

KATESTONE CONSULTING SERVICES AGREEMENT

DATE	<i>[insert date]</i>
AGREEMENT NO.	<i>[insert agreement #]</i>
PARTIES	<p>Katestone Environmental Pty Ltd ACN 097 270 276</p> <p>16 Marie Street Milton QLD 4064</p> <p>Fax No.: (07) 3369 1966 (Katestone)</p>
	<p><i>[Insert name of client]</i></p> <p><i>[Insert address of client]</i></p> <p><i>[Insert fax no. of client]</i> (Client)</p>
BACKGROUND	<p>Katestone provides consulting services and tools in the area of air quality, meteorology and sustainability.</p> <p>The Client wishes to engage Katestone to provide these Services.</p> <p>Katestone has agreed to provide the Services to the Client on the terms of this agreement.</p>

By signing below, the parties are entering into an agreement that consists of this cover page, the attached terms and any Order signed under those terms.

KATESTONE	CLIENT
SIGNED for and on behalf of Katestone	SIGNED for and on behalf of the Client
Name of person signing: _____	Name of person signing: _____
Position: _____	Position: _____
Signature: _____	Signature: _____
Authorised Officer	Authorised Officer

CONSULTING SERVICES AGREEMENT

1. Definitions

In this agreement:

- *Charges* means the charges payable by the Client under this agreement, as specified in the Order.
- *Deliverable* means anything Katestone delivers or is required to deliver under this agreement, including a deliverable described in the Order.
- *Excluded Loss* means special, incidental, indirect, exemplary, punitive or consequential damages, loss of revenue, loss of profits, loss of production, loss of data, loss of goodwill or credit, loss of reputation or future reputation or publicity, loss of use, loss of interest, damage to credit rating, loss or denial of opportunity, loss of anticipated savings, or increased or wasted overhead costs; or which relates to additional expenses incurred or rendered futile; or which is not a natural or immediate consequence of the cause of action; or which is suffered as a result of a claim by a third party; or which consists of a claim for personal injury or damage to property, whether in contract, tort, statute or otherwise.
- *Force Majeure* means an event beyond the reasonable control of the affected party, which occurs without the fault or negligence of the affected party and could not have been avoided by the taking of any precaution which might reasonably be expected to have been taken by the affected party but, in the case of the Client, does not include acts or omissions of the Client's Personnel or other customers.
- *GST Act* means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- *Intellectual Property Rights* includes all present and future rights in relation to copyright, trademarks, designs, patents, trade, business or company names or other proprietary rights, or any rights to registration of such rights whether created before or after the date of this agreement, and whether existing in Australia or otherwise.
- *Material* means tangible and intangible information, documents, reports, software (including source and object code), inventions, data, and other materials in any media whatsoever.
- *Moral Rights* means the moral rights granted under the Copyright Act 1968 (Cth), and any similar rights existing under foreign laws.
- *Order* means any order for Services in the form of the order in Schedule 1, which the parties sign under clause 3.1.
- *Personnel* of a person means that person's directors, officers, employees and agents, and contractors (including professional advisors) and their respective Personnel.
- *Related Body Corporate* has the meaning given in section 50 of the Corporations Act 2001 (Cth).
- *Services* means the services, including provision of the Deliverables, specified in the Order.
- *Term* means the period specified in clause 2.

2. Term

- (a) This agreement commences on the date of the first Order.
- (b) Either party may at any time notify the other that it wishes to terminate the agreement.
- (c) No further Orders may be placed once a notice to terminate the agreement has been issued.
- (d) Once a notice under clause (a) has been received, the agreement will end once the obligations under all Orders have been completed or terminated in accordance with this agreement.

3. Services

3.1 Ordering Services

- (a) If the Client requires any Services:
 - i. it will provide Katestone with a written scope of work for those Services, including any deliverables and the timeframe for completion of those Services; then
 - ii. Katestone will promptly provide a quote for those Services and, if applicable, notify the Client if Katestone is unable to provide the Services within the relevant timeframe, in which case the parties may agree any change in the timeframe for completion of the relevant Services.
- (b) If the Client wishes to accept a quote provided under clause ii, the parties will complete and sign an Order for those Services within 6 months after the date of the quote. Each time an Order is signed by the parties, a new agreement is formed comprising the terms of this agreement and that Order. For the avoidance of doubt, an Order is not valid until both parties have signed the Order.
- (c) If the Client does not wish to accept a quote provided under clause ii, it will promptly notify Katestone accordingly.

3.2 Provision of Services

Katestone will provide the Services:

- (a) in accordance with the details and timeframes in the Order and on the terms of this agreement;
- (b) in a professional and competent manner;
- (c) in compliance with Client policies that are provided to Katestone (such as harassment, discrimination, environmental, use of IT resources, workplace health and safety and security policies) when on Client's premises; and
- (d) in accordance with applicable laws.

3.3 Client assistance

The Client will provide information, assistance and cooperation reasonably requested by Katestone to enable Katestone to provide the Services.

