

# **Agreement**

between

**The Australian National University**

and

.....

As represented by

.....

Regarding the Project

**[Project]**

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SAMPLE

**THIS CONTRACT** is made on the ..... day of ..... 2012

**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 .... ABN ..... as represented by ..... (“Project Provider”).**

**WHEREAS:**

- A. The ANU is the recipient of a grant from the Commonwealth of Australia (“**Commonwealth**”) represented by the Department of Health and Ageing to fund a general research program, to be allocated through competitive Institute grant processes.
- 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 Commonwealth for the funds provided and for coordinating any obligations to the Commonwealth.
- 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 research regarding “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;
- ‘**Asset**’ means an item of tangible property purchased or leased either wholly or in part with the use of the funds received by ANU from the Commonwealth, with a value at the time of acquisition of \$20,000 or more, inclusive of GST or some other item as notified in writing by the ANU.
- ‘**Commonwealth Confidential Information**’ means information that:
  - (a) is designated by the Commonwealth as being confidential; or
  - (b) the Project Provider knows or ought to know is confidential to the Commonwealth;

but does not include information that:

- (c) is or becomes public knowledge other than by breach of this Agreement or by any other unlawful means;
- (d) is in the possession of the Project Provider without restriction in relation to disclosure before the date of receipt from ANU or the Commonwealth; or
- (e) has been independently developed or acquired by the Project Provider.

- **‘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.

- **‘Conflict’** means any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through the Project Provider (or the Project Provider’s employees, agents or subcontractors) engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Project Provider in performing the Services fairly and independently;
- **‘Contract Material’** means all Material provided to the ANU by the Project Provider for the purposes of the Services;
- **‘Existing Material’** means all Material in existence prior to the commencement of this Agreement that is:
  - (a) incorporated in;
  - (b) supplied with, or as part of;
  - (c) required to be supplied with, or as part of,

the Contract Material and includes Material identified as Existing Material.

- **‘Intellectual Property’** includes all copyright and neighbouring rights (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered and unregistered 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;

- **‘Interest’** for the purposes of clause 19.6 and 19.7 of the Agreement means interest calculated at the 90 day bank-accepted bill rate( available from the Reserve Bank of Australia) less 10 basis points;
- **‘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 of the Agreement 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 agrees that it will not subcontract the performance of any part of the identified Services without the prior approval in writing of the ANU and the Commonwealth.

- 5.2. ANU may impose any terms and conditions it considers appropriate when giving its approval under clause 5.1.
- 5.3 The Project Provider will promptly provide a copy of any subcontract that it enters into in relation to the Services and permits the ANU providing a copy of the subcontract to the Commonwealth.
- 5.4 Where a subcontractor is unable to perform the Services, the Project Provider agrees to notify the ANU immediately. Where this sub-clause applies, the ANU may request the Project Provider to secure a replacement subcontractor acceptable to the ANU at no additional cost and at the earliest opportunity.
- 5.5 If the Project Provider does not comply with any request made under clause 5.3 the ANU may terminate this Agreement in accordance with clause 19 [termination].
- 5.6 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.
- 5.7 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.
- 5.8 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 and the Commonwealth a perpetual, irrevocable, royalty-free and licence fee-free, worldwide, non-exclusive licence (including a right of sublicense) to use, copy, modify, adapt, publish, perform, broadcast, reproduce, integrate and communicate and exploit the Contract Material including the Intellectual Property provided under this Agreement.
- 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 and the Commonwealth and their 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. For this clause, the 'Specified Acts' relating to Moral Rights means any of the following classes or types of acts or omissions by or on behalf of the ANU or the Commonwealth:
  - (a) using, reproducing, modifying, adapting, publishing, performing, broadcasting, communicating all or any part of the Contract Material, with attribution of authorship;
  - (b) supplementing the Contract Material with any other Material;
  - (c) using the Contract Material in a different context to that originally envisaged,but does not include false attribution of authorship.
- 10.7. The Project Provider must use its best endeavours to ensure that:
  - (a) where there is no consent already in place, a written consent will be given by the author of any Contract Material to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly to the

performance of the Specified Acts by the ANU or the Commonwealth or any person claiming under or through the Commonwealth; and

(b) where there is no consent already in place, a written consent will be given by the author of any Existing Material to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the ANU's or the Commonwealth's benefit in relation to the ANU's or the Commonwealth's licensed use of the Existing Material.

10.8. Intellectual Property rights and title to, or in relation to, Commonwealth Material remains vested at all times in the Commonwealth.

