

ABORIGINAL HERITAGE SERVICE PROVIDER Contract

A TEMPLATE to be used in conjunction with the Noongar Standard Heritage Agreement (NSHA)

[When using this template please delete this cover page or adapt as appropriate to your needs]

*Disclaimer: The Aboriginal Heritage Service Provider (AHSP) Contract is a template, and does not constitute legal advice. We the Department of the Premier and Cabinet attempt to ensure that the AHSP Contract is current but we do not guarantee its currency. You should seek legal or other professional advice before acting or relying on the AHSP Contract.*

Attention:

By email:

Date:

Dear [**insert name**]

ABORIGINAL HERITAGE SERVICE PROVIDER Contract

We refer to our previous correspondence dated [insert date] with you regarding your engagement by us as an Aboriginal Heritage Service Provider.

This letter constitutes an offer made by us to you and is subject to the terms and conditions set out in the enclosed Contract. If you wish to accept this offer, and agree with the terms and conditions, please sign and date each page of the enclosed Contract and return it to the address noted above.

The enclosed Contract should be read in conjunction with the terms of the Noongar Standard Heritage Agreement entered between us and SWALSC dated [date].

We look forward to working with you.

Yours faithfully

[Name]

**ABORIGINAL HERITAGE SERVICE PROVIDER CONTRACT**

**Recitals**

A The Proponent is proposing to carry out the Activity within the Agreement Area as set out in the NSHA.

B In accordance with the terms of the NSHA between the Proponent and SWALSC for and on behalf of the Agreement Group, the Proponent and SWALSC have agreed for an Aboriginal Heritage Survey to be undertaken over the Survey Area prior to the Activity being undertaken.

C SWALSC has not elected, pursuant to clause 8.3(d)(v) of the NSHA, to either be the Aboriginal Heritage Service Provider or to contract the Aboriginal Heritage Service Provider for the purposes of carrying out the Aboriginal Heritage Survey.

D Accordingly, the Proponent is engaging the Service Provider to carry out the Aboriginal Heritage Survey over the Survey Area and this document records the terms of that engagement.

1. **Parties**

The **Parties** to this Contract are the Service Provider and the Proponent.

1. **Definitions**
   1. In this Contract a word or phrase defined in the NSHA has the same meaning as in the NSHA, unless the word or phrase is defined in clause 2(b) below.
   2. In this Contract, unless the context indicates otherwise:

**Aboriginal site** means a place to which the Aboriginal Heritage Act applies by operation of section 5 of the *Aboriginal Heritage Act 1972* (WA), including sites that are not on the Aboriginal Heritage Act Register.

**Aboriginal Heritage Application Request** means an application under either or both of sections 16 and 18 of the *Aboriginal Heritage Act 1972* (WA).

**Activity** means the activity described in the Activity Notice.

**Activity Notice** means the document in Annexure B - Part 1**.**

**Activity Notice Response** means the document in Annexure B - Part 2**.**

**Additional Requirements** means the matters specified in Annexure D (if any).

**Agreed Matters Document** means the document in Annexure B – Part 3.

**Annexure** means an annexure to this Contract.

**Good Practice Guide** means the Good Practice Guide for Aboriginal Heritage Service Providers in Annexure F.

**Contract** means this contract as executed by the Parties, including all of its Annexures.

**Confidential Information** has the meaning given in clause 19.1 of the NSHA and includes relevant information disclosed by one party to another under this Contract.

**Last Fieldwork Day** means the last day of fieldwork as specified in the Timetable.

**Moral Rights** has the same meaning as in the *Copyright Act* 1968.

**NSHA** means the Noongar Standard Heritage Agreement executed by the Proponent and SWALSC on [date], the standard terms of which are available on the website of the Department of Premier and Cabinet.

**Price** means the fixed fees as specified in Table 1 of Annexure C and includes re-imbursement of costs based on the itemised estimate of costs in Table 2 of Annexure C.

**Proponent** means the entity described at item 1 of Annexure A.

**Services** mean the services for which the Service Provider is engaged by the Proponent to provide pursuant to clause 4 of this Contract.

