

RESEARCH SUB-CONTRACT

BUILDING CAPACITY IN GOVERNMENT AND ACADEMIC FOR EVIDENCE-BASED HEALTH DEVELOPMENT IN INDONESIA

THIS AGREEMENT is made the Jakarta day of 27 October 2016

BETWEEN: THE AUSTRALIAN NATIONAL UNIVERSITY, (ABN 52 234 063 906),
an institution established under the *Australian National University Act 1991* (Cth) as represented by the Research School of Population Health ACT, 2601 ('**ANU**').

AND: CENTER OF RESEARCH AND DEVELOPMENT FOR HUMANITIES AND HEALTH MANAGEMENT, NATIONAL INSTITUTE OF HEALTH RESEARCH & DEVELOPMENT – MINISTRY OF HEALTH REPUBLIC OF INDONESIA, Jalan Percetakan Negara 29, Jakarta 10560, Indonesia (**NIHRD – MOH**)

RECITALS

- A. The ANU has entered into the Funding Agreement with the Australian Government, Department of Foreign Affairs and Trade to undertake the Activity titled Building capacity in government and academic institutions for evidence-based health development in Indonesia ("**Activity**").
- B. ANU will require the collaboration of NIHRD – MOH in implementing activities to build capacity in Indonesian government and academic institutions for evidence-based health development in Indonesia.
- C. NIHRD-MOH is to be provided with some of the funding provided by DFAT through ANU under the Funding Agreement for the achievement of the aims of the Funding Agreement.
- D. The parties agree to the terms set out below.



1. INTERPRETATION

1.1 Except where the context requires otherwise, the following definitions are incorporated in this Agreement:

'Activity' has the meaning specified in Recital A.

'Funding Agreement' means the agreement between the ANU and the Australian Government, Department of Foreign Affairs and Trade (**'DFAT'**) in relation to the Activity titled Building capacity in government and academic institutions for evidence-based health development in Indonesia dated 19 December 2014 attached as Annexure A. [Note: This 'Funding agreement' is included as Annexure A for reference purposes only, the Annexure is not binding on the NIHRD-MOH]

'Agreement' means this document together with its schedules and annexures.

'Annexures list'.

Annexure A: Full text of the Funding Agreement between ANU and DFAT.

Annexure B: Details of the Activity as proposed by ANU to DFAT based on which DFAT awarded the Funding Agreement.

Annexure C: Details of the specific activities to be conducted under the responsibility of NIHRD-MOH, termed the 'NIHRD-MOH specified activity'.

Annexure D: Details of funds to be disbursed to NIHRD MOH for the conduct of the NIHRD-MOH specified activity.

'NIHRD-MOH Specified Activity' means the part of the Project that NIHRD-MOH must undertake as described in Annexure C.

'Activity Material' means any material brought into existence, as part of, or for the purpose of, the NIHRD-MOH Specified Activity.

'Agreement Period' means the period specified in clause 2.1 during which the NIHRD-MOH Specified Activity must be completed.

'Commencement Date' means the date this Agreement is signed by the Parties, or if signed on separate days, the date of the last signature.



'Existing Material' means all material in existence prior to the Commencement Date or material created or collected separately from this Agreement:

- a) incorporated in;
- b) supplied with, or as part of; or
- c) required to be supplied with, or as part of the Activity Material.

'Budget' refers to the budget set out in Annexure D.

'Funds' means:

- a) the amount or amounts payable under this Agreement by ANU to NIHRD-MOH as specified in Annexure D as 'Budget';
- b) where referring to NIHRD-MOH's use of, reporting, or acquittal of funds, includes any interest earned on those funds.

'Party' means either the ANU or NIHRD-MOH and **'Parties'** means both the ANU and NIHRD-MOH.

'Personnel' means, in relation to a Party, any employee, officer, agent, volunteer, subcontractor or professional adviser of that Party.

'Reports' has the meaning given in Annexure C.

'Term' means the term of this Agreement as provided in clause 2.

