

AGREEMENT

BETWEEN

THE HEALTH ADMINISTRATION CORPORATION

AND

[INSERT NAME]

BETWEEN

THE HEALTH ADMINISTRATION CORPORATION, a Corporation Sole constituted by section 9 of the Health Administration Act 1982, ABN 45 100 538 161, and having its office at Level 11, 73 Miller Street, North Sydney (**HAC**)

AND

[INSERT NAME OF SUPPLIER] (ACN), of **[INSERT ADDRESS]**, (**the Supplier**)

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

"**Agreement**" means this document including all Schedules and Annexures;

"**Contract Material**" means all material brought into existence pursuant to this Agreement, or for the purpose of performing the Services under this Agreement, including but not limited to documents, equipment, information and data stored by any means including intellectual property rights therein;

"**Fee**" means the fee as referred to in Clause 5 and Annexure 2 of this Agreement;

"**GST**" has the same meaning as in the GST legislation;

"**GST legislation**" means any law imposing or relating to GST and includes the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

"**HAC**" includes a delegate of the Health Administration Corporation;

"**HAC's Materials**" means any documentation, information, data or material including electronic information or data given by HAC to the Supplier by whatever means;

"**Intellectual Property**" includes all industrial and intellectual property rights including but not limited to copyright, future copyright, patents, trade/business or company names, registered and unregistered trademarks, registered designs, trade secrets, know how, rights in relation to circuit layouts and all other rights of intellectual property as recognised by the law in force in New South Wales;

"**Ministry**" means the NSW Ministry of Health and includes its agents and employees;

"**Proposal**" means the response submitted to HAC by the Supplier to perform the work required by the Tender Specifications or Consultancy Brief;

"**Services**" means the services described in Annexure I and includes the Proposal;

"**Specified Personnel**" means the key personnel of the Supplier who are required to undertake the provision of Services or part of the services constituting the Services as named in the Schedule.

"**Supplier**" means the persons or bodies party to this Agreement engaged to perform the Services and includes officers, employees, agents and authorised sub-contractors (and their employees and agents) utilised by the Supplier;

"**Tax**" means any sales tax, value added tax, duty, withholding tax, levy, impost or other charge or duty levied by any government in Australia or elsewhere, which arises out of or in

connection with the Supplier's performance of its obligations under this Agreement, but excludes GST.

"Tender Specifications" or **"Consultancy Brief"** means any Tender Specifications or Consultancy Brief or any other document issued by HAC to the Supplier for the purpose of obtaining the proposal and which describes the services to be performed by the Supplier.

2. ENGAGEMENT

HAC engages the Supplier to provide the Services in accordance with this Agreement.

3. SUPPLIER'S OBLIGATIONS

3.1 Due Diligence

The Supplier must perform the Services in a diligent manner and with all necessary skill and care expected in accordance with the provision of such Services and in accordance with all representations and warranties as to the Supplier's experience and ability expressly or impliedly made by reference to its Proposal and this Agreement, or by law.

3.2 Timely Provision of Services

The Supplier must perform the Services expeditiously and in accordance with the time limits if any specified in the Schedule.

3.3 HAC's Materials

- (a) The Supplier accepts all responsibility for the secure guardianship of HAC's Materials provided by HAC to the Supplier.
- (b) Upon completion of this Agreement or in the event of termination, the Supplier must as soon as practicable return to HAC, HAC's Materials and the Contract Material.
- (c) Clause 3.3(b) does not operate to prevent the Supplier from keeping a bona fide copy of the Contract Materials for its records subject always to Clause 3.4.

3.4 Confidentiality

The Supplier must not without the prior written consent of HAC disclose any information in connection with the Services or this Agreement to any person not a party to this Agreement other than:

- (a) as necessary for the purposes of performing its obligations under this Agreement, or
- (b) with respect to any matter already within public knowledge,

and it is agreed that this obligation survives completion or termination.

3.5 Sub-contracting

- (a) The Supplier must not assign or sub-contract any part of the Services without the prior written consent of HAC.
- (b) Consent given by HAC in accordance with this clause does not relieve the Supplier from its obligations under this Agreement.

3.6 Statutory Requirements

- (a) Without limiting the generality of any other provision of this Agreement the Supplier must ensure that all work done in connection with the Services complies with all applicable legislation, regulations, codes of conduct and all relevant Australian standards applicable to the Services.
- (b) The Supplier shall at all times be responsible for the employment, supervision and standard of work of any person carrying out work for the Supplier under this Agreement.