**Service Provider** means the entity described at item 2 of Annexure A.

**Specified Personnel** means the personnel specified in Annexure C.

**Survey Agreement** means the agreement reached between the Proponent and the SWALSC under the NSHA on all matters referred to in clauses 9.2 to 9.7 (inclusive) of the NSHA for an Aboriginal Heritage Survey to be undertaken over the Survey Area, as evidenced by the documents in Annexure B.

**Survey Area** means the area of land and waters described in the Survey Agreement.

**SWALSC** means the South West Aboriginal Land & Sea Council Aboriginal Corporation, ICN 3832.

**Timetable** means the document in Annexure E.

* 1. Clause 1.2 of the NSHA applies to this Contract.

1. **Acknowledgements**
   1. The Service Provider acknowledges and agrees that:
      1. a copy of the NSHA has been made available to the Service Provider and the Service Provider has considered the terms of the NSHA before entering this Contract; and
      2. the Survey Agreement forms the basis for the Services.
2. **Services**
   1. The Service Provider will carry out an Aboriginal Heritage Survey over the Survey Area in accordance with the Survey Agreement and the Additional Requirements (if any). The Services must be provided by the Specified Personnel in accordance with the principles in the Good Practice Guide.
   2. In carrying out the Aboriginal Heritage Survey over the Survey Area in accordance with clause 4(a) of this Contract, the Service Provider will comply with, and do any and all things reasonably necessary to assist the Proponent to comply with, clauses 10 and 12 of the NSHA including but not limited to:
      1. organising a Survey Team to include up to 8[[1]](#footnote-1) persons named as Aboriginal Consultants nominated or identified in accordance with clause 8.3(d)(vii) of the NSHA and any nominees of the Proponent under clause 10.1(e) of the NSHA;
      2. commencing the field work for the Aboriginal Heritage Survey as soon as possible and not later than the due date for commencement of fieldwork specified in the Timetable;
      3. if requested in the Survey Agreement or at any other time providing a Preliminary Advice in accordance with clauses 12.1(a) and 12.3 of the NSHA to SWALSC and, after taking into account any comments from SWALSC, to the Proponent on or before the due dates specified in the Timetable;
      4. providing a draft Survey Report in accordance with clause 12.1(b), and Schedule 6 of the NSHA to SWALSC and, after taking into account any comments from SWALSC, to the Proponent on or before the due dates specified in the Timetable;
      5. providing a final Survey Report to SWALSC, the Proponent and the Aboriginal Heritage Act Registrar that complies with clauses 12.1(c), 12.4 and Schedule 6 of the NSHA on or before the due date specified in the Timetable; and
      6. if Aboriginal sites have been identified during the Survey, providing to the Aboriginal Heritage Act Registrar Heritage Information Submission Form/s that comply with Schedule 7 to the NSHA on or before the due date specified in the Timetable.
   3. Upon completion of the Aboriginal Heritage Survey, the Service Provider will provide to the Proponent:
      1. three bound hard copies of the final Survey Report; and
      2. unlocked electronic copies of the final Survey Report in both PDF and Microsoft Word formats.
   4. The Service Provider will carry out the Services in accordance with the Timetable.
   5. The Service Provider will provide regular progress updates to the Proponent and will immediately inform the Proponent if any of the time frames in paragraphs (b) or (d) (as applicable) of this clause 4 will not be met, including in the event of Force Majeure or Aboriginal Cultural Business notified under clause 24 of the NSHA.