10.9. The Project Provider agrees to ensure that:

(a) ANU is notified of any academic publication;

(b) any academic publication is available on a publicly accessible website, including accessible by ANU and the Commonwealth, within at least 12 months of initial publication or a copy is otherwise provided free of cost to ANU and the Commonwealth;

(c) research that has been funded as any part of the Services must first be reported to ANU and the Commonwealth as Contract Material, before it can be used by the Project Provider in an academic publication; and

(d) the requirements of clause 11 are met in relation to any academic publication.

10.10. This clause survives the expiration or early termination of this Agreement (including the licence referred to in clause 10. 2 and the indemnity referred to in clause 10. 4).

## **11. Acknowledgement and Publications**

11.1 Project Provider must acknowledge the financial contribution and other support that it has received from the APHCRI and the Commonwealth:

(a) in all publications, promotional and advertising materials, public announcements and activities by it or on its behalf in relation to the Services or any products, processes or inventions developed as a result of the Services; and

(b) in the form specified in Item B2 of Schedule 1 or, if not specified in Item B2 of Schedule 1, then in a form approved by the ANU or the Commonwealth prior to its use.

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. The ANU or the Commonwealth 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 or the Commonwealth, relating to the non-disclosure of any Confidential Information, Commonwealth Confidential Information or Personal Information. Project Provider shall promptly arrange for all such undertakings to be given.
- 12.3. The Project Provider agrees not to disclose to any person other than the Commonwealth any Commonwealth Confidential Information relating to this Agreement or the Services or which draws on Commonwealth Confidential Information without prior approval in writing from the Commonwealth.
- 12.4. The Commonwealth may impose any conditions it considers appropriate when giving its approval under clause 12.4 and the Project Provider agrees to comply with those conditions.
- 12.5. 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.
- 12.6. The Commonwealth gives no undertaking to treat Project Provider information, or this Agreement, as confidential. The Project Provider acknowledges that the Commonwealth may disclose information relevant to this Agreement, or this Agreement itself, to any person:
- (a) to the extent required by Law or by a lawful requirement of any government or governmental body, authority or agency;
  - (b) if required in connection with legal proceedings;
  - (c) for public accountability reasons, including disclosure on request to other Government Agencies, and a request for information by Parliament or a Parliamentary Committee or a Commonwealth Minister; or
  - (d) for any other requirement of the Commonwealth.
- 12.7. In this clause the terms: agency; approved privacy code (APC); contracted service provider; Information Privacy Principles (IPPs); National Privacy Principles (NPPs); health service; and health information have the same meaning as they have in section 6 of the Privacy Act 1988 ('the Privacy Act') and 'subcontract' and other grammatical forms of that word have the meaning given in section 95B(4) of the Privacy Act.
- 12.8. This subclause applies only where the Project Provider deals with Personal Information when, and for the purpose of, performing this Agreement. The Project Provider acknowledges that it may be treated as a contracted service provider and agrees in respect of performing this Agreement:
- (a) to use or disclose Personal Information obtained during the course of performing this Agreement, only for the purposes of this Agreement;
  - (b) not to do any act or engage in any practice which if done or engaged in by an agency, would be a breach of an IPP;
  - (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency;

- (d) to notify individuals whose Personal Information the Project Provider holds, that complaints about acts or practices of the Project Provider may be investigated by the Privacy Commissioner who has power to award compensation against the Project Provider in appropriate circumstances;
  - (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F (direct marketing) of the Privacy Act, an NPP (particularly 7 to 10) or an APC where that section, NPP or APC is applicable to the Project Provider, unless:
    - (i) in the case of section 16F, the use or disclosure is necessary, directly or indirectly, in the performance of the Project under this Agreement;
    - (ii) in the case of an NPP or an APC, the activity or practice is authorised by this Agreement and engaged in for the purpose of performing this Agreement, and the activity or practice is inconsistent with the NPP or APC;
  - (f) to comply with any request under section 95C of the Privacy Act (relating to disclosure of any provisions of this Agreement (if any) that are inconsistent with an NPP or an APC binding on a Parties to this Agreement);
  - (g) to immediately notify the Commonwealth if the Project Provider becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in this clause, whether by the Project Provider or any subcontractor;
  - (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are consistent with the requirements of this clause; and
  - (i) to ensure that any officers, employees or agents of the Project Provider who are required to deal with Personal Information for the purposes of this Agreement are made aware of the obligations of the Project Provider specified in this clause.
- 12.9. The Project Provider agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement imposes on the subcontractor the same obligations as the Project Provider has under this clause, including the requirement in relation to subcontracts.
- 12.10. The Project Provider agrees to indemnify the ANU and the Commonwealth in respect of any loss, liability or expense suffered or incurred by the ANU or the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Project Provider under this clause, or a subcontractor under the subcontract provisions referred to in clause 12.8.
- 12.11. The Project Provider's obligations under this clause are in addition to, and do not restrict, any obligations it may have under the Privacy Act or any privacy codes or privacy principles contained in, authorised by or registered under any Law including any such privacy codes or principles that would apply to the Project Provider but for the application of this clause.
- 12.12. Notwithstanding any other provision in this clause, where the Project Provider provides a health service to an individual it will:
- (a) comply with the NPPs in relation to the use and disclosure of health information about the individual; and
  - (b) transfer health information to another health service provider when directed to do so by the Commonwealth.
- 12.13. 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 and their officers, employees and agents (in this clause referred to as "those indemnified") from and against any:

- (a) loss or liability incurred by ANU or the Commonwealth;
- (b) loss of or damage to property of ANU or the Commonwealth; or
- (c) loss or expense incurred by ANU or the Commonwealth in dealing with any claim against (including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by ANU or the Commonwealth) arising from:
- (d) any act or omission by the Project Provider or its employees, agents or subcontractors in connection with this Agreement, where there was fault (including, any negligent or otherwise tortious act or omission) on the part of the person whose conduct gave rise to that liability, loss, damage or expense; or
- (e) any breach by the Project Provider of its obligations or warranties under this Agreement.

14.2. Project Provider's liability to indemnify the ANU and the Commonwealth under clause 14.1 shall be reduced proportionally to the extent that any negligent or other tortious act or omission of the ANU or the Commonwealth contributed to the relevant loss, liability, damage or expense.

14.3. The right of the ANU and the Commonwealth to be indemnified under this clause:

- (a) is in addition to, and not exclusive of, any other right, power or remedy provided by Law; and
- (b) does not entitle the ANU or the Commonwealth to be compensated in excess of the amount of the relevant liability, loss, damage, or expense.

14.4 This clause 14 shall survive the expiration or termination of this Agreement.

### **15. Insurance**

15.1 Project Provider warrants that it has taken out or will take out, and will maintain all appropriate types and amounts of insurance to cover the Project Provider's obligations under this Agreement, including those which survive its expiration or early termination, which insurance must include the types and corresponding amounts of insurance specified in Item F of Schedule 1 [Insurance].

15.2 If the Project Provider takes out a 'claims made policy', which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the period of insurance, the Project Provider must maintain the policy during the term of this Agreement and a policy in like terms for 7 years after the expiry or early termination of this Agreement.

15.3 If the Project Provider takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of event can occur at any time subsequently, the Project Provider must maintain the policy during the term of this Agreement.

15.4 The Project Provider must, on request, promptly provide to the ANU or the Commonwealth any relevant insurance policies or certificates of currency for inspection.

## **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, in respect of the Project Provider or by any of its employees, agents or subcontractors, the Project Provider must:

- (a) immediately notify the ANU in writing of the Conflict making a full disclosure of all relevant information relating to the Conflict and setting out the steps that the Project Provider proposes to take to resolve or otherwise deal with the Conflict; and
- (b) take such steps as have been proposed by the Project Provider, or at the discretion of the ANU, take such steps as the ANU may reasonably require to resolve or otherwise deal with the Conflict.

16.3 If the Project Provider fails to notify the ANU under this clause, or is unable or unwilling to resolve or deal with the Conflict as required, the ANU may terminate this Agreement in accordance with clause 19 [termination clause].

16.4 The Project Provider agrees that it will not, and will use its best endeavours to ensure that any of its employees, agents or subcontractors do not engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict the Project Provider in performing the Project fairly and independently.

## **17. Assets and Access to Project Provider's Premises**

17.1. During the Agreement Period the Project Provider must use Assets only for performance of this Agreement.

17.2. The Project Provider must:

- (a) not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this clause, without the prior written approval of the ANU or the Commonwealth;
- (b) hold all Assets securely and safeguard them against theft, loss, damage or unauthorised use;
- (c) maintain all Assets in good working order;
- (d) maintain all appropriate insurances in respect of any Assets;
- (e) be fully responsible for, and bear all risks arising in relation to, the use or disposal of any Asset;

