

Agreement

between

The Australian National University

and

[name of organisation]

Regarding the

[insert project title]

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Agreement – [name of organisation]

THIS CONTRACT is made on the day of 2005

Parties

BETWEEN

The Australian National University (“ANU”), ABN 52-234-063-906, a body corporate pursuant to the Australian National University Act 1991 of Canberra, in the Australian Capital Territory, as represented by The Australian Primary Health Care Research Institute (“**APHCRI**”)

AND [name of organisation]

(“**Project Provider**”).

WHEREAS:

- A. The ANU is the recipient of a grant from the Department of Health and Ageing to fund a general research program, to be allocated through competitive Institute grant processes, as described in **Annexure 1**.
- B. The ANU, as the Administering Institution, and through APHCRI is responsible for managing the Funds against the completion of set milestones. The ANU is accountable to the Department of Health and Ageing for the Funds provided and for coordinating any obligations to the Department of Health and Ageing.
- C. This Agreement (“**Agreement**”) sets out the terms and conditions upon which the Project Provider has agreed to participate and the rights and obligations of both the Project Provider and ANU, as the Administering Institution.
- D. APHCRI requires the services of the Project Provider to undertake [name of project].
- E. The Project Provider has agreed to coordinate and deliver the Services upon the terms and conditions contained in this Agreement.

NOW IT IS HEREBY AGREED as follows:

1. Interpretation

1.1. In this Agreement, unless the contrary intention appears:

- ‘**ANU Material**’ means any Material provided by ANU to the Project Provider for the purposes of this Agreement or which is copied or derived from Material so provided;
- ‘**Confidential Information**’ means information that:
 - (a) is by its nature confidential;
 - (b) is designated by ANU as confidential;but does not include information which:
 - (c) is or becomes public knowledge other than by breach of this Agreement;
 - (d) is in the possession of the Project Provider without restriction in relation to disclosure before the date of receipt from ANU; or

(e) has been independently developed or acquired by the Project Provider.

- ‘**Contract Material**’ means all Material provided for the purposes of the Services;
- ‘**Intellectual Property**’ includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields and all other rights with respect to intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organization of July 1967;
- ‘**Liaison Officer**’ means the person for the time being holding, occupying or performing the duties of the office of Executive Officer, APHCRI, specified in Item BB of Schedule 2 [Liaison Officer] or any other person specified by the ANU in writing and notified to Project Provider;
- ‘**Material**’ includes documents, equipment, software, goods, information and data stored by any means;
- ‘**Personal Information**’ means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;
- ‘**Specified Personnel**’ means the person specified in Item E of Schedule 1;
- ‘**Services**’ means the program of research, funded by the Commonwealth Department of Health and Ageing, to be undertaken by researchers for the Project Provider through APHCRI as specified in Schedule 1 Item A [Services].

1.2. In this Agreement, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular; and
- (b) words importing a gender include any other gender; and
- (c) words importing persons include a partnership and a body whether corporate or otherwise; and
- (d) clause headings, words capitalised or in bold format and notes in square brackets (“[]”) are inserted for convenience only, and have no effect in limiting or extending the language of provisions, except for the purpose of rectifying any erroneous cross-reference; and
- (e) all references to clauses are clauses in this Agreement; and
- (f) all references to dollars are to Australian dollars and this Agreement uses Australian currency; and
- (g) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning; and

- (h) all references made to ANU includes APHCRI and correspondingly all references to APHCRI includes ANU, unless the meaning is to separately distinguish them.

1.3. Schedule 1 - Project Provider's Obligations, Schedule 2 - APHCRI's Obligations, and appendices (if any) form part of this Agreement. In case of any conflict between the terms and conditions contained in the clauses of the Agreement and any part of the Schedules (and appendices if any) then the terms and conditions of the clauses shall take precedence.

2. Provision of Services

- 2.1. Project Provider shall perform the Services (including the preparation of Contract Material) in accordance with Schedule 1 [Project Provider's Obligations] to a high professional standard.
- 2.2. Project Provider shall perform the Services at the times specified in Item C of Schedule 1 [Time-frame] and in the manner specified in Schedule 1 [the Project Provider's Obligations].