   6. If the Proponent requests additional services from the Service Provider in relation to preparing a Preliminary Advice or in relation to complying with the DAA Guidelines for preparing Aboriginal Heritage survey reports where those services are not provided for in the Survey Agreement, any additional services required to prepare a Preliminary Advice or to comply with the DAA Guidelines for preparing Aboriginal Heritage survey reports will be charged by the Service Provider on an hourly basis in accordance with the Hourly Rate Card in Annexure C.
   7. The due dates in the Timetable may be varied by agreement in writing between the Service Provider and the Proponent. Where the variation of dates will impact on the NSHA obligations of SWALSC (for example under clause 12.1(a) and (b) of the NSHA), the Service Provider and the Proponent must also obtain agreement in writing from SWALSC to any such variation.
3. **Payment**
   1. The Service Provider acknowledges and agrees that it has provided the Proponent with the Price comprised of a fixed fee plus costs based on an itemised estimate of costs, and the Price includes the fees and costs required to engage Aboriginal Consultants in accordance with clause 4(b)(i) of this Contract. The Service Provider is responsible for payment of all fees to members of the Survey Team, including Aboriginal Consultants. The costs component of the Price must not exceed the itemised estimate of costs by more than 5 per cent in respect of each itemised amount unless a prior written submission is made by the Service Provider and approved by the Proponent.
   2. The Service Provider will render itemised invoices in arrears to the Proponent during the period of the Service Provider's engagement for the provision of the Services at the following milestones:
      1. delivery of a draft Survey Report to the Proponent under clause 4(b)(iv) – 50 %; and
      2. delivery of a final Survey Report to the Proponent under clause 4(b)(v) – 50 %.
   3. Within 30 days of receipt of an invoice referred to in clause 5(b) the Proponent will either:
      1. pay to the Service Provider the amount specified in the invoice; or
      2. request further information from the Service Provider about any amount in the invoice.
   4. If the Proponent requests further information in accordance with clause 5(c)(ii) the Service Provider will provide that further information to the Proponent within 5 Business Days, or such other time as is agreed in writing with the Proponent.
   5. Upon receipt of the further information referred to in clause 5(d) the Proponent will either:
      1. pay to the Service Provider the amount specified in the invoice; or
      2. issue a Notice of Dispute in accordance with clause 9 of this Contract.
4. **Intellectual Property** 
   1. The Service Provider assigns all of the copyright in the Survey Report (and any drafts and preliminary advices) to the Proponent upon their creation.
   2. The Service Provider warrants that:
      1. no third party owns or has an interest (whether legal or equitable) in the copyright in the Survey Report (or any drafts and preliminary advices); and
      2. the Survey Report (or any drafts and preliminary advices) will not infringe the copyright or Moral Rights of any third party.
   3. The Service Provider indemnifies and will keep indemnified the Proponent, the State of Western Australia and all their respective officers, employees and agents from and against all costs, losses, expenses, actions, suits, demands, claims, damages and other liabilities resulting from the Service Provider's failure to comply with this clause 6, including any breach of warranty under clause 6(b), or otherwise resulting from the actual or alleged infringement of the copyright or the Moral Rights of any third party by the Service Provider.
5. **Termination**