- (f) maintain a register of all Assets recording the date of purchase or lease, the purchase or lease price, Asset description including serial number, Asset location, the proportion of the Funds used to create or acquire the Asset, the Depreciated value of the Asset and (where relevant) details of Asset disposal including the sale price;
  - (g) as and when requested, provide copies of the register of Assets to the ANU or the Commonwealth; and
  - (h) return the Asset to ANU once the Services have been provided or the end of the term of this Agreement (as appropriate).
- 17.3. Project Provider, on receipt of a notice given not less than 48 hours in advance of access, shall at all reasonable times (between the hours of 9am and 5pm on a business day) 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, agents or subcontractors do not represent themselves, as being an officer, employee, partner or agent of the ANU or the Commonwealth, or invested with any power or authority to bind or represent the ANU or the Commonwealth.
- 18.2. Project Provider is not by virtue of this Agreement be or for any purpose, an employee, partner or agent of the ANU or the Commonwealth, or invested with any power or authority to bind or represent the ANU or the Commonwealth.

### **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 19.4 and 19.5 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.

19.6 If:

(a) on the expiry or any early termination of this Agreement, any fees remain unspent or cannot, by reconciliation between the accounts and records maintained by the Project Provider (as reported to the ANU by the Project Provider in any of the financial statements) and the budget, be shown to the reasonable satisfaction of the ANU to have been spent or committed in accordance with this Agreement; or

(b) at any time the ANU forms the reasonable opinion that any fees have been used, spent or committed by the Project Provider other than in accordance with this Agreement,

the ANU may by written notice to the Project Provider require the Project Provider to repay that part of the fees, and the Project Provider must repay to the ANU the amount specified in the notice, within 20 Business Days of the date of the notice.

19.7 (a) If the Project Provider fails to repay the fees in accordance with a notice issued under clause 19.6 the Project Provider must pay the ANU interest on the amount specified in the notice from the date it was due, for the period it remains unpaid and the amount specified in the notice, and interest owed under this clause will be recoverable by the ANU as a debt due to the ANU by the Project Provider.

19.7 (b) The Project Provider acknowledges that interest payable under clause 19.7 represents a reasonable pre-estimate of the loss incurred by the ANU as a result of the loss of investment opportunity for, or the reasonable cost of borrowing other money in place of, the amount which should have been repaid.

19.8 This clause survives the expiration or early termination of this Agreement.

**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 and compliance with law and policies**

- 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.
- 25.3. The Project Provider acknowledges that it may be considered a ‘Commonwealth service provider’ for the purposes of the *Ombudsman Act 1976* and subject to investigation by the Ombudsman under that Act. The Project Provider also acknowledges that neither the ANU nor the Commonwealth will be liable for

the cost of any such investigation by the Ombudsman in connection with the subject matter of this or any associated Agreement.

- 25.4. The Project Provider must, in carrying out this Agreement, comply with the provisions of any Law including the *Crimes Act 1914*, *Criminal Code Act 1995*, *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984*, *Disability Discrimination Act 1992*, *Equal Opportunity for Women in the Workplace Act 1999*, *Age Discrimination Act 2004*, *Ombudsman Act 1976* and *Auditor-General Act 1997*.
- 25.5. The Project Provider acknowledges that under section 137.1 of the Schedule to the *Criminal Code Act 1995*, giving false or misleading information to the Commonwealth is a serious offence.
- 25.6. The Project Provider must ensure that Project Provider's employees, agents or subcontractors engaged in the performance of the Services:
- (a) perform their functions in an impartial and professional manner;
  - (b) apply high probity and ethical standards in their conduct; and
  - (c) behave with honesty and integrity.

## **26. Project Provider Warranties**

- 26.1. The Project Provider represents and warrants to the ANU that:
- (a) it will promptly notify and fully disclose to the ANU in writing any event or occurrence actual or threatened arising during the Agreement term which could have an adverse effect on the Project Provider's ability to perform any of its obligations under this Agreement;
  - (b) it has full power and authority to enter into, perform and observe its obligations under this Agreement;
  - (c) the execution, delivery and performance of this Agreement has been duly and validly authorised by the Project Provider;
  - (d) it will promptly notify and fully disclose to the ANU in writing if:
    - (i) it becomes insolvent or is wound up;
    - (ii) it makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver, manager or administrator appointed on behalf of creditors;
    - (iii) it goes into liquidation or passes a resolution to go into liquidation, or becomes subject to any petition or proceedings in a court for its compulsory winding up or becomes subject to the supervision of a court or regulatory authority, either voluntarily or otherwise;
    - (iv) it suffers any execution against its assets;
    - (v) anything analogous to, or of a similar effect to anything described above under the Law occurs in respect of the Project Provider;
  - (e) the unconditional execution and delivery of, and compliance with its obligations by it under this Agreement do not:
    - (i) contravene any Law to which it or any of its property is subject or any order or directive from a Government Agency binding on it or any of its property;
    - (ii) contravene its constituent documents;