3. Fees, Allowances, Assistance and Payment

- 3.1. The ANU shall pay to the Project Provider the fees and allowances as specified in Item CC [Fees] and Item EE [Allowances] in Australian dollars and shall provide the assistance as specified in Item FF of Schedule 2 [Assistance].
- 3.2. Project Provider shall supply to ANU a tax invoice for any payment it is seeking, and the tax invoice is to be in a format acceptable under the GST Act.
- 3.3. Where Item CC of Schedule 2 [Fees] provides that Project Provider is to be paid by progressive instalments (or by a single payment), the ANU shall be entitled, without compromising any other right it may have, to defer payment of an instalment (or the single payment) until Project Provider has completed to the satisfaction of the ANU that part of the Services to which that instalment (or the single payment) relates.
- 3.4. Project Provider shall submit invoices for payment in the manner specified in Item D of Schedule 1 [Invoice Procedures].
- 3.5. APHCRI shall pay in the manner specified in Item DD of Schedule 2 [Payment], within 30 days of submission of invoices as specified in this clause 3.
- 3.6. In this clause

- (a) words have the same meaning as in the GST Law, unless the context makes it clear that a different meaning is intended; and
- (b) "**GST Law**" means the same as in the A New Tax System (Goods & Services Tax) Act 1999, as amended from time to time.

4. Entire Agreement and Variation

- 4.1. This Agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement.

4.2. No agreement or understanding varying or extending this Agreement, including in particular the scope of the Services in Item A of Schedule 1 [Services], shall be legally binding upon either party unless in writing and signed by both parties.

5. Subcontracting

5.1. Project Provider may, with the prior written approval of the ANU (which shall not be unreasonably withheld), subcontract the performance of any part of the identified Services.

5.2. Despite any approval given by the ANU, Project Provider shall be responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Agreement.

5.3. Project Provider shall ensure that a subcontractor is aware of all terms and conditions of this Agreement relevant to the subcontractor's part in the provision of the Services.

5.4. Project Provider shall pay the subcontractors in accordance with the terms of the relevant subcontract.

6. Specified Personnel

6.1. Project Provider shall ensure that any Specified Personnel undertake work in respect of the Services in accordance with the terms of this Agreement.

6.2. Where Specified Personnel are unable to undertake work in respect of the Services, Project Provider shall notify the ANU immediately. Project Provider shall, if so requested by the ANU, provide replacement personnel acceptable to the ANU at no additional charge and at the earliest opportunity.

7. Liaison

7.1. Project Provider shall liaise with and report to the Liaison Officer of the ANU or their delegate as reasonably required by the ANU during the period of this Agreement.

7.2. Project Provider may nominate from time to time a person who has authority to receive and sign notices and written communications for Project Provider under this Agreement and accept any request or direction in relation to the Services.

8. Contract Material

8.1. Ownership of Contract Material shall vest in the ANU upon delivery to APHCRI by the Project Provider, as required under this Agreement.

9. ANU Material

9.1. Ownership of all ANU Material remains vested at all times in the ANU.

9.2. Upon the expiration or earlier termination of this Agreement, Project Provider shall return to APHCRI all ANU Material remaining in its possession.

9.3. Project Provider shall ensure that ANU Material is used and copied only for the purposes of this Agreement unless otherwise agreed in writing with APHCRI.

9.4. Project Provider shall use ANU Material strictly in accordance with any conditions or restrictions set out in Item B1 of Schedule 1 [Use of ANU Material], or notified from time to time in writing by the ANU.

10. Intellectual Property Rights

10.1. Intellectual Property in the Contract Material vests in the Project Provider upon creation and development.

- 10.2. Project Provider grants to ANU a perpetual, irrevocable, royalty-free and licence fee-free, worldwide, non-exclusive licence (including a right of sublicense) to use, copy, modify, publish, reproduce, integrate and exploit the Contract Material including the Intellectual Property provided under this Agreement for ANU purposes.
- 10.3. Project Provider warrants that it is entitled, or will be entitled or will procure that it is entitled at the relevant time, to deal with the Intellectual Property in any Contract Material in the manner provided for in this clause (including Intellectual Property of a third party).
- 10.4. Project Provider shall at all times indemnify, keep indemnified and hold harmless the ANU, its officers, employees, agents or a third party (in this clause referred to as ‘those indemnified’) from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person in respect of any infringement of Intellectual Property rights by the Project Provider in the course of, or incidental to, performing the Services or the use by the ANU or the Commonwealth of the Contract Material.
- 10.5. Project Provider’s liability to indemnify the ANU or Commonwealth under this clause 10.4 shall be reduced proportionally to the extent that any act or omission of the ANU or its employees or agents contributed to the loss or liability.
- 10.6. The licence referred to in clause 10. 2 and the indemnity referred to in clause 10. 4 shall survive the expiration or termination of this Agreement.

