

Contractor's Agreement

Simulation Industry Association of Australia Ltd
ABN 13 087 862 619
through its chapter the Australian Society for Simulation in Healthcare
(Principal)

St Vincent's Hospital Sydney Limited
ABN 77 054 038 872
(Contractor)

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THIS CONTRACTOR'S AGREEMENT is made on

2008

BETWEEN Simulation Industry Association of Australia Limited (SIAA)
ABN 13 087 862 619, through the Australian Society for Simulation in
Healthcare, a chapter of SIAA.
(Principal)

AND St Vincent's Hospital Sydney Limited ABN 77 054 038 872 (Contractor)

RECITALS

- A. The Contractor has agreed to perform certain Contractor Services for the Principal.
- B. The Contractor is engaged to complete the Contractor Services to assist the Principal in promoting specialist training in synthetic learning environments particularly the development of non-technical skills relevant to accredited specialist training.

IT IS AGREED

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Agreement means this document and all schedules to it;

Commencement Date means the date specified in item 1 of schedule 2.

Commonwealth Confidential Information means information which the Principal indicates, or which is readily apparent from the information itself, as having been sourced from the Commonwealth and:

- (a) is by its nature confidential;
- (b) is designated by the Commonwealth in writing as being confidential; or
- (c) the Contractor knows or ought to know is confidential;

but does not include information that:

- (a) is or becomes public knowledge, other than by breach of this Agreement or by any other unlawful means;
- (b) is in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from the Principal; or
- (c) has been independently developed or acquired by the Contractor.

Commonwealth Contract means the Funding Agreement dated 20 June 2007 between the Commonwealth of Australia (represented by the Department of Health and Ageing), and the State of Queensland (represented by Queensland Health), as novated to the Principal and varied by Deed of Novation and Variation dated 24 June 2008.

Contractor means the party identified in item 8 of schedule 2.

Contractor Reports means the reports required in accordance with the Contractor Services and specified in schedule 1.

Contractor Services means the services described in schedule 1.

Contract material means:

- (a) any material forming part of or constituting a Deliverable that is created, written or otherwise brought into existence by or on behalf of the Contractor in the course of performing the Contractor Services (called “new contract material”); and
- (b) any material that exists at the Commencement Date and is incorporated into a Deliverable (called “existing contract material”).

Confidential Information means all information relating to the Commonwealth Contract, this contract and the Principal’s business, operations, members and future development plans:

- (a) is by its nature confidential;
- (b) is designated by the Principal as being confidential; or
- (c) the Contractor knows or ought to know its confidential;

but does not include information that:

- (a) is or becomes public knowledge, other than by breach of this Agreement or by any other unlawful means;
- (b) is in the possession of the Contractor without restricting in relation to disclosure before the date of receipt from the Principal; or
- (c) has been independently developed or acquired by the Contractor.

Deliverable means any document, piece of equipment, data listing or other creation required to be delivered to the Principal in order to complete the performance of the Contractor Services.

Force Majeure means any event beyond the reasonable control of the party affected and includes an event due to natural causes that happens independently of human intervention.

Intellectual Property Rights means all copyright, patents and all rights in relation to inventions, trade marks and designs.

Key Personnel means the representatives of the Contractor specified in item 6 of schedule 2.

Payment Schedule means schedule 3 of this Agreement.

Progress Report means the report(s) submitted by the Contractor in accordance with section 4 of schedule 1.

Pre-Existing Contract Material are materials which the Contractor can establish to the satisfaction of the Project Officer:

- (d) existed, in substantially the same form and with substantially the same contents, prior to the engagement of the Contractor;
 - (e) are the property of the Contractor; and
 - (f) are of general application and do not relate specifically to the work under the Contract or to the operations, responsibilities or business interests of the Principal.
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Principal's consent means prior written consent of the Principal which may be given subject to reasonable terms and conditions as the Principal may see fit to impose.

Project Officer means the person specified in item 3 of schedule 2 or any other person substituted by the Principal by notice to the Contractor.

Records means all material including but not limited to books, documents, information, computer software, equipment, and data stored by any means disclosed, or made available, by the Principal to the Contractor in connection with the performance of this Agreement.

1.2 Interpretation

In this Agreement:

- (a) clause headings are not to be used as an interpretation aid;
- (b) words in the singular include the plural and words in the plural include the singular according to the requirements of the context;
- (c) a reference to a clause or a schedule is a reference to a clause or schedule of this Agreement; and
- (d) where there is any conflict between a clause of this Agreement and anything contained in a schedule of this Agreement, the provisions of the clause will prevail to the extent of the inconsistency.

2. TERM

This Agreement will start on the Commencement Date and unless otherwise terminated earlier in accordance with its terms, will continue until the Contractor Services have been performed in accordance with this Agreement.

3. CONTRACTOR SERVICES

3.1 Quality of Services

- (a) The Contractor will provide and complete the Contractor Services through its Key Personnel, to the standards and in the manner, frequency, quantity and times specified in schedule 1.
- (b) The Contractor will ensure that the Contractor Services are of good quality and suitable in all respects for their intended purposes.
- (c) The Contractor will ensure that the Contractor Services meet the requirements set out in this Agreement.
- (d) The Contractor will ensure that the Deliverables do not infringe any intellectual property rights of another party.
- (e) The Contractor will act professionally at all times and exercise skill, care and diligence in performing the Contractor Services.