The Proponent may, in its absolute discretion and for its sole benefit, terminate this Contract without cause in whole or in part at any time by 10 days (or such other period as may be agreed between the parties) prior written notice to the Service Provider. The Service Provider will immediately comply with any directions given by the Proponent in the notice and do all that is possible to mitigate its losses arising from the termination of the Contract. The Proponent will:

* + 1. pay the Service Provider for Services provided up to and including the date of termination; and
    2. compensate the Service Provider in respect of any costs, expenses, losses and liabilities (excluding loss of profit, loss of revenue, loss of opportunity, consequential loss, or similar losses, liabilities or expenses) which are substantiated and which are properly incurred by the Service Provider in the performance of the Services, to the extent that those liabilities or expenses cannot be mitigated. No further compensation will be payable in the event of termination pursuant to this clause 7.

1. **Insurance**
   1. The Service Provider must effect and maintain:
      1. public liability insurance covering the legal liability of the Service Provider and the Specified Personnel arising out of the Services for an amount of not less than $20 million for any one occurrence and unlimited in the number of occurrences happening in the period of insurance.
      2. worker's compensation insurance in accordance with the provisions of the *Workers' Compensation and Injury Management Act 1981* (WA), including cover for common law liability for an amount of not less than $50 million for any one occurrence in respect of workers of the Service Provider. The insurance policy must be extended to cover any claims and liability that may arise with an indemnity under section 175(2) of the *Workers' Compensation and Injury Management Act 1981*;
      3. professional indemnity insurance covering the legal liability of the Service Provider and the Specified Personnel under the Contract, arising out of any act, negligence, error or omission made or done by or on behalf of the Service Provider, or any subcontractor in connection with the Contract for a sum of $1 million for any one claim and in the annual aggregate, with a provision of one automatic reinstatement of the full sum insured in any one period of insurance. Professional indemnity insurance under this clause must include:
2. fraud and dishonesty;
3. defamation;
4. infringement of intellectual property rights;
5. loss of or damage to documents and date; and
6. breach of Australian Consumer Law.
   1. The Service Provider must provide the Proponent copies of all insurance policies (including all exclusion schedules) and certificates of currency:
      1. upon request by the Proponent; and
      2. any time there is a renewal of, or change in the terms of, any such insurance policy or certificate of currency.
7. **Dispute Resolution**
   1. If a difference or dispute (together called a **Dispute**) between the parties arises out of or in relation to this Contract, or the breach, termination, validity or subject matter or it, or as to any claim in tort, in equity or pursuant to any domestic or international statute or law, then any party may give the other a written notice of dispute adequately identifying and providing details of the Dispute (**Notice of Dispute**).
   2. Notwithstanding the existence of a Dispute, all parties will, subject to this Contract and to any rule of law to the contrary, continue to perform their respective obligations under this Contract to the maximum extent possible.
   3. Within 10 Business Days after receiving a Notice of Dispute, the parties to the Dispute must meet and use reasonable endeavours acting in good faith to resolve the Dispute. The parties will confer at least once to resolve the Dispute or to agree on methods of doing so. At every such conference each party will be represented by a person having authority to agree such resolution or methods. All aspects of every such conference, except the fact of its occurrence, will be the subject of without prejudice privilege.
   4. If the parties do not resolve a Dispute under the process described in paragraphs (a), (b) and (c) of this clause 9, the parties must then submit to expert determination in accordance with the procedure set out in this clause to resolve the Dispute.
   5. The expert determination under this clause is to be conducted by a person agreed between the parties to the Dispute, or failing such agreement within 14 days of service of the Notice of Dispute (or such other time as agreed by the parties), then by a person appointed on application by either party by the President for the time being of the Institute of Arbitrators and Mediators Australia, Western Australia Chapter (**Independent Expert**).
   6. The Independent Expert must:
      1. have reasonable qualifications and practical experience in the area of the Dispute;
      2. have no interest or duty which conflicts or may conflict with his or her functions as an independent expert, except for any interest or duty he or she has fully disclosed (and which has been accepted by both parties) before his or her appointment;
      3. undertake to the parties to the Dispute to keep confidential all matters coming to the Independent Expert's knowledge by reason of his or her appointment, the performance of his or her duties and the exercise of his or her powers.
   7. An expert determination under this clause will be conducted in accordance with the procedure for expert determination published from time to time by the Institute of Arbitrators and Mediators Australia, and the parties agree to comply with this procedure in all respects unless otherwise agreed in writing by the parties (including in this clause).
   8. The Independent Expert will act as an expert and not as an arbitrator and may reach a decision from his or her own knowledge and expertise. The Independent Expert will not be bound by the rules of evidence.
   9. The determination of the Independent Expert will be final and binding on the parties except in the case of fraud.
   10. A determination made by an Independent Expert under this clause may, by leave of court, be enforced in the same manner as a judgment or order of the court, and where leave is so given, judgment may be entered in the terms of the determination.
   11. The costs of the expert will be shared equally by the parties to this Contract unless agreed otherwise in writing.
8. **Notices**

Any notice:

* 1. must be in writing and signed by a person duly authorised by the sender; and
  2. must be delivered to the intended recipient by registered post or by hand or fax to the intended recipient's address or fax number specified in Annexure A (or the address in Western Australia or fax number last notified in writing by the intended recipient to the sender);
  3. will be taken to be received by the recipient:
     1. in the case of delivery in person, when delivered; and
     2. in the case of delivery by post, 2 Business Days after the date of posting; and
     3. in the case of delivery by fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number of name of recipient and indicating that the transmission has been made without error, but if the result is that a notice would be taken to be given or made on a day that is not a Business Day or at a time that is later than 4.00pm (local time), it will be taken to have been duly given or made at 9.00am on the next Business Day.

