

Agreement Number : RFT2023-10
Agreement Title : Need Assessment for the After Hours, Multicultural Access and Homelessness Support Programs
Contractor : [Contractor Name]

SHORT FORM AGREEMENT

Parties to the Agreement:

WA Primary Health Alliance
ABN: 11 602 416 697
Level 2, 1 Hood Street, SUBIACO WA 6008
(WAPHA)

[Contractor Name]
ABN: [Contractor ABN]
[Contractor Address]
(Contractor)

The Contractor agrees to supply the Services to WAPHA in accordance with the terms and conditions of this Agreement. The Parties agree that by signing this document they enter into the Agreement, which comprises this document and any Schedules and Appendices and any other documents incorporated by reference:

Signed for and on behalf of WAPHA by its duly authorised representative:

Signed for and on behalf of the Contractor by its duly authorised representative:

Signature

Signature

Print Name

Print Name

Date

Date

In the presence of:

In the presence of:

Witness Signature

Witness Signature

Print Witness Name

Print Name

Date

Date

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TERMS AND CONDITIONS

1. Definitions

Activity means the Activity described in Item A of the Activity Schedule.

Activity Schedule means an Activity Schedule attached to and forming part of this Agreement.

Agreement means this document and includes any schedules, appendices and annexures.

Business Day means a day which is not a Saturday, Sunday, public holiday or bank holiday in the city of Perth, Western Australia.

Claim includes any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity), at law or in equity.

Committed means, at a particular date, any portion of the Fees for an Activity that the Contractor is contractually and irrevocably obliged to pay to a third party in respect of any part of an Activity, and that are identified in a written contractual arrangement between the Contractor and that third party.

Commonwealth means the Commonwealth of Australia and includes the Department of Health.

Confidential Information has the meaning in clause 11.1.

Fees means fees payable in accordance with clause 13 and Item B of the Activity Schedule in respect of an Activity.

Force Majeure Event means an event beyond a Party's reasonable control which, by exercise of reasonable diligence and precautions, could not have been prevented or reasonably foreseen by that Party, including any:

- (1) act of God, unusually severe weather (including a cyclone/hurricane), earthquake, fire, subsidence, land slide, mud slide, wash-out, explosion, radioactive contamination or natural disaster;
- (2) terrorism, insurrection, revolution or civil disorder, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot;
- (3) illness, disease, epidemic or pandemic announced as such by or on behalf of the Australian Government Department of Health or the World Health Organisation;
- (4) adverse application of any law or enforcement actions of any court or Australian Government agency;
- (5) industrial dispute of any kind, strike, lock-out, ban, limitation or other industrial disturbances; or
- (6) any production shutdown or interruption, or other restriction imposed, which is validly required or directed by any Australian governmental agency or by law.

Intellectual Property Rights or **IPR** means all intellectual property rights, including:

- (1) plant breeder's rights, patents, copyright, rights in circuit layouts, registered designs, trade marks (including goodwill in those marks), domain names and any right to have Confidential Information kept confidential; and
- (2) all rights of a similar nature to any of the rights in (1) of this definition, which may subsist in Australia or elsewhere,

whether or not such rights are registered or capable of being registered.

Losses means liabilities, expenses, losses, damages and costs.

Material includes software, firmware, documented methodology or process, property, information, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.

Parties means the parties to this Agreement being WAPHA and the Contractor .

Personal Information has the same meaning given to it under the *Privacy Act 1988 (Cth)*.

Personnel means a Party's employees, officers, agents, contractors and subcontractors, including Specified Personnel, and its subcontractors' employees, officers, agents and contractors.

Privacy Laws means the *Privacy Act 1988 (Cth)*, the Australian Privacy Principles and all other Commonwealth, state and territory laws, regulations and codes, including any orders, directions, directives or other instruments made or issued under any of them, relating to the handling of Personal Information or health records.

Services means the services forming part of an Activity.

Specified Personnel means the Contractor's Personnel specified in the Activity Schedule (if any).

2. Interpretation

- 2.1 A provision of this Agreement must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
- 2.2 If an act must be done on a specified day that is not a Business Day, it must be done on or by the next Business Day.
- 2.3 Words in the singular include the plural and vice versa.

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2.4 If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.

2.5 A reference to a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority and (as the case may be) the person's legal personal representatives, successors, assigns and persons substituted by novation.