3.2 Contractor to Inform Itself

- (a) The Contractor has informed itself of the nature of the work and materials necessary for completion of the Contractor Services under this Agreement.
-

- (b) The Contractor warrants to the Principal that no representation or warranty has been given or is given to the Contractor by or on behalf of the Principal as to the suitability or completeness of any information supplied or made available by it.

3.3 Contractor Warranties

- (a) The Contractor warrants that it has the qualifications, admissions and memberships (if any) necessary to complete the Contractor Services.
- (b) The Contractor will ensure that the Deliverables comply with the standards and specifications set out in schedule 1.
- (c) The Contractor warrants that it will consult regularly with the Principal, via the Project Officer, throughout the performance of the Contractor Services.

4. KEY PERSONNEL

4.1 Performance by Key Personnel

The Contractor Services will be performed by the Key Personnel. Consent from the Principal is required in the circumstance that the Contractor would like to engage another person to act on behalf of or replace any of the Key Personnel.

4.2 Quality

The Contractor will ensure that Key Personnel are competent and have the necessary skills to perform the Contractor Services.

4.3 Delegation

The Contractor will not without the Principal's consent -

- (a) allow Key Personnel to delegate any part of the Contractor Services; or
- (b) allocate tasks that are not connected with the Contractor Services to any of the Key Personnel engaged on the Contractor Services on a full time basis until completion of the Contractor Services allocated to that person.

4.4 Unavailability and notice

If any of the Key Personnel are not available to perform any of the Contractor Services allocated to them the Contractor will immediately -

- (a) give notice to the Principal of the circumstances; and
- (b) if so requested by the Principal, arrange for a replacement of that person with a person satisfactory to the Principal at no cost to the Principal.

4.5 Removal of Key Personnel

The Principal may, on reasonable grounds, give notice requiring the Contractor to remove Key Personnel from working on the Contractor Services. Upon receipt of a notice pursuant to this clause 4.5, the Contractor will, at no cost to the Principal, promptly remove and replace the Key Personnel referred to in the notice with a person satisfactory to the Principal.

5. FEES AND REIMBURSABLE EXPENSES

5.1 Payment

The Contractor will provide the Contractor Services and will receive payment for the Contractor Services in accordance with schedule 3.

5.2 Services not performed

The Contractor will not be entitled to be paid for any part of the Contractor Services which the Project Officer has certified as not having been performed in accordance with this Agreement.

The Project Officer will notify the Contractor within 10 days of receipt of a Progress Report of such incomplete or inadequate services.

5.3 Rectification

The Contractor will promptly perform or rectify any part of the Contractor Services certified as not being performed in accordance with this Agreement. The Principal may, without limiting any other right it may have, defer payment for that part of the Contractor Services until the Project Officer has certified that any defect or omission in the services have been performed or rectified to comply with the requirements of this Agreement.

5.4 Reimbursement of Expenses

The Contractor may include in an invoice under clause 6 a claim, and be paid, for the expenses described in item 7 of schedule 2 after those expenses have been incurred by the Contractor. The Principal will only reimburse the Contractor for other expenses that have been incurred by the Contractor with the Principal's consent.

If travel expenses are included in item 7 of schedule 2, the Principal will pay only economy class fares and moderate meal and accommodation expenses.

6. INVOICES & PAYMENT

6.1 Invoice

The Principal will not have any obligation to pay the Contractor for any part of the Contractor Services until the Principal has been given a correctly rendered invoice as reasonably required by the Principal and in accordance with clause 6.4.

The Contractor will be paid in accordance with schedule 3. Invoices must be of sufficient detail to allow the Principal to assess progress against targets. For work carried out on a time basis, invoices must be supported by records of time spent by individuals on the Contractor Services, certified by the Contractor and the Project Officer.

6.2 Additional Information

Upon receipt of an invoice, the Principal may require the Contractor to provide additional information to assist the Principal to determine whether or not an amount is payable.

6.3 Timing

The Principal will make payment of a correctly rendered invoice within 30 days after the end of the month in which a correctly rendered invoice is received or if additional information is required by the principal pursuant to clause 6.2, 30 days after receipt of the additional information.

6.4 Invoice Requirements

For the purposes of this clause 6, a correctly rendered invoice is an invoice that has been transmitted to the Principal in accordance with clause 29 and -

- (a) the amount claimed in the invoice is due for payment pursuant to this Agreement;
- (b) the amount claimed in the invoice is correctly calculated in accordance with this Agreement;
- (c) the invoice correctly identified the Contractor Services performed; and
- (d) travel, meal and accommodation expenses are separately itemised in the invoice.

The Principal will notify the Contractor within 14 days after the receipt of an invoice found not to be correctly rendered.

