Ninness, Acting Director)**

**Prof. Alan Broadfoot**

Executive Director - NIER  
University of Newcastle

Date: 10 Sep 2021