2.6 A reference to an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

2.7 A reference time is to local time in the Perth, Western Australia;

2.8 If there is any conflict or inconsistency between the provisions in documents forming part of this Agreement the documents shall take priority in the following order:

- (1) the Terms and Conditions of this Agreement; and
- (2) an Activity Schedule attached to this Agreement.

3. Context of this Agreement

This Agreement is made between the WA Primary Health Alliance Ltd (WAPHA) and the Contractor for the performance of the Activity.

4. Term of Agreement

This Agreement begins on the date that the second Party executes the Agreement (**Commencement Date**) and ends on the date when the Contactor has completed the performance of its obligation under this Agreement (**End Date**) unless terminated earlier in accordance with clause 16 (**Term**).

5. Performance of Services

5.1 The Contractor must carry out each Activity in accordance with this Agreement using the Specified Personnel and:

- (1) with due care and skill and to the best of the knowledge and expertise of the Contractor for the benefit of WAPHA;
- (2) in a professional manner and in accordance with any applicable ethical codes or standards;
- (3) in accordance with relevant Australian industry standards, best practice and guidelines or where none apply, relevant international industry standards, best practice and guidelines;
- (4) in accordance with all applicable law and all applicable governmental policy of which a prudent and experienced Contractor providing the Services should have been aware;
- (5) in accordance with any directions in relation to the Services given by WAPHA from time to time;
- (6) within it's the period between the start and end dates as specified in the Activity Schedule and so as to meet

any timeframes specified in the Activity Schedule for that Activity.

5.2 The Contractor represents and warrants that:

- (1) it has the right to enter into this Agreement;
- (2) it and its Personnel have all qualifications, accreditations, rights, title, licences, interests and property necessary to lawfully perform the Services and grant the rights to WAPHA specified in this Agreement;
- (3) it and its Personnel will maintain professional registration (if applicable), with an appropriate authority to practice;
- (4) it will maintain membership to a professional body (if any) with ethical and professional guidelines;
- (5) providing the Services does not involve working with or coming into contact with any persons under 18 years of age or any other person who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation for any reason;
- (6) the Services do not include the examination of, or the provision of treatment to any persons; and
- (7) all information, reports and Material given to WAPHA under this Agreement will be correct, complete and not misleading.

The Contractor acknowledges that WAPHA is entering this Agreement in reliance on these warranties and representations, which are deemed to be repeated by the Contractor each time a Fee is paid under this Agreement.

5.3 Request for Information

Within 10 Business Days from WAPHA's request, the Contractor must provide to WAPHA copies of:

- (1) all of its and its Personnel qualifications, certificates, licences and memberships relevant to the Services;
- (2) its current certificate of insurances for all insurances required under clause 12; and
- (3) any other information as reasonably requested by WAPHA relating to the Services.

6. Subcontracting

6.1 If the Contactor subcontracts any aspect of the provision of the Activity it must ensure that the subcontractor and its Personnel:

- (1) complies with all applicable laws, WAPHA policies and procedures, and the requirements of this Service Agreement, as though the subcontractor were the Contractor in relation to the specific subcontracted services; and
- (2) has the necessary skills, experience, qualifications and accreditations to perform the Activity.

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6.2 The Contractor is fully responsible, and remains liable, for the performance of the Activity even if the Contractor subcontracts any aspect of the provision of the Services.

6.3 Without limiting any legal or other obligation, the Contractor must at its own cost train, supervise and pay and/or remit all statutory costs and entitlements for all of its Personnel.

6.4 The Contractor must provide all Specified Personnel with appropriate personal protective equipment that complies with all laws, WAPHA's policies, plans and procedures.

6.5 WAPHA may direct the Contractor to remove its Personnel and replace at its cost any Contractor Personnel that is carrying out any part of the Activity if in the reasonable opinion of WAPHA the Contractor's Personnel has:

- (1) been negligent or incompetent; or
- (2) breached any relevant WAPHA policy, procedure or plan; or
- (3) failed or refused to comply with a lawful direction or act with a standard of skill, care and diligence required under this Service Agreement,

and the Contractor must immediately comply with that direction.

7. Defective Services

In the event that the Contractor (or any Specified Personnel) provides the Services or Activities which are not of an acceptable standard or quality the Contractor will:

- (1) rectify the Services or Activity; or
- (2) at the direction of WAPHA and at the sole cost of the Contractor, engage a third party to rectify the Services or Activity.