6.5 Paid but incorrectly rendered invoices

If an invoice is found, after the Principal has paid the invoice amount to the Contractor, not to have been correctly rendered, the Principal will, as the case requires -

- (a) pay an amount owed to the Contractor within 30 days after the end of the month in which a correctly rendered invoice is received, or if additional information is required by the Principal pursuant to clause 6.2, within 30 days after receipt of the additional information; or
- (b) deduct any amount owed to the Principal from the next invoiced payment or, if no other payment is due to the Contractor pursuant to this Agreement, recover the amount from the Contractor as a debt due to the Principal.

6.6 Not an Admission

Payment of money to the Contractor will not constitute an admission by the Principal that any of the Contractor Services have been performed in accordance with this Agreement.

7. NO AGENCY

The Contractor will not -

- (a) represent itself or allow itself to be represented as an employee or agent of the Principal; or
 - (b) by virtue of this Agreement be or become an employee or agent of the Principal.
-

8. CONFLICT OF INTERESTS

8.1 Contractor's Conflict

The Contractor warrants that, to the best of its knowledge, it does not, and is not likely to have a conflict of interest in the performance of this Agreement. If a conflict or risk of conflict of interest arises (without limitation, because of work undertaken for any person other than the Principal) the Contractor will immediately give notice of the conflict of interest, or the risk of it, to the Principal.

8.2 Conflicting Activity

The Contractor will take all reasonable measures to ensure that its employees, agents and sub-contractors do not engage in any activity or obtain any interest which is in conflict with providing the Contractor Services to the Principal fairly and independently. The Contractor will immediately give notice of any conflict of interest relating to the activities or interests of any of its employees, agents or sub-contractors to the Principal.

8.3 Termination

If the Principal is given notice of a conflict of interest pursuant to clause 8.1 or 8.2, the Principal may proceed in accordance with clause 16.4 to terminate this Agreement.

9. CONTRACT MATERIAL

9.1 Intellectual Property Rights vest in Principal

Intellectual property rights in, or relating to all Contract Material created or acquired by the Contractor or any person engaged by the Contractor pursuant to this Agreement will vest in the Principal.

Title to and intellectual property rights in all Contract Material, including each and every stage of design and production of it, will upon its creation be transferred to the Principal without the need for further assurance.

Prior to commencing work in relation to the Contract Material, the Contractor will obtain from every person who is to create Contract Material, and provide to the Principal, a written assignment from that person to the Principal of any intellectual property rights which may vest in that person as a result of that person performing the work.

9.2 Pre Existing Contract Material

This Agreement does not affect intellectual property rights in Pre-Existing Contract Material but the Contractor grants, and will ensure that relevant third parties grant, to the Principal a paid up non-exclusive non-transferable licence -

- (a) to use, reproduce and adapt for its own use; and
- (b) to perform any other act with respect to copyright; and
- (c) to manufacture, sell, hire or otherwise exploit a product or process or to provide a service or to licence a third party to do these things in respect of,

the Pre-Existing Contract Material but only as part of the contract material (and any further development of that material).

9.3 Expiry or Termination

Upon the expiration or earlier termination of this Agreement, the Contractor will deliver to the Principal all records, contract material and all copies of it, and if necessary, transfer or have transferred any intellectual property rights to the Principal.

9.4 Use of contract material

The Contractor will ensure that the contract material and records are used, copied, supplied or reproduced only for the purposes of this Agreement.

9.5 Electronic Form

If any contract material is produced or reproduced in an electronic format, the Contractor must deliver it to the Principal in a format approved in writing by the principal.

The Contractor must not produce, reproduce or store contract material in such a way that it is mixed with, attached to or indistinguishable without the use of a computer, from material that is not the subject of this Agreement.

9.6 Moral Rights

Where the Contractor is an individual, the Contractor consents to any acts or omissions of the Principal in the exercise of rights or assignments granted under this clause that might otherwise constitute an infringement of the Contractor's Moral Rights.

Without limiting this clause, the Contractor consents, in relation to the contract material to being attributed as author of works comprised in the Contract Material in a form and manner acceptable to the Principal.

Prior to an individual commencing work in respect of the Contract Material on behalf of the Contractor, the Contractor must obtain from that individual, in writing, and provide to the Principal, upon request:

- (a) All consents, permissions and assignments to enable the Principal to exercise in full, without cost to the Principal and without impediment, the rights granted under this clause; and
- (b) without limiting paragraph (a), a consent to any act or omission which would otherwise infringe the Moral Rights of that individual. Such consent will be in a form specified by the Principal.

9.7 Commonwealth Material

- (a) For the purpose of this clause 9.7 "Commonwealth Material" means material which have been:
 - (i) provided by the Commonwealth to the Principal for the purposes of the Commonwealth Contract; or
 - (ii) copied at any time from the Material referred to in clause (i).
- (b) The Contractor acknowledges that the intellectual property rights in the Commonwealth Material remain invested at all times in the Commonwealth.

- (c) The Contractor agrees to ensure that all Commonwealth Material is used strictly in accordance with any conditions or restrictions communicated by the Principal as having being stipulated by the Commonwealth.
- (d) On the conclusion of the Contract Services or on the earlier termination of this agreement, the Contractor must return all copies of Commonwealth Material to the Principal.