1. **Miscellaneous**

Clauses 19 (Confidential information), 22 (GST), 23 (Costs and duties), 24 (Force Majeure and Aboriginal Cultural Business) and 25 (General) of the NSHA apply to this Contract with such modifications as are necessary to give sensible effect to those clauses in the context of this Contract.

**Signing Pages**

[Proponent to delete execution clauses as applicable]

|  |  |  |
| --- | --- | --- |
| Executed by (XX – Insert name of Proponent] ACN [XX – Insert ACN number] in accordance with section 127(1) of the *Corporations Act 2001* (Commonwealth): | )  )  )  ) |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Director's signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print name)    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Director/Secretary's signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print name) |  |  |
| The Common Seal of [XX – Insert name of Proponent] ACN [XX – Insert ACN number] was hereunto affixed by authority of its Directors in the presence of: | )  )  )  ) |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Director's signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print name)    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Director/Secretary's signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print name) |  |
| Executed by [XX – Insert name of Proponent (if an individual)] in the presence of:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Witness' Signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print name) | )  ) |

[Service provider to delete execution clauses as applicable]

|  |  |  |
| --- | --- | --- |
| Executed by (XX – Insert name of Service Provider] ACN [XX – Insert ACN number] in accordance with section 127(1) of the *Corporations Act 2001* (Commonwealth): | )  )  )  ) |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Director's signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print name)    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Director/Secretary's signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print name) |  |  |

|  |  |  |
| --- | --- | --- |
| The Common Seal of [XX – Insert name of Service Provider] ACN [XX – Insert ACN number] was hereunto affixed by authority of its Directors in the presence of: | )  )  )  ) |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Director's signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print name)    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Director/Secretary's signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print name) |  |  |
| Executed by [XX – Insert name of Service Provider (if an individual)] in the presence of:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Witness' Signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (print name) | )  ) |  |

**Annexure A: Parties' Details**

Item 1 (**Proponent**):

Principal Contact:

Proponent Name:

ABN:

Address:

Phone:

Fax:

Email:

All correspondence, including invoices, should be addressed to the principal contact for processing.

Item 2 (**Service Provider**):

Principal Contact:

Proponent Name:

ABN:

Address:

Phone:

Fax:

Email:

**Annexure B – Survey Agreement**

**Part 1: Activity Notice**

**[Insert here - Delete]**

**Part 2: Activity Notice Response**

**[Insert here - Delete]**

**Part 3: Agreed Matters Documents**

**[This must be completed by the Proponent- Delete]**

|  |  |  |  |
| --- | --- | --- | --- |
| **Clause** | **Statement** | **Agreed matter** | **Reference** |
| 8.3(a) | Requirement for Survey | Yes | Activity Notice - key statement (b)  Activity Notice Response – Row 1 |
| 1.1 | Survey Area | [The whole of the Area the subject of the Activity Notice, or as agreed – If necessary, insert boundary description/map at the end of this section.] | Activity Notice – Detailed Contents & Attachments 1 & 2  Activity Notice Response – Row 2 |
| 8.3(d)(i) | Extent that Activity Program consists of Low Ground Disturbance Activity | [[2]](#footnote-2)Nil | Activity Notice - key statement (a)  Activity Notice Response – Row 3 |
| 8.3(d)(ii) | Preferred heritage survey methodology | [Site Identification/Site Avoidance] | Activity Notice - key statement (c)  Activity Notice Response – Row 4 |
| 8.3(d)(iii) | Heritage survey dates | As per Timetable | Activity Notice – key statement (d)  Activity Notice Response – Row 5 |
| 8.3(d)(vii) | Names and details of Aboriginal Consultants for the Survey | 1.  2.  3.  4.  5.  6.  7.  8. | Activity Notice Response – Row 7 (or may have been subsequently notified by SWALSC) |
| **Proponent Key Statements** | | | |
| 12.1(a) | The Proponent requires a Preliminary Advice | [Yes/No] | Activity Notice – Key Statements (e)(i) |
| 12.1(b) | The Proponent requires a draft of the Survey Report | Yes | Activity Notice – Key Statements (e)(ii) |
| 8.2(e) | An *Aboriginal Heritage Act 1972* Section 16 Application or *an Aboriginal Heritage Act 1972* Section 18 Application | [Yes/No] | Activity Notice – Key Statements (e)(iii) |