11. Acknowledgement and Publications

- 11.1 Project Provider must acknowledge the contribution of the APHCRI and the Commonwealth of Australia through the Department of Health and Ageing (or the granting Department, as appropriate) in any relevant correspondence, public announcement, advertising Material, research reports or other Material produced by or on behalf of Project Provider as part of this Agreement or with funds provided under this Agreement as indicated in Item B2 of Schedule 1.
- 11.2 Project Provider must ensure that no Material produced under the Services will be published by Project Provider before having undergone processes established by APHCRI for the purposes of approving papers and other materials for publication.
- 11.3 Project Provider must provide APHCRI with two copies of any Contract Material produced under the Services, which is to be published by Project Provider a minimum of five (5) weeks in advance of publication.

12. Disclosure of Information

- 12.1. Project Provider shall not, without the prior written approval of the ANU, disclose to any person other than the ANU, any Confidential Information contained in ANU Material. In giving written approval, the ANU may impose such terms and conditions as it thinks fit.
- 12.2. Project Provider shall not, without first obtaining the prior consent of the person, disclose to any person any Personal Information contained in the Contract Material. The Project Provider shall obtain the written consent of any person whose Personal Information it needs to disclose for the purposes of this Agreement. The Project Provider shall take all reasonable measures to ensure Personal Information relating to this Agreement is protected against loss and unauthorised access, use, modification, or

disclosure, and shall maintain its obligations under relevant Commonwealth and State/Territory privacy laws at all times.

- 12.3. The ANU may at any time require Project Provider to give and to arrange for its employees and subcontractors engaged in the performance of the Services to give written undertakings, in a form required by the ANU, relating to the non-disclosure of any Confidential Information. Project Provider shall promptly arrange for all such undertakings to be given.
- 12.4. The obligation on Project Provider under this clause shall not be taken to have been breached where the information referred to is legally required to be disclosed.
- 12.5. This clause shall survive the expiration or termination of this Agreement.

13. Compliance with Policies

- 13.1. A party must, when using the other party's premises or facilities, comply with all reasonable directions and procedures relating to occupational health, safety and security in effect at those premises or in regard to those facilities, as notified by the other party or as might reasonably be inferred from the use to which the premises or facilities are being put.

14. Indemnity

- 14.1. Subject to the provisions of this Agreement, Project Provider shall at all times indemnify and hold harmless the ANU and the Commonwealth of Australia, and their officers, employees and agents (in this clause referred to as "those indemnified") from and against any loss (including legal costs and expenses on a solicitor/own client basis), or liability, reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by any wilful, unlawful or negligent act or omission of Project Provider, its employees, agents or subcontractors in connection with Project Provider's performance of its obligations under this Agreement.
- 14.2. Project Provider's liability to indemnify the ANU and Commonwealth of Australia under clause 14.1 shall be reduced proportionally to the extent that any act or omission of the ANU or its employees or agents contributed to the loss or liability.
- 14.3. The indemnity referred to in clause 14.1 shall survive the expiration or termination of this Agreement.

15. Insurance

- 15.1 Project Provider shall, for so long as any obligations remain in connection with this Agreement, and it is reasonable in the circumstances to do so, effect and maintain insurance as specified in Item F of Schedule 1 [Insurance].

16. Conflict of Interest

- 16.1 Project Provider warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement by itself or by any of its employees, agents or subcontractors.
- 16.2. If during the term of this Agreement a conflict of interest arises, or appears likely to arise, Project Provider undertakes to notify the ANU immediately in writing and to

take such steps as the ANU may reasonably require to resolve or otherwise deal with the conflict.

17. Access to Project Provider's Premises

17.1. Project Provider shall at all reasonable times give to the Liaison Officer or to any persons authorised in writing by the ANU, access to premises occupied by Project Provider where the Services are being undertaken and shall permit those persons to inspect the performance of the Services and any ANU Material, Contract Material or other Material relevant to the Services, and where necessary take copies.