10. PROJECT MANAGEMENT

10.1 Generally

The Principal appoints the Project Officer as its agent for the purposes of this Agreement.

If pursuant to a provision of this Agreement, the Project Officer gives a direction, the Contractor will comply with that direction.

A direction may be given orally by the Project Officer but the Project Officer must as soon as practical confirm it in writing.

10.2 Liaise with Project Officer

The Contractor will -

- (a) liaise with and report to the Project Officer; and
- (b) attend meetings and briefings with representatives of the Principal as reasonably required by the Project Officer.

10.3 Contractor Reports

Contractor Reports to the Project Officer must be in writing, unless otherwise permitted by the Project Officer.

10.4 Assistance Relating to Commonwealth Contract

- (a) The Contractor must provide all reasonable assistance to the Principal for the purpose of the Principal responding to request for information from the Commonwealth under the Commonwealth Contract.
- (b) The Contractor must, at all reasonable times, give to persons authorised in writing by the Commonwealth Department of Health, permission to:
 - (i) Inspect any material relevant to this Agreement; and
 - (ii) Access and copy any records of the Contractor Relating to the Contract Services.
- (c) The Contractor will provide the Principal with all assistance reasonably requested by the Commonwealth Department through the Principal with respect to any enquiry into or concerning the project which is the subject of the Commonwealth Contract.
- (d) This clause applies until the expiration of an earlier termination of the Agreement and for a period of 7 years from that date.

11. DISCLOSURE OF INFORMATION

11.1 Non Disclosure

The Contractor must not, and must ensure that its Key Personnel, employees or any other person acting on its behalf do not, use or disclose to any person or make public the Confidential Information and the Commonwealth Confidential Information, for any purposes other than performance of the services under this Agreement except:

- (a) if the information is in the public domain;
- (b) as required by law;
- (c) if disclosure is made for the purpose of obtaining legal advice; or
- (d) if disclosure is authorised in writing by the Principal.

The Contractor will keep all records and other information in a secure location so that no unauthorised person is able to gain access to them.

11.2 Undertakings

The Principal may, for its own benefit or the Commonwealth's require the Contractor to give, and to arrange for any employees and subcontractors engaged in the Contract services to give written undertakings in a form required by the Principal, relating to the non-disclosure of Confidential Information and/or Commonwealth Confidential Information. The Contractor must promptly arrange for such undertakings to be given.

12. PROTECTION OF PERSONAL INFORMATION

12.1 Application and Definitions Contractor

- (a) This clause applies only where the Contractor deals with Personal Information when, and for the purpose of, performing the contract services.
- (b) In this clause 12, 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.

12.2 Contractor's Obligations

The Contractor agrees in respect of performing the Contract Services:

- (a) to use or disclose Personal Information obtained during the course of performing the Contract Services, 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 Contractor holds, that complaints about acts or practices of the Participant may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor 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 NPPs 7 to 10) or an APC where that section, NPP or APC is applicable to the Contractor, unless:
 - (i) in the case of section 16F, the use or disclosure is necessary, directly or indirectly, in the performance of the Contract Services; or
 - (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 the Contract Services, 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 party to this Agreement);
- (g) to immediately notify the Principal if the Participant becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 12, whether by the Participant 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 12; and
- (i) to ensure that any officers, employees or agents of the Contractor who are required to deal with Personal Information for the purposes of this Agreement are made aware of the obligations of the Contractor set out in this clause 12.

12.3 Subcontractor and employees

- (a) The Contractor 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 Participant has under this clause 12, including the requirement in relation to subcontracts.
- (b) The Contractor acknowledges that the Commonwealth may at any time by notice in writing to the Principal or Contractor require the Contractor to give, and to arrange for the Contractor's Key Personnel engaged in the performance of the Contract Services to give, undertakings in writing, in a form required by the Commonwealth, relating to the non-disclosure of Personal Information.
- (c) If the Contractor receives a request under clause 12.3(b), it agrees to promptly arrange for all such undertakings to be given.

12.4 Indemnity

The Contractor agrees to indemnify the Principal and the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Principal and the Commonwealth which arises directly or indirectly from a breach of any of the

obligations of the Participant under this clause 12, or a subcontractor under the subcontract provisions referred to in clause 12.4.

12.5 Obligations are Additional

The Contractor's obligations under this clause 12 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 Contractor but for the application of this clause 12.

12.6 Health Services

Notwithstanding any other provision in this clause 12 where the Contractor provides a health service to an individual in the course of the Contract Services 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.

13. SECURITY AND ACCESS

13.1 Principal Premises

The Contractor will, when using the Principal's premises or facilities, comply with all rules, directions and procedures including those relating to security and to workplace health and safety in effect at the premises or in regard to the facilities notified to the Contractor by the Principal.

13.2 Contractor Premises

The Contractor will give the Project Officer, and any other persons authorised in writing by the Principal, reasonable access to premises occupied by the Contractor where the Contractor Services are being undertaken and will permit them to inspect any contract material or other material relating to the Contractor Services.