**Annexure C: Price for Services**

**[These fixed fee amounts should be negotiated noting the maximum rates that apply to SWALSC when contracting the AHSP as set out in Schedule 5 of the NSHA – delete]**

[**Delete rows as applicable, or copy item to Estimate of Other Costs table below**]

**Table 1 – Fixed Fee**

| **No.** | **Item** | **Fixed Fee** | **Exc. GST** | **Incl. GST** | **Description of Work Effort** |
| --- | --- | --- | --- | --- | --- |
| **Ethnographic Assessment** | | | | | |
|  | Aboriginal Heritage Service Provider, including administrative fee | **Y** |  |  | . |
|  | Principal Aboriginal Heritage Consultant (if any) | **Y** |  |  |  |
|  | Aboriginal Heritage Liaison Officer (if necessary and agreed) | Y |  |  |  |
| **Archaeological Assessment** (if necessary and agreed) | | | | | |
|  | Archaeologist (archaeological team external contractors) | Y |  |  |  |
|  | Fieldwork and reporting | Y |  |  |  |
| **Aboriginal Consultants** | | | | | |
|  | Aboriginal Consultants – up to 8 unless otherwise agreed | [Y/N[[3]](#footnote-3)] |  |  |  |
| **Field Expenses** | | | | | |
|  | Aboriginal Heritage Liaison Officer or Anthropologist accommodation/meals | [Y/N] |  |  |  |
|  | Archaeologist or Archaeological Team accommodation/meals | [Y/N] |  |  |  |
|  | Aboriginal Consultants accommodation/meals | [Y/N] |  |  |  |
| **Travel Expenses** | | | | | |
|  | Vehicle mileage | [Y/N] |  |  |  |
|  | Hire Vehicle (if survey vehicle is hired) | [Y/N] |  |  |  |
|  | Aboriginal Consultants travel expenses (if required) | [Y/N] |  |  |  |
|  | Airfares | [Y/N] |  |  |  |
|  | Taxi travel (to and from airports or meetings) | [Y/N] |  |  |  |
| **Incidental Expenses** | | | | | |
|  | Film, maps, report production and expendables | [Y/N] |  |  |  |
|  | **Total Fixed Fee** | |  |  |  |

**Note:** Tables 1 and 2 are designed to provide flexibility in the way the AHSP and proponent agree the contract price with consideration given to the following:

1. At the time of contracting, the contract price may be agreed on the basis of fixed fees in relation to items in Table 1 and/or an estimate of costs (generally limited to disbursements which could be outside the control of the AHSP) in relation to items in Table 2. See clause 5(a) and clause 2 for the definition of Price.
2. The template allows for a combination of fixed fees for some items and estimate of costs for other items together making up the contract price in which case both tables would be needed and any row that is not required in either table is to be deleted.
3. If the contract price is wholly fixed fee, it is recommended to delete all the item rows of Table 2 and insert "Nil" in the bottom row.