3.7 Conflict of Interest

- (a) The Supplier warrants that it has no conflict of interest in the performance of the Services as at the date of this Agreement.
- (b) Immediately upon becoming aware of the existence, or possibility of a conflict of interest affecting the Supplier, the Supplier must advise HAC in writing, in which event HAC reserves its rights under Clause 13.

3.8 Access to Supplier

The Supplier must upon reasonable notice from HAC provide access to the Supplier or Specified Personnel in order for HAC to inspect, discuss or assess the provision of the Services.

3.9 Specified Personnel

If Specified Personnel are unable or not suitable in the reasonable opinion of HAC to undertake or perform the services assigned to them, the Supplier must provide replacement personnel acceptable on reasonable grounds to HAC at no additional charge as soon as practicable.

4. HAC'S OBLIGATIONS

HAC will as soon as practicable, or as required by this Agreement, make available to the Supplier all relevant instructions, information, documentation or data or any other material as required for the performance of the Services.

5. FEES

- 5.1** HAC will pay the Fee to the Supplier in accordance with Annexure 2, subject to the conditions of this Agreement including clause 6.
- 5.2** If the Supplier has obtained HAC's prior written approval to incur or pay any costs, expenses, fees or charges, HAC will reimburse the Service Provider for those costs, expenses, fees or charges.

6. TAXES

- 6.1** Subject to clauses 6.2 and 6.3, the Supplier is liable to pay all Taxes imposed or levied in connection with services supplied under this Agreement.
- 6.2** To the extent that the Supplier is liable to pay GST in connection with services supplied under this Agreement, and unless specified in Annexure 2, the fees and any reference to costs or expense specified in this Agreement are inclusive of GST.
- 6.3** If there is any abolition or reduction, increase or introduction of any Tax, the Price that is payable for the Deliverable, or any other cost or expense that is payable under the

Customer Contract will be varied so that the Supplier's net dollar margin for the Deliverable, cost or expense remains the same.

- 6.4** The Supplier warrants and undertakes that at the time any supply on which GST is imposed is made by it to HAC under this Agreement it is or will be registered under the GST legislation. If HAC requests written evidence of registration, the Supplier will promptly produce evidence satisfactory to HAC.

7. VARIATIONS

HAC may request (in writing) the Supplier to vary the Services provided the variation is within the general scope of the Services described in Annexure 1. The variation, including fees for the variation, must be agreed in writing between the parties prior to the variation being implemented.

8. INTELLECTUAL PROPERTY

8.1 Ownership

- (a) Subject to Clause 8.1(b), ownership of Intellectual Property in or in relation to Contract Material vests upon its creation in HAC. The Supplier must, upon request by HAC, do all things necessary to vest ownership and title of Intellectual Property in HAC.
- (b) If ownership of or title in Intellectual Property in relation to Contract Material is not capable of being vested in HAC under Clause 8.1(a) because the Supplier itself does not own that Intellectual Property, the Supplier must at its cost ensure that HAC is suitably and irrevocably licensed to use that Contract Material or that Intellectual Property.
- (c) The Supplier must ensure all licence fees and/or consents required under law are paid and/or obtained in connection with any reproduction, adaptation or use of any Intellectual Property or Contract Material necessary for the provision of the Services.
- (d) The Supplier agrees to indemnify HAC and the Ministry for any demand, cost and expense made, sustained, brought or prosecuted as a result of any breaches by the Supplier of the intellectual property rights of third parties whilst performing the Services under this Agreement.

8.2 Publications

- (a) The Supplier must not publish any articles, statements or any other information arising from this Agreement without HAC's approval in writing beforehand. The NSW Health logo must not be used without HAC's approval in writing beforehand.
- (b) The Supplier agrees to acknowledge the support of the Ministry in any publications.

8.3 Delivery of Contract Material

- (a) Subject to the terms of the Tender Specifications or Consultancy Brief on, or as soon as practicable after, the expiration or earlier termination of this Agreement, the Supplier must deliver to HAC all Contract Material and all HAC's Material.

- (b) Subject to Clause 3.4, Clause 8.3(a) does not operate to prevent the Supplier from keeping a bona fide copy of the Contract Material for its own records.