1.2 Unless the contrary intention appears in this agreement

- a) Words in the singular include the plural, and words in the plural include the singular;
- b) Words importing persons include a partnership and a body whether corporate or otherwise;
- c) All references to dollars are in Australian currency; and
- d) Reference to any statute or legislation (whether primary or subordinate) is to a statute or legislation of the Commonwealth of Australia or of the Republic of Indonesia as specified, and if it has been amended is a reference to that statute or legislation as amended.



2. TERM OF AGREEMENT AND TERMINATION

- 2.1 Unless earlier terminated, this Agreement is in effect from the Commencement Date until 30 June 2018.
- 2.2 In case the Funding Agreement between DFAT and ANU is terminated or reduced in scope due to any reason, then ANU may be required to terminate this Agreement or reduce its scope by written notice to NIHRD-MOH.
- 2.3 If ANU and NIHRD-MOH mutually agree, this Agreement may be terminated by either Party providing the other Party with thirty (30) days written notice.
- 2.4 Either Party may terminate this Agreement for material breach or insolvency by giving ninety (90) days written notice to terminate, stating the reasons for termination.
- 2.5 In the event of termination NIHRD-MOH must:
- a) cease expenditure of any uncommitted Funds;
 - b) prepare an account statement of funds already expended on the Activity till date of notice of termination and submit to ANU; and
 - c) refund any uncommitted part of the Funds already paid by ANU, together with any uncommitted or unspent interest, within thirty (30) days of the date of the notice to terminate.
- 2.6 There will be no refund of any expenses incurred for implementation of the NIHRD-MOH Activity previous to the date of termination.
- 2.7 The expected outputs of this Agreement will be adjusted by mutual consent of the Parties to be commensurate with the funds expended by the date of termination.
- 2.8 In the event that a notice to terminate is given by either Party under clause 2.3, ANU will not be liable to pay compensation for any amount to NIHRD-MOH.
- 2.9 No compensation is payable by ANU for termination under clauses 2.2 or 2.3.
- 2.10 Upon expiration or termination of this Agreement, each Party will at the request of the other, return or destroy all Confidential Information received from the other Party.



3. OBLIGATIONS OF NIHRD-MOH

- 3.1 NIHRD-MOH will carry out the NIHRD-MOH Specified Activity:
- a) diligently, competently and in accordance with generally accepted professional, scientific, ethical principles and standards.
 - b) in accordance with Annexure C;
 - c) providing the Reports as specified in this Agreement, and any other information (including access to NIHRD-MOH's financial records relating to the NIHRD-MOH Activity) and
 - d) expending the Funds in accordance with the budget as approved in Annexure D.
- 3.2 NIHRD-MOH warrants that it is financially viable and has the necessary relevant expertise to perform its obligations in relation to the NIHRD-MOH Specified Activity.
- 3.3 NIHRD-MOH agrees to:
- a) not subcontract the performance of any part of the NIHRD-MOH Specified Activity without the prior approval in writing of the ANU;
 - b) ensure that any work performed by an approved subcontractor in relation to the NIHRD-MOH Specified Activity is in accordance with this Agreement and the prevailing laws and regulations of the Republic of Indonesia;
 - c) if requested, promptly provide a copy of any subcontract relating to this Agreement to the ANU.
- 3.4 NIHRD-MOH agrees to be fully responsible for the performance of the NIHRD-MOH Specified Activity and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any subcontract entered into under this Agreement.

4. LIAISON AND OBLIGATIONS OF THE ANU

- 4.1 NIHRD-MOH acknowledge that the ANU is responsible for liaising with DFAT and administering the Funds.



- 4.2 Subject to the ANU receiving the Funds under the Funding Agreement, the ANU will provide NIHRD-MOH with a total of AUD740,000 of the Funds over 3 years in accordance with the Payment Schedule specified in Annexure C of this Agreement in consideration for NIHRD-MOH fulfilling the NIHRD-MOH Specified Activity.