8. Conflict of Interest

8.1 The Contractor and its Personnel must notify WAPHA immediately of any matter which may give rise to an actual or perceived conflict of interest (whether financial or non-financial).

8.2 The Contractor must resolve all conflict of interests in accordance with WAPHA's Conflict of Interest Policy.

8.3 In the event that a Contractor is deemed to have acted in a conflict of interest or has failed to declare the conflict of interest, WAPHA may terminate this Agreement immediately without notice.

9. Intellectual Property Rights

9.1 All Intellectual Property Rights in all Material created for the purpose of the Activity (including reports and any other Material that is required to be provided to WAPHA in respect of the Activity) shall vest in WAPHA on creation.

9.2 The Contractor must to do all things necessary to assign, transfer or vest all its interest in the Material to WAPHA.

9.3 The Contractor represents and warrants that it shall not in the development or provision of any Material referred to in 9.1 infringe or cause WAPHA to infringe the Intellectual Property Rights of any person.

10. Indemnity

The Contractor must at all times indemnify, hold harmless and defend WAPHA, its employees, directors, officers and agents from and against all Claims and Losses arising directly or indirectly from or in relation to this Agreement.

11. Confidentiality

11.1 The Contractor must not directly or indirectly use any information of whatever description, whether in permanently recorded form or not and whether or not belonging to WAPHA or a third party, which is by its nature confidential or the Contractor ought to know is confidential, but does not include information which is publicly available (other than by breach of this Agreement) or has been independently developed by the Contractor (**Confidential Information**),

for any purpose, other than completing the Activity under this Agreement, and must not disclose the Confidential Information to any person without the prior written consent of WAPHA.

11.2 The Contractor must ensure that each person to whom Confidential Information has been disclosed by the Contractor, complies with the obligation of the Contractor under this clause.

11.3 The Contractor must keep the Confidential Information confidential and secure whilst in the possession, control or custody of the Contractor.

11.4 The Contractor must immediately notify WAPHA in writing if any person disclosed, or is suspected by the Contractor of disclosing or intending to disclose any Confidential Information to any other person otherwise than in accordance with this clause.

11.5 The Contractor acknowledges that monetary damages may be insufficient if this clause is breached and WAPHA is entitled to injunctive relief and all other relief as may be proper, to the extent permitted by law.

12. Contractor's insurance

12.1 From the Commencement Date the Contractor must, and must ensure that its subcontractor have in place or effect and maintain the following insurances:

- (1) workers' compensation for an amount as required by law;
- (2) professional indemnity insurance for the Contractor for an amount of not less than \$10 million per claim;
- (3) public liability insurance for the Contractor for an amount of not less than \$20 million per claim; and

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(4) any other insurance (on terms and conditions including the term and period of cover) that a prudent and experienced contractor in the position of the Contractor would take out.

13. Use of Fees

13.1 Except as otherwise specified in the Activity Schedule, the Contractor must use the Fees for an Activity solely to conduct that Activity and in accordance with this Agreement.

13.2 If at any time WAPHA determines that the Contractor has received Fees for an Activity that: have not been spent or Committed for the Activity in accordance with this Agreement; WAPHA has made an overpayment of Fees to the Contractor; or the Contractor has spent or Committed an amount of the Fees for an Activity other than for the Activity for which it was provided, then the Contractor must deal with those Fees as directed by WAPHA.

13.3 Fees are not to be used capital works or the purchase of assets unless:

- (1) detailed in an Activity schedule as being approved as part of the Activity; or
- (2) prior approval has been obtained in writing from WAPHA. Such approval is to detail the quantities and amounts for each item to be purchased.

14. Payment

14.1 In this clause 14, clause 15 and Item B of the Activity Schedule, a word or expression defined in the A New Tax System (Goods and Services Tax) Act 1999 (**GST Act**) and not otherwise defined in this Agreement has the same meaning given to it in that Act.

14.2 Subject to this clause 14 and the Contractor complying with its obligations under this Agreement (including that the Services have been delivered in accordance with this Agreement), WAPHA must pay to the Contractor the Fees in accordance with the requirements set out in Item C of the Activity Schedule.