9. INDEMNITY

- 9.1** Subject to Clause 9.2, the Supplier agrees to indemnify HAC against any claim or demand, made or prosecuted in any manner, arising from any injury to any person (including death) or any damage to any property, where such injury or damage was caused by any wilful or negligent act or omission of the Supplier, its employees or agents, in connection with this Agreement.
- 9.2** The Supplier's liability to indemnify HAC under Clause 9.1 shall be reduced proportionately to the extent that any unlawful or negligent act or omission on the part of HAC directly contributed to the injury or damage.

10. INSURANCE

10.1 Insurance

The Supplier must take out and maintain with a reputable insurance company the insurance policies for the term of this Agreement as specified in the Schedule.

Coverage shall be extended to sub-contractors.

A certificate of currency(s) for the policy(s) shall be made available to HAC for inspection on demand.

10.2 Worker's Compensation

The Supplier is responsible for obtaining workers' compensation insurance as is required by law.

10.3 Superannuation Guarantee

(a) Companies

The fees quoted by the Supplier are inclusive of liability under the Superannuation Guarantee (Administration) Act 1992.

(b) Individuals

The prices quoted by individuals, not registered as companies, include the Ministry's superannuation liability under the provisions of the Superannuation Guarantee (Administration) Act 1992. The Supplier will be responsible for the production of any documentation required to be completed in this regard.

11. KEEPING OF RECORDS

11.1 Records

The Supplier must keep proper accounts, records (including information stored by computer and other devices) and time sheets in accordance with accounting principles generally applied in relevant commercial practice in respect of its charges, and/or billing, and any reimbursements payable pursuant to this Agreement.

11.2 Access

The Supplier must, within a reasonable time of any request, give HAC access to, or copies of, any information which may be reasonably required to enable any claim to be substantiated and verified.

12. NEGATION OF EMPLOYMENT AND AGENCY

- 12.1** The Supplier shall not represent itself, and shall ensure that its employees and agents do not represent themselves, as being employees or agents of HAC or the Ministry.
- 12.2** The Supplier shall not by virtue of this Agreement be, or for any purpose be deemed to be, an employee or agent of HAC or the Ministry.

13. TERMINATION

13.1 Termination by either party

Subject to sub-clauses 13.2 and 13.3 either party may terminate this Agreement if the other party breaches any term of this Agreement and such breach is not remedied within 28 days of receipt of written notice of the breach.

13.2 Termination by HAC

If the Supplier:

- (a) becomes bankrupt, or insolvent, or enters into a scheme or arrangement with its creditors,
- (b) fails to carry out the Services according to the terms of this Agreement, or
- (c) without reasonable cause suspends the carrying out of the Services

HAC may terminate this Agreement immediately by written notice addressed to the Supplier. Upon receipt of such notice the Supplier shall cease or reduce work under this Agreement in accordance with the tenure of the notice and shall forthwith do everything possible to mitigate any consequential loss to either party. HAC will only be liable to pay that part of the fee that relates to services provided up to the date of termination.

13.3 Termination by the Supplier

If HAC fails to pay the Supplier in accordance with this Agreement the Supplier may forthwith terminate this Agreement by written notice addressed to HAC.

13.4 Termination for Convenience

HAC may by notice in writing at any time terminate this Agreement for convenience, such termination to be effective immediately unless stated otherwise in the notice. The Supplier must immediately comply with any directions given in the notice and must do everything that is reasonably practical to mitigate its losses arising in consequence of termination of this Agreement under this clause.

If HAC exercises its right under this clause, it will pay the Supplier for any reasonable unpaid amounts relating to services properly performed up to the date of termination and reimburse the Supplier for its unavoidable costs and expenses directly incurred as a result of termination, provided that they do not exceed the total amount of Fees set out in Annexure 2 and is supported by satisfactory written evidence. Once HAC has paid such amounts, no further compensation is payable for termination under this clause.

13.5 Supplier's Continuing Liability

Termination by HAC will not release the Supplier from liability in respect of any breach of, or non-performance of, any obligation by the Supplier pursuant to this Agreement.

14. TERMINATION WITHOUT PREJUDICE

The expiration or termination of this Agreement is without prejudice to any accrued rights or remedies of each party.

15. CONTINUING OBLIGATIONS

The expiration or determination of this Agreement shall not affect such of its provisions as are expressed to operate or have effect thereafter.

16. DISCONTINUANCE OF HAC

Subject to any contrary legislative intention:

- (a) if HAC is reconstituted, renamed or replaced or if its powers or functions are transferred to another entity, this Agreement is deemed to refer to that new entity; and
- (b) if HAC ceases to exist, this Agreement is deemed to refer to that entity which serves substantially the same purpose or object as the former entity.