The Project Officer and any other person authorised by the Principal, when at the Contractor's premises will comply with all rules, directions and procedures including those relating to security and to workplace health and safety in effect at the premises or in regard to those facilities as notified by the Contractor to the Principal.

14. SUSPENSION OF SERVICES

14.1 Suspension by the Principal

The Principal may by notice require the Contractor to suspend the progress of the whole or any part of the Contractor Services for a specified period within a reasonable time after receipt of the notice, if suspension is required by the Principal because of any change in the nature, scope or timing of the Contractor Services to be provided.

14.2 Suspension by the Contractor

If the Contractor wishes to suspend the whole or part of the services under this Agreement the Contractor shall obtain the prior written approval of the Project Officer. The Project Officer may approve the suspension subject to conditions.

14.3 Recommencement of Service

The Principal may by notice require the Contractor to recommence work on all or any part of the suspended Contractor Services.

14.4 Effect of Suspension

Where the Contractor is required to suspend Contractor Services pursuant to clause 14.1,

- (a) the Contractor and the Principal will negotiate in good faith as to reasonable compensation payable to the Contractor; and
- (b) any previously agreed completion dates for the Contractor Services will be postponed by a period equivalent to the duration of the suspension.

14.5 Reimbursement

The Principal will reimburse the Contractor for additional costs reasonably and properly incurred by the Contractor as a result of the suspension of Contractor Services pursuant to clause 14.1. If the Contractor and the Principal do not agree on the amount of reasonable compensation within thirty (30) days of the request for compensation by the Contractor, the amount will be determined pursuant to clause 27.

If a dispute referred to in clause 27 has arisen between the parties either party may, during the continuation of the dispute, by notice to the other party require the suspension of the progress of the whole or any part of the Contractor Services from the date specified in the notice until the dispute has been resolved.

15. VARIATION

15.1 Variation to the Contractor Services

The Principal may by notice require the Contractor to vary the Contractor Services in nature, scope or timing.

Without limiting the generality of clause 15.1, the Principal or the Project Officer may direct the Contractor to

- (a) increase, decrease or omit any part of the Contractor Services;
- (b) change the character, quality or content of any part of the Contractor Services;
- (c) change the direction or dimensions of any part of the Contractor Services;
- (d) perform additional work.

15.2 Pricing the Variation

Where the Principal requires a variation to the Contractor Services, the parties will negotiate in good faith a variation of the fees and the time for completion and failing Agreement, the fees and time for completion will be determined pursuant to

clause 27. The Contractor will not commence work on the variation to the Contractor Services without the Principal's consent and the written Agreement of both parties to the varied fees and time for completion.

15.3 Variation for the Convenience of the Contractor

If the Contractor requests that the Project Officer approves a variation for the Contractor's convenience the Project Officer may do so in writing and the approval may be conditional. Unless the Project Officer otherwise directs in writing the Contractor shall not be entitled to an extension of time to complete the Contractor Service or extra payment in respect of the variation or anything arising out of the variation.

16. PAYMENT FOR REDUCED CONTRACTOR SERVICES

16.1 Generally

In the event of a reduction of the Contractor Services the Principal will pay the Contractor;

- (a) any fees determined in accordance with clause 16.2 and 16.3 and;
- (b) reasonable costs, as determined by the Principal, incurred by the Contractor directly attributable to the reduction in Contractor Services.

16.2 Contractor Services in lump sum payment

Where the fee for the Contractor Services is a lump sum, the Principal will not be liable to pay any amounts to the Contractor pursuant to clause 15.1 where it would result in amounts greater than the fees and expenses specified in schedule 3 being paid to the Contractor.

16.3 Contractor Services based on schedule of rate

Where fees are on a schedule of rates basis the rates for the reduced Contractor Services will be subject to negotiation and Agreement between the Principal and the Contractor and failing Agreement resolved pursuant to clause 26.

16.4 Loss of Profits

The Contractor will not be entitled to compensation for loss of prospective profits.

17. DEFAULT OF THE CONTRACTOR AND TERMINATION

17.1 Termination by the Principal

If the Contractor

- (a) fails to comply with any of the terms and conditions of this Agreement;
- (b) fails to comply with a direction of the Project Officer given in accordance with this Agreement; or
- (c) enters into any arrangement or proceedings for the purpose of insolvency administration or is placed under official management,

the Principal may suspend payments under this Agreement and require the Contractor to show cause why the Agreement should not be terminated.

17.2 Notice to Show Cause

If the Principal suspends payments pursuant to clause 17.1, the Principal must -

- (a) give the Contractor notice of the suspension, specifying the reason; and
- (b) require the Contractor to show cause within 14 days of the notice why the Agreement should not be terminated.

17.3 Failure to Show Cause

If the Contractor fails to show cause within the period specified in the notice to the satisfaction of the Principal, the Principal may without prejudice to any other rights, terminate the Agreement by notice to the Contractor as of the date specified in the notice.

17.4 Contractor Default

If the Contractor:

- (a) abandons or refuses to proceed with the Contractor Services;
- (b) fails to comply with clause 8. (Conflict of Interest);
- (c) fails to comply with clause 18. (Compliance with laws); or
- (d) fails to comply with clause 20. (Insurance),

the Principal may terminate this Agreement by notice to the Contractor as of the date specified in the notice.