14.3 Any payment of moneys under clause 14.2 is not approval by WAPHA of the Contractor's performance or compliance with this Agreement, but is only to be taken as payment on account.

14.4 Invoices must be addressed to WAPHA's address in Item 2 of the Standard Schedule and include the following information:

- (1) the name and date of this Agreement;
- (2) the correct invoice amount;
- (3) payment method details (either the Contractor's postal address details or EFT bank account details and email address for remittance advice); and
- (4) contact person (including address, email address and telephone number) for accounts queries.

14.5 Invoices are to be submitted to accounts@wapha.org.au. The subject of the email is to have included in it: the name of the Contactor; the Agreement Number; the Agreement Title; the word "invoice".

14.6 Payment is to be payable to the Contractor 20 Business Days after receipt of a correctly rendered invoice.

15. Goods and Services Tax

15.1 In this clause:

- (1) any reference to GST payable by a Party includes any corresponding GST payable by the representative member of any GST group of which that Party is a member, and any reference to a Party's entitlement to an input tax credit includes any entitlement to an input tax credit of the representative member of any GST group of which that Party is a member; and
- (2) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

15.2 If a Supply to which the invoice relates is a Taxable Supply, the Contractor will submit a Tax Invoice and any other documentation required under the GST law.

15.3 Each Party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other Party to claim any Input Tax Credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any Supply made under or in connection with this Agreement but the supplier need not provide a Tax Invoice for a Supply until the supplier has received payment for the Supply.

15.4 If the GST on a Taxable Supply is varied pursuant to any change in legislation, the consideration payable under this Agreement must be increased or decreased to reflect that variation of the GST.

16. Termination

16.1 WAPHA may, at any time, by Notice, terminate this Agreement immediately.

16.2 In the event of termination under clause 16.1, WAPHA is entitled to recover from the Contractor (or direct the use of) any part of the Fees provided for an Activity which:

- (1) has not been spent or Committed by the Contractor as at the date that the Notice of termination is received; or
- (2) has, in WAPHA's opinion, been spent or Committed by the Contractor other than for the Activity and in accordance with this Agreement.

17. Duty to return or destroy Documentation

17.1 Upon termination or expiration of this Agreement or as otherwise directed by WAPHA, the Contractor must cease using the Confidential Information, Intellectual

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Property and other property of WAPHA (**Documentation**), that is in the Contractor, its Personnel or Specified Personnel's position, custody or control and at the discretion of WAPHA

- (1) return; or
 - (2) destroy and certify in writing to WAPHA the destruction of,
- all Documentation.

18. Commonwealth Requirements

18.1 Notwithstanding anything else in this Agreement, the Contractor acknowledges that WAPHA is bound by obligations to the Commonwealth under the funding agreement entered into between the Commonwealth and WAPHA (**Funding Agreement**), including any relevant funding schedule related to or forming part of the Funding Agreement and agrees to do all things necessary and otherwise provide all assistance necessary for WAPHA to comply with the Funding Agreement.

19. Dispute resolution

- 19.1 If a dispute between the Parties arises in connection with the subject matter of this Agreement (**Dispute**), then within 20 Business Days of the dispute arising, either Party shall give the other Party a written notice adequately identifying and providing details of the dispute (**Notice of Dispute**) and the Parties shall meet to attempt to resolve the dispute.
- 19.2 The Parties must co-operate to ensure that the Dispute is resolved as quickly as reasonably possible.
- 19.3 If the Parties cannot resolve the dispute within 30 Business Days, a Party may refer the dispute to private mediation by notice to the other Party.
- 19.4 If the Parties proceed to private mediation, the mediation must, unless agreed otherwise, be conducted in accordance with the Australian Commercial Disputes Centre Mediation Guidelines.
- 19.5 While attempting to resolve the Dispute, the Parties must continue to carry out and comply with this Agreement.
- 19.6 Each Party bears its own costs of the dispute, including half a share of the costs of the mediator.

20. Force Majeure

- 20.1 A Party (**Affected Party**) will not be liable for any delay or failure to perform any of its obligations under this Agreement where such delay or failure is caused by a Force Majeure Event (other than the obligation to pay money) if, as soon as possible after the beginning of the Force Majeure Event affecting the ability of the Affected Party to perform any of its obligations under this Agreement, it gives a notice to the other Party which:
- (1) specifies the obligations the Affected Party cannot perform;

- (2) fully describes the Force Majeure Event;
- (3) estimates the time during which the Force Majeure Event will subsist; and
- (4) specifies the measures proposed to be adopted to remedy or abate the Force Majeure Event.