5. DATA OWNERSHIP AND INTELLECTUAL PROPERTY

- 5.1 Data collected and processed during the Activity, as well as specific data management infrastructure generated during the Activity will remain under the ownership of NIHRD-MOH.
- 5.2 ANU can access and utilise the Activity related data owned by NIHRD-MOH to fulfil the specific and overall expected outputs of the Activity.
- 5.3 Both Parties shall ensure confidentiality of the data shared between them both during and after the implementation of this Agreement.
- 5.4 Intellectual property rights in the Activity Material shall be jointly owned by NIHRD-MOH and ANU. Any publication or other dissemination or use of the results from the Activity shall require mutual consent of both Parties.
- 5.5 The ANU and NIHRD-MOH grant each other a permanent, irrevocable, non-transferable, non-exclusive, free of cost licence to use the intellectual property rights in the Activity Material for internal, non-commercial purposes.
- 5.6 This clause does not affect the ownership of Intellectual property rights in any Existing Material incorporated into the Activity Material.
- 5.7 To the extent that ANU needs to use any NIHRD-MOH Existing Material for the purpose of performing its obligations under this Agreement, NIHRD-MOH grants to the ANU world-wide, royalty free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate Existing Material incorporated in the Activity Material to the extent necessary to carry out the Activity but for no other purpose.
- 5.8 To the extent that NIHRD-MOH needs to use any ANU Existing Material for the purpose of performing its obligations under this Agreement, the ANU grants to



the NIHRD-MOH a world-wide, royalty free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate Existing Material incorporated in the Activity Material to the extent necessary to carry out the Activity but for no other purpose.

- 5.9 No representations or warranties are made or given in relation to intellectual property rights in Existing Material, however each Party making available intellectual property rights in Existing Material acknowledges that to the best of its knowledge at the time of entering into this Agreement, intellectual property rights in Existing Material when used in accordance with this Agreement will not infringe any third party intellectual property rights.

6. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

- 6.1 NIHRD-MOH and ANU must ensure that their subcontractors and personnel, have regard to and comply with, relevant and applicable laws, guidelines and policies that are relevant for the implementation of this Agreement, including those in the national regulations of the host country.
- 6.2 Under the Funding Agreement (see Annexure A), ANU is required to comply with any lawful request of the Australian Auditor General and the Australian Privacy Commissioner relating to this Agreement. Such requests could include information in regard to the NIHRD-MOH Specified Activity. Therefore upon request NIHRD-MOH must provide any necessary information to enable DFAT and ANU to comply with any such a lawful request of the Australian Auditor General and the Australian Privacy Commissioner relating to the NIHRD-MOH Specified Activity covered in this Agreement.
- 6.3 NIHRD-MOH and ANU must respect of personal information of personnel in connection with this Agreement, comply with all applicable laws regarding privacy and personal information.
- 6.4 ANU and NIHRD-MOH must ensure that all persons, including personnel and subcontractors, engaged in activities under the agreement shall abide by the laws and regulations of the host country including those governing the issues of



child protection, terrorism and corruption.

- 6.5 ANU and NIHRD-MOH must ensure that all persons, including personnel and subcontractors, engaged in activities under the agreement shall respect political independence, sovereignty and territorial integrity of the host country, shall not interfere in internal affairs of the host country and shall avoid any activity that is inconsistent with the purpose and objective of the agreement.

7. FRAUD

- 7.1 For the purposes of this clause 'Fraudulent Activity', 'Fraud' or 'Fraudulent' means dishonestly obtaining a benefit, or causing a loss by deception or other means and includes incidents of attempted, alleged, suspected or detected fraud.
- 7.2 NIHRD-MOH and their employees, agents, representatives and subcontractors must not engage in any Fraudulent Activity. NIHRD-MOH is responsible for preventing and detecting Fraud by their respective entities.
- 7.3 In the event of a Fraud, NIHRD-MOH must develop and implement a strategy to investigate in accordance with the Republic of Indonesia's laws and regulations. NIHRD-MOH (as the case may be) must undertake the investigation at their own cost. NIHRD-MOH must share information on detection of Fraud within the Activity with ANU, at the earliest.
- 7.4 Following the conclusion of an investigation, where the investigation finds proof of Fraudulent activity, NIHRD-MOH shall ensure recovery of misappropriated Funds and/or items of property, along with official processing of the case under Indonesian regulations;
- 7.5 Following the conclusion of an investigation, If NIHRD-MOH (as the case may be) considers that after all reasonable action has been taken to recover the Funds or funded property and full recovery has not been achieved or recovery has only been achieved in part, NIHRD-MOH (as the case may be) will inform ANU accordingly, to discuss and arrive at a decision for no further action in the specific case.