**Table 2 – Estimate of Costs**

[**Delete or add rows as applicable \* Note the maximum rates that apply to SWALSC when contracting the AHSP as set out in Schedule 5 of the NSHA and the requirements to seek Proponent approval if any item exceeds the estimate of costs by more than 5 per cent**]

| **No.** | **Item** | **Estimate of Cost** | **Exc. GST** | **Incl. GST** | **Description of Work Effort** |
| --- | --- | --- | --- | --- | --- |
| **Aboriginal Consultants** | | | | | |
|  | Aboriginal Consultants – up to 8 unless otherwise agreed | [Y/N[[4]](#footnote-4)] |  |  |  |
| **Field Expenses** | | | | | |
|  | Aboriginal Heritage Liaison Officer or Anthropologist accommodation/meals | [Y/N] |  |  |  |
|  | Archaeologist or Archaeological Team accommodation/meals | [Y/N] |  |  |  |
|  | Aboriginal Consultants accommodation/meals | [Y/N] |  |  |  |
| **Travel Expenses** | | | | | |
|  | Vehicle mileage | [Y/N] |  |  |  |
|  | Hire Vehicle (if survey vehicle is hired) | [Y/N] |  |  |  |
|  | Aboriginal Consultants travel expenses (if required) | [Y/N] |  |  |  |
|  | Airfares | [Y/N] |  |  |  |
|  | Taxi travel (to and from airports or meetings) | [Y/N] |  |  |  |
| **Incidental Expenses** | | | | | |
|  | Film, maps, report production and expendables | [Y/N] |  |  |  |
|  | **Total Estimated Costs** | |  |  |  |

**Note:** Tables 1 and 2 are designed to provide flexibility in the way the AHSP and proponent agree the contract price with consideration given to the following:

1. At the time of contracting, the contract price may be agreed on the basis of fixed fees in relation to items in Table 1 and/or an estimate of costs (generally limited to disbursements which could be outside the control of the AHSP) in relation to items in Table 2. See clause 5(a) and clause 2 for the definition of Price.
2. The template allows for a combination of fixed fees for some items and estimate of costs for other items together making up the contract price in which case both tables would be needed and any row that is not required in either table is to be deleted.
3. If the contract price is wholly fixed fee, it is recommended to delete all the item rows of Table 2 and insert "Nil" in the bottom row.

**Table 3 - Specified Personnel**

[**Delete or add rows as applicable**]

|  |  |
| --- | --- |
| **Name** | **Role Title** |
|
|  | Aboriginal Heritage Service Provider |
|  | Principal Aboriginal Heritage Consultant (if any) |
|  | Aboriginal Heritage Liaison Officer (if any) |
|  | Archaeologist (if any) |
|  | Aboriginal Consultant |

**Table 4 – Hourly Rate Card (Optional)[[5]](#footnote-5)**

|  |  |  |  |
| --- | --- | --- | --- |
| **Name** | **Role Title** | **Hourly Rate** | |
| **Excl. GST** | **Inc. GST** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**Annexure D: Additional Requirements**

**[INCLUDE HERE ANY DETAILED SPECIFICATIONS IF PROPONENT REQUIRES THE SURVEY MEET A STANDARD]**

**Annexure E: Timetable for Services**

[**Delete– These dates can be negotiated between the Proponent and the AHSP. However, any variation of due dates which may impact on SWALSC's obligations under cl. 12.1(a) and (b) will require the Proponent and the Service Provider to obtain agreement in writing from SWALSC**]

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Description of Activity** | **NSHA Clause Reference** | **Due Date** |
| 1. | Commencement of fieldwork for Survey | cl. 10.2 NSHA | [Insert Date - ASAP and generally within 30 Business Days of the date of the Survey Agreement] |
| 2. | Last Day of Fieldwork for Survey | cl. 12.1 NSHA | [Insert Date – there may be a date specified in the Activity Notice] |
| 3. | Provide Preliminary Advice (if any) to SWALSC | cll. 12.1(a) and 12.3 NSHA | [Last day of fieldwork +5 Business Days] |
| 4. | Provide Preliminary Advice (if any) to Proponent | cll. 12.1(a) and 12.3 NSHA | [Last day of fieldwork +12 Business Days] |
| 5. | Provide draft Survey Report to SWALSC | cll. 12.1(b) and 12.4 NSHA  Schedule 6 NSHA | [Last day of fieldwork +15 Business Days] |
| 6. | Provide draft Survey Report to Proponent | cll. 12.1(b) and 12.4 NSHA  Schedule 6 NSHA | [Last day of fieldwork +25 Business Days] |
| 7. | Provide final Survey Report to SWALSC, Proponent and Aboriginal Heritage Act Registrar | cll. 12.1(c), 12.4 and 12.5(c) NSHA  Schedule 6 NSHA | [Last day of fieldwork +35 Business Days] |
| 8. | If Aboriginal sites identified, provide Heritage Information Submission to Aboriginal Heritage Act Registrar | cl. 12.5(d) NSHA  Schedule 7 NSHA | [Last day of fieldwork +35 Business Days] |