20.2 The Affected Party, to the extent it is prevented from carrying out its obligations under this Agreement as a result of Force Majeure Event, must:

- (1) remedy the Force Majeure Event to the extent reasonably practicable (provided that the Affected Party is not obliged to settle any industrial disputes) and resume performance of its obligations as soon as reasonably possible; and
- (2) take all action reasonably practicable to mitigate any loss, damage or other liabilities suffered by the other Party as a result of the Affected Party's failure to perform out its obligations under this Agreement.

20.3 Either Party may terminate this Agreement if the Force Majeure Event continues for a continuous period of 30 days.

20.4 If this Agreement is terminated under clause 20.3, WAPHA is not liable to make any payment to the Contractor as a result of (directly or indirectly) the termination.

21. Notices

- 21.1 A notice under this Agreement must be in writing and in English.
- 21.2 A party must send a notice to the other Party at the address set out in this Agreement.
- 21.3 To deliver a notice, a party must hand deliver, post, fax or email it to the other party's address.
- 21.4 The notice takes effect at the time stated in the notice, but if no time is stated or the time stated is before receipt, then a notice takes effect on receipt.
- 21.5 A notice sent by post is received on:
- (1) the 2nd Business Day after posting, if within Australia; or
 - (2) the 7th Business Day after posting, if posted to or from a place outside Australia.
- 21.6 A notice sent by facsimile, is received on:
- (1) at 5.00pm WST on the Business Day that the notice is sent; or
 - (2) if sent after 5.00pm WST, then on the next Business Day.
- 21.7 A Party may send a notice in more than one way permitted under this Agreement.
- 21.8 If a Party sends the same notice using more than one method, then the notice is effective from the time that the receiver receives the first notice.

22. Privacy

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22.1 The Contractor agrees that it will handle Personal Information or sensitive information collected, disclosed, transferred, received or otherwise used in performing the Services under this Agreement will all applicable Privacy Laws and WAPHA's privacy policies (as amended from time to time).

22.2 The Contractor consents to WAPHA providing any Personal Information WAPHA holds about the Contractor to any third party as required.

22.3 If the Contractor has reasonable grounds to believe that a data breach has occurred relating to the Services, including an 'eligible data breach' as defined by the *Privacy Act 1988*, the Contractor must immediately notify WAPHA and must provide WAPHA with a copy of any notifications required to be given to the Office of the Australian Information Commissioner or an individual prior to sending.

23. No partnership or employment

23.1 Nothing in this Agreement is intended to create a partnership as between the Parties.

23.2 Neither Party may represent itself as being an officer, employee, partner or agent of the other Party.

23.3 The Parties acknowledges that neither Party has the authority to bind the other Party.

24. Entire understanding

This Agreement is the entire agreement and understanding between the Parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.

25. Further assurance

25.1 Each Party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Agreement.

25.2 The Contractor must maintain a current and lawful Australian Business Number (ABN) at all times, and must immediately advise WAPHA of any circumstances affecting the Contractor's ABN and its currency.

26. Severability

If anything in this Agreement is unenforceable, illegal or void then it is severed, and the rest of this Agreement remains in force.

27. Variation

An amendment to this Agreement is not effective unless it is in writing and signed by the Parties.

28. Assignment

Neither Party to this Agreement may assign or otherwise deal with the whole or any part of it except with the prior written consent of the other Party.

29. Waiver

A Party's failure or delay to exercise a power or right under this Agreement does not operate as a waiver of that power or right and does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing and is only effective in respect of the specific instance to which it relates and for the specific purpose for which it is given.

30. Governing law and jurisdiction

30.1 The law of the Western Australia governs this Agreement and the Parties submit to the non-exclusive jurisdiction of the courts of Western Australia and any courts of appeal from those courts.

30.2 Any legal proceedings in relation to this Agreement must be held in Western Australia unless otherwise agreed between the Parties in writing.

31. General

31.1 The warranties survive termination of this Agreement.

31.2 The obligations of the Contractor under clauses 4, 5.2, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22 and this clause 31.2 will survive the expiry or termination of the Agreement.