- (iii) contravene any agreement or instrument to which it is a party;
  - (iv) contravene any obligation of it to any other person; or
  - (v) require it to make any payment or delivery in respect of any financial indebtedness before the scheduled date for that payment or delivery
  - (f) no litigation, arbitration, mediation, conciliation or proceedings including any investigations, are taking place, pending, or are threatened against the Project Provider which could have an adverse effect upon either the Project Provider's capacity to perform its obligations under this Agreement or the Project Provider's reputation;
  - (g) unless otherwise disclosed in this Agreement, it is not entering into this Agreement as trustee of any trust or settlement;
  - (h) it has not made any false declaration in respect of any current or past dealings with the ANU, the Commonwealth or any Government Agency, including in any tender or application process or in any agreement;
  - (i) it has had no significant deficiency in the performance of any substantive requirement or obligation under any agreement with the ANU, the Commonwealth or any Government Agency;
  - (j) it has, and will continue to have and to use, the skills, qualifications and experience, to perform the Services in an efficient and controlled manner with a high degree of quality and responsiveness and to a standard that complies with this Agreement;
  - (k) it has and will continue to have the necessary resources, including financial resources, to perform the Services and will use those resources to perform the Services.
- 26.2. The Project Provider acknowledges that the ANU in entering into this Agreement is relying on the warranties and representations contained in this Agreement.
- 26.3. Each representation and warranty survives the execution of this Agreement.

## **27. Notices**

- 27.1. 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].
- 27.2. 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.
- 27.3. 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.

SAMPLE

## **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 detailed in Appendix 1. In addition it is a requirement that at least one chief investigator from the Project Provider will participate in the program reporting requirement in Canberra, on dates yet to be determined.

### **Contract Material (see clauses 1.1, 2.1 and 8)**

Project Provider will produce and deliver the following Contract Material:

- final report (One hard copy and one electronic copy in required 1:3:25 format) and financial acquittal on the expenditure of research funds provided under this Agreement

15 January 2012

### **B1. Use of APHCRI Material (see clause 9.4)**

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

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

Acknowledgement of the Australian Primary Health Research Institute's role in publications produced by or behalf of Project Provider as part of this Agreement or with funds provided under this Agreement will normally be of the form but the form will be confirmed when agreed in writing with the ANU:

*The research reported in this paper [or presentation] is a project of the Australian Primary Health Care Research Institute, which is supported by a grant from the Commonwealth of Australia as represented by the Department of Health and Ageing. The information and opinions contained in it do not necessarily reflect the views or policy of the Australian Primary Health Care Research Institute or the Commonwealth of Australia (or the Department of Health and Ageing).*

### **C. Time-frame (see clause 2.2)**

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

- Progress Report [DATE]
- final report and financial acquittal [DATE]

**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:

Provision of Services to the Australian Primary Health Care Research Institute

(b) Name of Liaison Officer:

Director APHCRI

**E. Specified Personnel (see clauses 1.1 and 6)**

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

**F. Insurance (see clause 15)**

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

- workers' compensation insurance for an amount required by the appropriate State or Territory legislation; and
- 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)**

[ADMINISTERING INSTITUTION CONTACT DETAILS]

## **SCHEDULE 2 — APHCRI Obligations**

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

APHCRI

The Australian National University

Level 1, Ian Potter House

Corner of Marcus Clarke and Gordon Streets

Acton, ACT 2601

### **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

Level 1, Ian Potter House

Corner of Marcus Clarke and Gordon Streets

Acton, ACT 2601

Fax: 02 6230 5025

E-mail: director.aphcri@anu.edu.au

### **CC. Fees (see clause 3.1)**

The total fee for the services shall not exceed \$[AGREED BUDGET] plus GST.

Payments shall be made against correctly rendered invoices at the following rate:

- 50% on Execution of this Agreement
- 25% on submission of Progress Report [DATE]
- 25% on submission of satisfactory final report and financial acquittal as determined by the APHCRI Hub [DATE]

### **DD. Payment (see clause 3.5)**

Payments shall be made to a bank account nominated by the Project Provider.

### **EE. Allowances (see clause 3.1)**

Nil

**FF. Assistance (see clause 3.1)**

Nil

SAMPLE



*EXECUTION*

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

**SIGNED** for and on behalf of )

[ADMINISTERING INSTITUTION] )

)

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:.....

***Appendix 1 – [Application]***

SAMPLE