17.5 Final Payment

Upon termination of this Agreement pursuant to clause 17.3, or clause 17.4, all money which has been paid and all money to be paid for work done to the date of termination will be in full and final satisfaction of all claims by the Contractor under this Agreement.

18. COMPLIANCE WITH LAWS

The Contractor must comply with all relevant laws and requirements of any statutory authority in performing the Contractor Services.

19. INDEMNITIES

19.1 Contractor's Liability

The Contractor will be liable for loss or damage (including personal injury whether or not resulting in death) suffered by the Principal, its officers, servants or agents, arising from the unlawful or negligent acts or omissions of the Contractor in the course of the performance (or the attempted or purported performance) of the Contractor Services.

19.2 Contractor's Indemnity

The Contractor releases and indemnifies the Principal and all its officers, servants and agents from and against all actions, proceedings, claims and demands which may be brought or made against them by any person, including the Contractor arising from -

- (a) any wilful or negligent act or omission of the Contractor;
- (b) any unlawful or negligent act or omission of the visitors, invitees or licensees of the Contractor;
- (c) death, injury, loss or damage suffered by the Contractor or any of its visitors, invitees or licensees except where death, injury, loss or damage is caused by the wrongful act or omission of the Principal.

20. INSURANCE

20.1 Workers' Compensation Insurance

The Contractor must have and maintain for the duration of this Agreement workers' compensation insurance in relation to any employees of the Contractor for an unlimited amount, including liability under statute and at common law.

20.2 Public Liability and Professional Indemnity Insurance

Where specified in schedule 2, the Contractor must effect in connection with provision of the Contractor Services public liability insurance and professional indemnity insurance.

20.3 Insurance Requirements

The insurances must be effected with an agreed insurer and include terms and conditions acceptable to the Principal.

20.4 Duration of Insurance

- (a) If the Contractor 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 Contractor must maintain the policy during the term of this Agreement and a policy in like terms for 7 years after the expiry or earlier termination of this Agreement.
- (b) If the Contractor 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 Participant must maintain the policy during the term of this Agreement.

20.5 Proof of Insurance

The Contractor will -

- (a) before performing any of the Contractor Services; and
- (b) upon request in writing at any time by the Principal,

produce evidence to the Principal that the insurances required by this clause 19. have been effected and maintained.

21. UNAVOIDABLE DELAY

A party will not be entitled to exercise its rights and remedies upon the default of the other party (whether at common law or pursuant to this Agreement) if that default

- (a) is caused by force majeure; or
- (b) continues for less than three (3) days.

22. WAIVER

A right under this Agreement will only be waived where the waiver is in writing and is signed by the relevant party.

A waiver by either party will not prejudice its rights in respect of any subsequent breach of this Agreement by the other party.

23. GOVERNING LAW

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

24. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties in relation to its subject matter.

25. NO SUB-CONTRACTING

25.1 Subcontractor

The Contractor will not sub-contract any part of the Contractor Services without the Principal's prior written consent.

Subcontractors and their services which have been advised by the Contractor prior to signing this Agreement are listed in item 9 of schedule 2. The Contractor will not increase the subcontractor's services without the Principal's prior written consent.

25.2 Contractor's Responsibility

Approval to subcontract shall not relieve the Contractor from any liability or obligation under this Agreement. The Contractor shall be liable to the Principal for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were acts or omissions of the Contractor.

25.3 Assignment

The Contractor will not assign this Agreement or any of the benefits under this Agreement without the Principal's prior written consent.

26. ASSISTANCE

The Contractor will do all things reasonably required by the Principal to give effect to this Agreement or to perfect or protect the rights of the Principal including, without limitation, giving or obtaining confidentiality undertakings acceptable to the Principal in relation to records or Contractor Services.

27. RESOLUTION OF DISPUTES

27.1 Mediation

Any dispute associated with this Agreement will be the subject of mediation for a period of up to 14 days (or longer period agreed between the parties) by a mediator appointed by agreement between the parties.

If the parties fail to agree as to the appointment of a mediator within 7 days after a dispute arises, the mediator will be appointed by the Australian Commercial Disputes Centre (New South Wales Chapter).

27.2 Notice

For the purposes of this clause 27, a dispute will have arisen between the parties when one party gives notice to that effect to the other party.

28. GST-EXCLUSIVE

28.1 Meaning

In this clause “*adjustment event*”, “*adjustment note*”, “*GST*”, “*supply*”, “*supplier*” and “*tax invoice*” have the same meaning as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (“the GST legislation”).

28.2 Contractor Acknowledgment

The Contractor acknowledges that in terms of the GST legislation it will, under this Agreement, be a “supplier” and may be required to pay GST to the Commissioner of Taxation.

28.3 GST Exclusive

The parties agree that the agreed prices for the goods or services under the Agreement are GST exclusive prices.

28.4 Tax Invoices

The Contractor will ensure that all tax invoices and adjustment notes rendered to the Principal under the Agreement are in a format that identifies any GST paid, and which permits the Principal to claim an input tax credit.