7.6 NIHRD-MOH's obligations under this clause are applicable only for the term of this agreement.

8. DISPUTE RESOLUTION

8.1 The Parties undertake to use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with the terms of this Agreement.

8.2 A Party may give the other Party a notice of dispute (Dispute Notice) in connection with the terms of this Agreement. Following the giving of a Dispute Notice, the dispute must initially be referred to a representative of each of the Parties relevant to the dispute, who will use reasonable efforts to resolve the dispute within 10 business days of the giving of the Dispute Notice.

8.3 If the Parties have not been able to resolve the dispute in accordance with clause 8.2, then the Parties (relevant to the dispute) may agree on a process for resolving the dispute through mediation or conciliation, excluding litigation or arbitration.

9. NOTICES

9.1 Any notices under this Agreement must be in writing and will be considered delivered when sent by pre-paid registered mail or facsimile (providing a printed confirmation that the facsimile was successfully sent is obtained) and addressed to the Parties as set out below, or at such substituted addresses as the Parties may notify each other in writing:

(a) For the ANU:

Professor Archie Clements – Director, Research School of Population Health

62 Mills Road

The Australian National University

Canberra ACT 2601

AUSTRALIA

Phone: +61 2 6125 2378

Email: director.rsph@anu.edu.au

(b) For the NIHRD-MOH

[ex officio]

Center of Research and Development for Humanities and Health
Management

National Institute of Health Research & Development

Ministry of Health Republic of Indonesia

Jalan Percetakan Negara 23A

Jakarta 10560

INDONESIA

Phone: +62 21 4243314

Fax: +62 21 4211845

- 9.2 In the absence of proof to the contrary, a notice will be deemed to have been received, in the case of pre-paid registered mail, 3 days after it was sent if sent locally and 10 days after it was sent if sent overseas and, in the case of facsimile transmission, at the time recorded on the transmission confirmation report.

10. ENTIRE AGREEMENT

This Agreement, including Annexures A, B, C and D, constitute the entire agreement between the Parties with respect to the subject matter of this Agreement.

11. WAIVER

A waiver by a Party of any rights arising from a breach or non-observance by the other Party of a term of this Agreement shall not be taken to operate in any way as a waiver of any rights arising from any subsequent continuation of that breach or non-observance, or any further or other breach or non-observance of the same or any other term.

12. GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the law the Republic of Indonesia or the Australian Capital Territory, where applicable.



13. SEVERAL LIABILITY

The liability of the Parties under this Agreement is several and not joint.

14. ASSIGNING THIS AGREEMENT

The NIHRD-MOH must not assign its interest in this Agreement without first obtaining the consent in writing of ANU.

15. DELAY

No delay, neglect or forbearance by either Party in enforcing against the other any term or condition of this Agreement will be deemed to be a waiver or in any way prejudice any right of that Party.

16. LANGUAGE

This agreement signed in 2 (two) original copies in English and Indonesian, all text being equally authentic. In case of any divergence of interpretation, the English text will prevail.



Executed as an AGREEMENT:

**SIGNED for the AUSTRALIAN
NATIONAL UNIVERSITY by**

KIARAN KIRK

its duly authorised officer

in the presence of:

[Signature]

Signature of witness

NANCY RICHARDSON

Name of witness

AUSTRALIAN NATIONAL UNIVERSITY

Address of Witness

**SIGNED for and on behalf of the
CENTER OF RESEARCH AND DEVELOPMENT
FOR HUMANITIES AND HEALTH MANAGEMENT,
NATIONAL INSTITUTE OF HEALTH RESEARCH
AND DEVELOPMENT – MINISTRY OF HEALTH by**

DR. DEDE ANWAR MUSADAD, SKM, MKES

its duly authorised officer

in the presence of:

[Signature]

Signature of witness

M. RIYADI, SKM, MSc, PH

Name of witness

MDH

Address of Witness

[Signature]

Signature

[Signature]

Signature