4. Charges and expenses

4.1 Charges

- (a) The Client will pay the Charges specified in the Order.
- (b) Unless otherwise specified in an Order, Katestone may invoice the Client monthly in arrears.
- (c) Katestone may once per annum vary the rates in an Order which are used to calculate the Charges on 30 days written notice to the Client. A variation to the Charges will take effect upon the expiry of the notice period. If the amount of the increase is in excess of 5% the Client may within the 30 day notice period of the increase, provide 30 days' notice to Katestone to terminate the Order. If a termination notice is issued, no increase in rates will occur, Katestone may charge for any work done until termination and clause 8.3 applies..

4.2 Payment

- (a) The Client will pay the invoiced Charges within 21 days of issue.
- (b) The Client will pay interest on all overdue amounts at the rate of 5% per annum calculated daily until payment is received by Katestone.
- (c) If any payment owing to Katestone is not made within 21 days of receiving the invoice, Katestone may by notice to the Client, suspend further Services and the performance of any outstanding obligations under the agreement.

4.3 Expenses

In addition to any fees charged for professional services, the Client will reimburse Katestone for costs and expenses set out in an Order or which are reasonably and properly incurred in connection with the work. Katestone will obtain the Client's prior consent before incurring an expense in excess of \$500 that is not specified in an Order.

4.4 Additional Charges

If:

- (a) provision of Services under the agreement is delayed by the Client or is delayed due to circumstances beyond the control of Katestone; or
- (b) there is a change in the amount, type, timing or complexity of the Services,

then Katestone may charge for any additional effort required in accordance with Katestone's current standard time and materials rates.

4.5 Taxes

- (a) Consideration under this agreement excludes GST, unless expressly specified otherwise. Where GST is payable by an entity in relation to a supply that it makes under or in connection with this agreement, and the consideration for that supply excludes GST, the

party providing the consideration will pay an additional amount equal to the GST when any part of the consideration is first payable.

- (b) Subject to clause (a), the Charges are exclusive of taxes, duties and charges imposed or levied in Australia or overseas in connection with this agreement. Without limiting the foregoing, the Client will be liable for any taxes, duties or charges imposed in connection with this agreement, and will pay to Katestone the amount of any tax, duty or charge imposed on Katestone in connection with this agreement.

5. Intellectual property

- (a) Nothing in this agreement requires Katestone to assign or procure the assignment of Intellectual Property Rights in the Deliverables to the Client.
- (b) Subject to the Client paying all amounts due under this agreement, Katestone grants to the Client a non-exclusive and non-transferable licence to use the Deliverables for the Client's own business purposes.
- (c) Katestone warrants that the Deliverables and the acts of the Client in relation to the Deliverables in accordance with this agreement do not infringe the Intellectual Property Rights or Moral Rights of any person.

6. Confidentiality

- (a) Each party must treat as confidential all information provided by the other party under this agreement except if it is already in the public domain.
- (b) A party must not disclose the other party's confidential information to any person except:
 - i. to its Personnel, and the Personnel of a Related Body Corporate of it, on a 'need to know' basis provided those Personnel first agree to observe the confidentiality of the information; with the other party's prior written consent;
 - ii. if required by law or the rules of any stock exchange; or
 - iii. if it is in the public domain, other than as a result of a breach of this agreement.
- (c) The Client acknowledges that, in providing the Services, Katestone may use information that is confidential to third parties. Nothing in this agreement requires Katestone to directly or indirectly disclose a third party's confidential information to the Client.

- 7.** A party must not use any information provided to it by the other party for the provision of the Services for any purpose other than that for which the information was provided. Liability

7.1 No representations

The Client acknowledges that it has not relied on any term, condition, representation, warranty, matter, statement or conduct in entering into this agreement which has not been stated expressly in this agreement.

7.2 Risk of reliance on Deliverables

The Client acknowledges that Deliverables may be produced using modelling and simulation techniques and there is an inherent risk in their accuracy. Accordingly, if the Client relies on the Deliverables it does so at its own risk.

7.3 Implied terms

To the extent permitted by law, any condition or warranty which would otherwise be implied in this agreement whether by statute or otherwise is hereby excluded. Where legislation implies in this agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under the condition or warranty, the condition or warranty is deemed to be included in this agreement. However, to the extent permitted by law, the liability of Katestone for any breach of the condition or warranty is limited, at the option of Katestone, to one or more of the following:

- (a) if a breach relates to goods:
 - i. the replacement of the goods or the supply of equivalent goods;
 - ii. the repair of the goods;
 - iii. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - iv. the payment of the cost of having the goods repaired; and
- (b) if the breach relates to services:
- (c) the supplying of the services again; or
- (d) the payment of the cost of having the services supplied again.

7.4 Liability

Except as set out in clause 7.3, Katestone's liability for breach of this agreement, or in tort or for any other common law or statutory cause of action:

- (a) is limited in the aggregate to the amount paid under the relevant Order by the Client to Katestone; and
- (b) does not include any Excluded Loss, even if Katestone was aware of the possibility of the Excluded Loss.