28.5 GST Payable

Subject to clause 28.6, for a supply under this Agreement subject to GST, the Principal must pay to the Contractor an amount equal to the GST payable for that supply.

28.6 Input tax credits

Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled.

28.7 Adjustment note

The Contractor must issue an adjustment note to the Principal on or before 7 days after the occurrence of an adjustment event. The Principal's request for an adjustment note shall be deemed to have occurred on the date of the adjustment event. The adjustment note must identify the goods or services relevant to the adjustment event. Adjustment notes issued to the Principal must comply with the requirements of the GST legislation. Where an adjustment event occurs, the amount of GST payable under clause 28.5 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

28.8 GST Variance

If the amount of GST recovered from the Principal under this Agreement differs, for any reason, from the amount of GST paid or payable by the Contractor to the Commissioner of Taxation, including by reason of:

- (a) an amendment to the GST legislation;
- (b) the issue of or an alteration in a ruling or advice of the Commissioner of Taxation;
- (c) a refund of GST to the Contractor in respect of any supply made under this Agreement;
- (d) a decision of any tribunal or court,

then, subject to obtaining the written approval or instruction from the Principal, the difference in amounts will be paid by or to the Principal as the case may be.

28.9 PAYG

The Principal is authorised to withhold from payments to the Contractor, a subcontractor or worker such amounts as are required under the Pay as You Go (PAYG) system.

29. CLAUSES TO SURVIVE TERMINATION

The following clauses will survive termination or expiration of this Agreement:

- (a) clause 9 (intellectual property);
- (b) clause 11 (disclosure of information);
- (c) clause 12 (protection of personal information);
- (d) clause 20 (insurance);
- (e) clause 26 (assistance to protect the rights of the Principal).

30. NOTICES

Notices must be in writing and may be delivered by prepaid postage, by hand or by facsimile transmission to the parties at the addresses specified in schedule 2 item 2 or other address subsequently notified by a party to the other. Notices will be deemed to be given

- (a) two (2) days after deposit in the mail with postage prepaid;
-

- (b) immediately upon delivery by hand;
- (c) immediately upon an apparently successful facsimile transmission of the entire notice being noted by the sender's transmitter, unless sent on a Saturday or Sunday or after 5:00 PM on any other day ("a week day"), in which case the notice will, be deemed to be given at 9:00 AM on the next week day.

SCHEDULE 1

THE CONTRACTOR SERVICES

1. DEFINITIONS

1. **Synthetic learning environment (SLE)** – an area, used for the purpose of learning and related activities, the latter including research into, assessment and evaluation of learning, which reproduces components or aspects of the real world environment, to support learning.
2. **Simulation** in this document refers to learning methods provided in SLEs which support experiential learning. Key components of experiential learning include:
 - a. the learner interacts with his or her environment.
 - b. A high proportion of the learning activities enact activities and tasks representative of the learner’s real world responsibilities.
 - c. The environment needs to be sufficiently realistic for experiential learning to occur. Depending upon the learning objectives, realism can be built into the equipment, the surrounding environment or the overall integration of equipment, environment and interactions between learners and instructors ¹
3. **Vocational specialist trainee** – a medical practitioner undertaking post graduate training for the purpose of qualifying as a Fellow of a medical specialist college. The training is in accordance with the curriculum of the relevant accredited specialist college.
4. **Specialist colleges targeted to participate in this initiative comprise:**
 - a. Australasian College of Dermatologists (ACD)
 - b. Australasian College of Emergency Medicine (ACEM)
 - c. Australian and New Zealand College of Anaesthetists (ANZCA)
 - d. ANZCA - Joint Faculty of Intensive Care Medicine (JFICM)
 - e. ANZCA - Faculty of Pain Medicine (FPM)
 - f. Royal Australasian College of Medical Administrators (RACMA)
 - g. Royal Australasian College of Physicians (RACP)
 - h. RACP - Australasian Chapter of Palliative Medicine (ACPM)
 - i. RACP - Australasian Faculty of Rehabilitation Medicine
 - j. RACP - Australasian Faculty of Occupational Medicine (AFOM)
 - k. RACP - Australian Faculty of Public Health Medicine (AFPHM)
 - l. RACP - Paediatrics & Child Health Division (PCHM)
 - m. Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG)

¹ From Beaubien JM. Baker DP. The use of simulation for training teamwork skills in health care: how low can you go? Quality & Safety in Health Care. 13 Suppl 1:i51-6, 2004 Oct.