**Annexure F: Good Practice Guide for Aboriginal Heritage Service Providers (AHSP)**

The Good Practice Guide for Aboriginal Heritage Service Providers (AHSP) identifies measures to promote the provision of services in a manner consistent with the principles as set out in the:

* The Australian Anthropological Society (AAS): Code of Ethics[[6]](#footnote-6); and
* Anthropological Society of WA: Goals and Ethics[[7]](#footnote-7).

**A. Timely and Effective Communication with Survey Team of the Survey Purpose, Location and Date**

* + The AHSP should endeavour to contact the Survey Team members as soon as possible after the Survey Agreement Date (as defined in Clause 9 of the NSHA) to advise the Survey Team members of the relevant Survey particulars, including:
    - their selection to participate as part of the Survey Team and, if requested, the identity of other Survey Team members;
    - the purpose of the Survey;
    - the location of the Survey;
    - the date of the Survey;
    - the travel, accommodation and meal arrangements;
    - the payment rates and methods of payment;
    - the expected level of participation of Survey Team members in the Survey; and
    - the relevant background information currently known by the AHSP about the Survey Area, including any known/registered sites, information from any previous surveys, and any other information contained in the AHIS.

**B. Information about Occupational Health and Safety – Safety Equipment**

* + Prior to the survey commencing, the AHSP should ensure that the Survey Team members attend any briefing given by the Proponent on safety and other procedures and policies implemented by the Proponent in relation to the Survey Area; and
  + The AHSP should use best endeavours to ensure that any protective clothing and equipment that has been provided by the Proponent for the safety of the Survey Team members is worn and used in accordance with any instructions provided by the Proponent.

**C. Confirmation of cultural information provided**

* + Prior to the submission of the Preliminary Advice, draft Survey Report or Survey Report to SWALSC (the first of whichever is applicable), the AHSP should summarise for the Survey Team the outcomes of the Survey and the key cultural information provided; and
  + The AHSP should seek to obtain the endorsement of the Aboriginal Consultants to that material (for example, through a ‘wrap up’ session at the conclusion of the Survey, or the provision of a draft Preliminary Advice or a copy of the draft Survey Report).

**D. Communication with Survey Team members**

* + In communicating with Survey Team members the AHSP should ensure communications are;
    - always polite and respectful of both the individual Survey Team members and the Survey Team as whole consistent with any required cultural protocols;
    - clear and concise with minimal use of acronyms, jargon or complex technical terminologies;
    - targeted to reduce disharmony, disagreement or dispute between the Survey Team members.

1. The number of Aboriginal Consultants can be modified by agreement in the circumstances described at cl. 10.1(c) of the NSHA [↑](#footnote-ref-1)
2. This principally relates to whether a Survey is required. [↑](#footnote-ref-2)
3. Delete row if no fixed fee. [↑](#footnote-ref-3)
4. Delete rows if no Estimate of Costs. [↑](#footnote-ref-4)
5. The hourly rate table is required only if clause 4(f) may apply. [↑](#footnote-ref-5)
6. Australian Anthropological Society: Code of Ethics <http://www.aas.asn.au/about-aas/code-of-ethics/> [↑](#footnote-ref-6)
7. Anthropological Society of Western Australia: Goals and Ethics <http://anthropologywa.org/ethics.html> [↑](#footnote-ref-7)