18. Negation of Employment, Partnership and Agency

18.1. Project Provider shall not represent itself, and shall ensure that its employees do not represent themselves, as being an employee or agent of the ANU, or as otherwise able to bind or represent the ANU.

18.2. Project Provider shall not by virtue of this Agreement be or for any purpose be deemed to be an employee or agent of the ANU, or as having any power or authority to bind or represent the ANU.

19. Termination and Reduction

19.1. The ANU may, at any time by written notice and at its sole discretion, terminate this Agreement, in whole or in part.

19.2. If this Agreement is so terminated, the ANU shall be liable only for:

- (a) payments under the payment provisions of this Agreement for services rendered before the effective date of termination; and
- (b) subject to clauses 18.3 and 18.4 any reasonable costs incurred by Project Provider and directly attributable to the termination or partial termination of this Agreement.

19.3. Upon receipt of a notice of termination Project Provider shall:

- (a) stop work as specified in the notice;
- (b) take all available steps to minimise loss resulting from that termination and to protect ANU Material and Contract Material; and
- (c) continue work on any part of the Services not affected by the notice.

19.4. In the event of partial termination the ANU's liability to pay fees under Item CC of Schedule 2 [Fees] shall, in the absence of agreement to the contrary, abate proportionately to the reduction in the Services.

19.5. The ANU shall not be liable to pay compensation in an amount which would, in addition to any amounts paid or due, or becoming due, to Project Provider under this Agreement, together exceed the fees set out in Item CC of Schedule 2 [Fees]. Project Provider shall not be entitled to compensation for loss of prospective profits.

20. Default

20.1. If either party is in default under this Agreement on account of the failure to perform or observe any obligation or undertaking to be performed or observed on its part under this Agreement, the party not in default may, subject to clause 20.2, by notice in writing to the other party, terminate this Agreement in whole or in part without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either party.

20.2. Where the default is capable of being remedied, a party shall not exercise its rights of termination under clause 20.1, unless it has first given to the other party notice in writing specifying the default and requiring the other party to remedy it within the time (being not less than 10 working days) specified in the notice and the default is not remedied within the time allowed.

21. Waiver

21.1. A waiver by either party in respect of any breach of a condition or provision of this Agreement shall not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision. The failure of either party to enforce at any time any of the provisions of this Agreement shall in no way be interpreted as a waiver of such provision.

22. Dispute Resolution

22.1. Subject to clause 22.4, before resorting to court proceedings the parties shall attempt to settle by negotiation any dispute in relation to this Agreement including by referring the matter to personnel who may have authority to intervene and direct some form of resolution.

22.2. If a dispute is not settled by the parties within 20 working days of one party first sending to the other party written notice that they are in dispute, the dispute may be the subject of court proceedings.

22.3. Notwithstanding the existence of a dispute, each party shall continue to perform its obligations under this Agreement.

22.4. A party may commence court proceedings relating to any dispute arising from this Agreement at any time where that party seeks urgent interlocutory relief.

22.5. This clause shall survive the expiration or termination of this Agreement.

23. Assignment and Novation

23.1. Project Provider shall not assign, in whole or in part, its benefits under this Agreement without the prior written approval of the ANU.

23.2. Project Provider shall not consult with any other person or body for the purposes of entering an arrangement that will require novation of the Agreement without first consulting the ANU.

24. Severability

24.1. Each provision of this Agreement and each part thereof shall, unless the context otherwise necessarily requires it, be read and construed as a separate and severable provision or part. If any provision or part thereof is void or otherwise unenforceable for any reason then that provision or part (as the case may be) shall be severed and the remainder shall be read and construed as if the severable provision or part had never existed. The parties shall negotiate in good faith to replace the void or unenforceable provision or part with a valid or enforceable provision or part.

25. Applicable Law

25.1. Subject to clause 25.2 this Agreement shall be governed by and construed in accordance with the laws of the Australian Capital Territory (“ACT”) and the jurisdiction in which the work of the Agreement is carried out and the parties agree, subject to this Agreement that the Courts of the ACT and the jurisdiction in which the

work of the Agreement is carried out shall have jurisdiction to entertain any action in respect of, or arising out of, this Agreement.