7.5 Tools

During the course of or as part of the provision of the Services, Katestone may make available to the Client various models and simulation tools. Client agrees that it is bound by any additional terms and conditions supplied with those models and simulation tools regarding their use.

8. Termination

8.1 Termination upon notice

Either party may terminate this agreement immediately by notice in writing if:

- (a) the other party breaches this agreement and, where the breach is capable of remedy, the breach is not remedied within 30 days after written notice by the party;
- (b) the other party becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration; or
- (c) the other party ceases or threatens to cease carrying on business.

8.2 Effect of termination by Katestone

If Katestone terminates this agreement under clause 8.1, Katestone may, in addition to terminating the agreement and without prejudice to its other rights and remedies:

- (a) retain any moneys paid; and
- (b) charge a reasonable sum for work performed in respect of which no sum has been previously charged.

8.3 Effect of termination or expiry

- (a) Termination by Client under clause (a) only terminates the agreement and Order relating to the breach. Any other agreement and Order is not affected by that termination.
- (b) Termination or expiry of this agreement will not affect the operation of clauses 5, 6 or 7 or any rights or remedies already accrued to either party under, or in respect of any breach of, this agreement.

9. General

9.1 Assignment and novation

This agreement must not be assigned or novated by either party without prior written consent of the other party.

9.2 Entire Agreement

This agreement and the relevant Order constitute the entire agreement between Katestone and the Client in relation to their subject matter.

9.3 Further assurance

Each party will promptly do further acts and sign and deliver further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this agreement.

9.4 Force majeure

If a party is prevented from or delayed in performing an obligation by Force Majeure, and promptly acts to mitigate or remove the Force Majeure and its effect, then the obligation is suspended during, but for no longer than, the period the Force Majeure continues and any further period that is reasonable in the circumstances.

9.5 Governing law and jurisdiction

This agreement is governed by and construed in accordance with the law of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.

9.6 Interpretation

In this agreement, the "Background" section and clause headings are inserted for convenience only and do not affect interpretation. Unless the context otherwise requires:

- (a) a reference to a **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (b) words importing the singular include the plural and vice versa;
- (c) **"includes"** in any form is not a word of limitation;
- (d) a reference to **"\$"** or **"dollar"** is to Australian currency and an obligation to pay money is an obligation to pay in Australian dollars; and
- (e) to the extent of any inconsistency between the clauses of this agreement and the Order, the clauses of this agreement prevail.

9.7 Parties' relationship

The relationship between Katestone and the Client is that of principal and independent contractor. Nothing in this agreement will be taken as establishing the Client or any Client Personnel as an employee or agent of Katestone.

9.8 Employment Offers

During the agreement and for 12 months after completion of the Services, the Client will not without the prior written consent of Katestone, engage, employ, or seek to employ any Katestone Personnel that have been involved in the performance of the Services.

9.9 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement:

- (a) must be in writing;
- (b) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;

(c) subject to clause (d), is taken to be received by the addressee:

- i. (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- ii. (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- iii. (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
- iv. (in the case of delivery by hand) on delivery; and

(d) if taken to be received under clause (c) on a day that is not a business day or after 5.00 pm, it is taken to be received at 9.00 am on the next business day ("business day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

9.10 Subcontracting

Katestone may subcontract the Services. Katestone is responsible for the acts or omissions of its subcontractors as if they were the acts or omissions of Katestone.

9.11 Severability

If any provision of this agreement is held unenforceable or illegal for any reason, the agreement will remain otherwise in full force apart from the provision which will be deemed deleted.

9.12 Variations

Except as permitted by this agreement, this agreement may only be varied by a document signed by or on behalf of each party.

9.13 Waiver

No right under this agreement will be deemed to be waived except by notice in writing signed by the relevant party.

Schedule 1

ORDER FORM

IMPORTANT: The Consulting Services Agreement must be signed by both parties before signing an Order.

DATE	<i>[insert date]</i>
CLIENT	<i>[Insert name of client]</i> <i>[Insert address of client]</i> <i>[Insert fax no. of client]</i> <i>[Agreement No.]</i>

This Order, once it is completed and signed by both parties, creates a binding obligation between Katestone Environmental Pty Ltd ACN 097 270 276 and the Client for the supply of the services specified in this Order under the Consulting Services Agreement between the parties.

SERVICES	<i>[Insert details of the Services. This could refer to a specification or proposal document.]</i>
DELIVERABLES	<i>[Insert details of the Deliverable(s) Katestone will provide. This could refer to a specification or proposal document.]</i>
TIME FRAME	<i>The Services are to be completed by [insert date]. [This can be a more detailed timeline with key dates or refer to a project plan.]</i>
CHARGES	<i>[Insert details of the Charges for the Services]</i>

Signed as an Order under the Consulting Services Agreement

KATESTONE	CLIENT
SIGNED for and on behalf of Katestone	SIGNED for and on behalf of the Client
Name of person signing: _____	Name of person signing: _____
Position: _____	Position: _____
Signature: _____	Signature: _____
<i>Authorised Officer</i>	<i>Authorised Officer</i>

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