17. INCONSISTENCIES

If there are any inconsistencies between the Services to be provided and/or the terms and conditions for the provision of Services as detailed in this Agreement, the Tender Specification or Consultancy Brief, and the Proposal, to the extent of any inconsistency, the Tender Specification or Consultancy Brief and this Agreement will have precedence over the Proposal.

18. NOTICES

The addresses of the parties for the purposes of giving any notice shall be as set out in the Schedule or as may from time to time be specified in writing between the parties.

19. DISPUTES

19.1 Disputes shall as far as possible, be satisfied by agreement between the parties.

19.2 If the dispute is not resolved, then the dispute is to be referred to the Australian Commercial Disputes Centre for mediation or any other agreed venue which conducts mediation.

20. APPLICABLE LAW

This Agreement will be governed by, and construed in accordance with, the law for the time being in force in New South Wales, and the parties submit to the jurisdiction of the courts of that State.

21. COMMENCEMENT DATE AND DURATION

This Agreement will commence on the commencement date stated in the Schedule or, if no commencement date is stated, the date signed by both HAC and the Supplier. The Agreement will continue in effect until the date stated in the Schedule or, if no date is specified, upon completion of the Services.

Executed as an Agreement on _____

EXECUTED for and on behalf of the
HEALTH ADMINISTRATION CORPORATION

But not so as to incur personal liability

By:

.....
(Signature)

.....
(Name and Position)

Date: _____

.....
(Signature of Witness)

.....
(Print Name of Witness)

Date: _____

EXECUTED by and on behalf of:
[INSERT NAME OF SUPPLIER]

.....
(Full name of Individual,
company or organisation)

.....
(Signature of Individual or
authorised representative for
company or organisation)

.....
(Name of Individual or authorised
representative)

Date: _____

.....
(Signature of Director/Secretary/
Witness)

.....
(Print Name of Witness)

Date: _____

SCHEDULE

Item 1 Time to complete Services (clause 3.2):

Item 2 Specified Personnel:

Item 3 Commencement Date and Duration (clause 21):

Item 4 Insurance

- (a) Public Liability insurance with an indemnity of at least \$ _____million in respect of each and every occurrence and unlimited in the aggregate for any one period of cover for the period of this Agreement;
- (b) Professional Indemnity Insurance with indemnity cover of at least \$_____ for a period ; and

[Professional indemnity insurance may be waived in some circumstances where there is risk standing for a particular engagement].

- (c) Adequate workers compensation insurance in accordance with applicable legislation for all Suppliers' employees.

Item 4 Notices to:
HAC contact:

Supplier contact:
Address:
Ph:
Fax:

ANNEXURE 1 THE SERVICES

(Describe Services to be provided. Use the following headings for guidance. Retain the headings but delete the notes in bold once Contract finalised).

1. Project Description

(The Project Description should be a summary of the Project and what is to be achieved. Also provide a concise statement which presents the reader with a clear statement of the reasons for undertaking the Project. The Description should be a precise statement of intent. As part of the Project Description, set out what the Project entails eg
Research
Survey
Data Collection and Collation
Seminar
Promotional Campaign)

2. Objectives of Project

(This should be specific and not general, and set out the specific goals to be achieved, eg improved public health products, improved public awareness in relation to disease prevention)

3. Milestones/Deliverables

(Milestones/deliverables should relate directly to the Objectives and mark the completion of different stages of the Project, eg a consultancy researching a particular subject

Stage 1 - completion of analysis of literature on the subject

Stage 2 - conduct interviews with relevant organisations

Stage 3 - Draft recommendations

Stage 4 - Final Report completed)

ANNEXURE 2

THE FEE

(Specify the total fee payable. Then specify payment instalments according to Milestones/Deliverables. As a matter of principle, there should not be substantial payments upfront unless verifiable corresponding establishment costs are listed. Payments should be made upon completion of the different Stages of the Project.

eg Total fee payable: \$190,000 inclusive/exclusive of GST

By instalments as follows:

\$20,000: to be paid on commencement of this Agreement for costs (list what costs are required to be covered);

\$20,000: to be paid upon satisfactory completion of Stage 1;

\$50,000: to be paid upon satisfactory completion of Stage 2;

\$65,000: to be paid upon satisfactory completion of Stage 3; and

\$35,000: to be paid upon satisfactory completion of Stage 4.

NB: Refer to GST clause and General Instructions about GST when preparing fee instalments. Delete this note once the Contract is prepared)