25.2. Where the laws of the jurisdiction in which the work of the Agreement is carried out are inconsistent with those of the ACT then the ACT law and jurisdiction will prevail.

26. Notices

26.1. Any notice, request or other communication to be given or served pursuant to this Agreement shall be in writing and dealt with as follows:

- (a) if given by Project Provider to APHCRI — marked, for the attention of the Liaison Officer at the address indicated in Item AA of Schedule 2 [Division & Notices] or as otherwise notified by APHCRI; or
- (b) if given by APHCRI to Project Provider—marked for the attention of Project Provider at the address indicated in Item G of Schedule 1 [Liaison & Notices] or as otherwise notified by Project Provider under clause 7 [Liaison].

26.2. Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically, and if it is sent or transmitted electronically a copy is to be sent to the addressee by pre-paid post.

26.3. Any notice, request or other communication will be deemed to be received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by pre-paid airmail post overseas, upon the expiration of 14 business days after the date on which it was sent; and
- (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

SCHEDULE 1 – Project Provider’s Obligations and Work to be Performed

A. Services (see clauses 1.1 and 2.1)

The Services to be provided are: [describe].

Contract Material (see clauses 1.1, 2.1 and 8)

Project Provider will produce and deliver the following Contract Material:

- [describe]

B1. Use of APHCRI Material (see clause 9.4)

[describe]

B2. Acknowledgement of Commonwealth of Australia in publications (see clause 11.1)

[describe]

C. Time-frame (see clause 2.2)

The time frame for the Services, including delivery of Contract Materials, is detailed in Appendix 1.

D. Invoice Procedures (see clause 3.3)

Invoices forwarded by Project Provider will be correctly addressed and shall include the following information:

- (a) Title of Services:

[insert]

- (b) name of Liaison Officer;

Executive Officer APHCRI

Quarterly payments shall be made against correctly rendered invoices at the following rate: 25%, 25%, 25% and 25% over the life of the Services, subject to satisfactory progress reports as determined by the APHCRI Hub and Expert Review Committee.

E. Specified Personnel (see clauses 1.1 and 6)

Project Provider shall ensure that the services prescribed in this Agreement shall be undertaken by [insert].

F. Insurance (see clause 15)

Project Provider maintains, where it is reasonable to do so:

- workers’ compensation insurance for an amount required by Australian Capital Territory legislation; and

Agreement – [name of organisation]

- public liability insurance for a minimum of \$10 million dollars; and
- professional indemnity insurance for a minimum of \$10 million dollars;

and, on request, must promptly provide to the ANU certificates of currency for inspection.

G. Liaison & Notices (see clauses 7 & 26)

[name and address of contact at Spoke]

SCHEDULE 2 – APHCRI Obligations

AA. The Australian Primary Health Care Research Institute (see clauses 1.1 and 25)

APHCRI

The Australian National University

Building 62

Acton, ACT 0200

BB. Liaison Officer (see clauses 1.1, 7 and 25)

The Liaison Officer shall be the person holding, occupying or performing the duties of Executive Officer at:

APHCRI

Building 62

The Australian National University

Acton, ACT 0200

Fax: 02 6125 0740

E-mail: @anu.edu.au

CC. Fees (see clause 3.1)

The total fee for the services shall not exceed \$**** inclusive of GST payable by the following instalments:

[suggested] On signing of this contract: \$**** inc GST

AND two three-monthly instalments, subject to

satisfactory progress or submission of Contract Material, of: \$ *** inc GST

DD. Payment (see clause 3.1)

Payments shall be made to a nominated bank account.

EE. Allowances (see clause 3.1)

Nil

FF. Assistance (see clause 3.1)

Nil

EXECUTION

IN WITNESS WHEREOF the parties have executed this Agreement on the date first above written.

SIGNED for and on behalf of [insert name])

)

By:)

Name:.....

In the Presence of:

.....{ WITNESS }

Name:

SIGNED for and on behalf of)

The Australian National University)

)

By:)

Name:.....

In the Presence of:

.....{ WITNESS }

Name:.....

Agreement – [name of organisation]

Annexure 1



Australian Primary Health Care Research Institute

Initial Work Program - Stream []
Call for Participation

Appendix 1

Timeframe for delivery of Contract Material