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- n. Royal Australian and New Zealand College of Ophthalmologists (RANZCO)
 - o. Royal Australian and New Zealand College of Psychiatrists and the Faculties of Child and Adolescent Psychiatry, and Old Age (RANZCP)
 - p. Royal Australian and New Zealand College of Radiologists and the Faculty of Radiation Oncology
 - q. Royal Australasian College of Surgeons (RACP)
 - r. Royal College of Pathologists of Australia (RCPA)
- 5. Specialist colleges not targeted in this initiative comprise:**
- a. Royal Australian College of General Practitioners (RACGP)
 - b. Australian College of Rural and Remote Medicine (ACRRM)
- 6. Clinical skills**, in this document, refer to domain specific components of clinical practice directly required including but not limited to:
- a. Patient assessment and clinical diagnostic reasoning
 - b. Judgement and decision-making regarding therapy
 - c. procedural knowledge and technical skills relevant to execution of procedures
- 7. Non-technical skills (NTS)**, in this document refer to cognitive functioning and observable behaviours that underpin safe and effective clinical practice. They include without being limited to the following:
- a. communication (patient-doctor, team)
 - b. leadership
 - c. teamwork
 - d. situation awareness and decision-making
 - e. resource management
 - f. safe practice, adverse event minimization/ mitigation
 - g. professionalism
- 8. Learning technologies** used in (SLEs) include, without being limited to:
- a. Manikin – life-like aspects of people and situations are generated by a manikin and or a “theatrical” interaction of actors and props with manikins.
 - b. Computer-based virtual reality – a realistic environment is reproduced on a computer screen.
 - c. Haptics (tactile information is fed back to the learner (E.g. feel of surgical instruments on tissue)
 - d. Actors – reproduce components of real world experience, especially involving communication between people
 - e. Part-task trainers – reproduce components of a patient’s anatomy. They are generally used to support procedural skills training however may be used in conjunction with other learning technologies to create integrated clinical situations.
 - f. Video – actual real world, or any of the above enacted on video
-

- 9. Learning methods** used in (SLEs) include, without being limited to:
- a. Scenarios - Using any of the above technologies to enact whole events or components of events.
 - b. Case-based learning – using other formats including written and oral presentations, to present clinical scenarios for learning.
 - c. Role play – Using any of the above technologies to enact interactions between people, including but not limited to:
 - i. health professionals and patients (E.g doctor–patient; nurse-patient)
 - ii. Health professionals and health professionals
 - d. Procedural training - Using any of the above technologies as a platform from which to conduct a procedure.
 - e. Multimodal formats – refer to activities which integrate two or more discrete techniques or curricula which use a variety of specific formats to address specific individual learning objectives.
 - f. Debriefing and reflection
- 10. Consultant** is a term giving reference to St Vincents, a contractor engaged by SIAA to provide consultancy services.

2. BACKGROUND

- (a) During 2008 and 2009, the Australian Society for Simulation in Healthcare (ASSH) Chapter, will manage (on behalf of the Australian Government) a project broadly aimed at promoting non-technical skills (NTS) relevant to accredited specialist training in synthetic learning environments (the “Project”). The Project, entitled: Non-Technical Skills Training (NTS) in Synthetic Learning Environments – Mapping Curricula for Vocational Specialist Training is a component of the Australian Government’s Expanded Specialist Training Program.
 - (b) The broad project comprises a series of activities including an information forum and the generation of a literature review, both aimed to inform specialist colleges about this topic. In addition, three specialist colleges will be selected to participate in an intensive curriculum development initiative and pilot training course.
 - (c) The Consultant (St Vincents Simulation Centre, Melbourne) has been commissioned to undertake several of the activities outlined in (ii).
 - (d) The Contractor (one of the pilot providers) will undertake the pilot training on behalf of ASSH.
 - (e) Three simulation providers (Contractors) will be contracted to develop and deliver a pilot training program to one of three specialist colleges, on behalf of ASSH.
-

3. PROGRAM OF TASKS

- (a) As one of the three expert simulation providers (the Contractor) you will work cooperatively with one designated college and the Consultant to develop and deliver a pilot training course.
- (b) The pilots will be targeted at different Specialist Colleges. The participating Specialist Colleges will be announced in September 2008.
- (c) ASSH will determine the Specialist Colleges to be involved in the pilots and will allocate Specialist Colleges to pilot providers. ASSH will allocate a Specialist College to the Contractor by November 2008.
- (d) The Contractor will provide one pilot activity for one Specialist College.
- (e) The Contractor will provide all resources required to provide the pilot training activity including office equipment, stationery and communication services.
- (f) The Contractor will conduct the pilot training activity in February 2009.

4. KEY OBJECTIVES, OUTCOMES AND DELIVERABLES

- (a) The Contractor shall work collaboratively with the Principal, the Curricula Mapping Consultancy project team and the nominated Specialist College. This will include:
 - Identifying learning objectives. This entails being advised by the consultancy project team regarding the priority learning objectives identified by the Specialist College.
 - Proposing suitable training technologies and methods. This entails advising the Specialist College regarding effective training technologies and methods best suited to address these objectives and developing a draft curriculum.
 - Working with key people within the Specialist College, consulting and receiving input, and where possible enabling them to participate in the training (as participants or faculty).
 - Allowing reasonable requests by ASSH and key stakeholders recommended by ASSH to observe part of the program.
 - (b) The Contractor shall invite specialists nominated by their collaborating Specialist College to contribute to the development of the pilot workshop and participate as facilitators.
 - (c) The Contractor shall develop a pilot training activity which entails the following:
 - developing a curriculum which reflects collaboration with project stakeholders.
 - to be conducted over a maximum of 2 days.
 - is piloted on a minimum of twelve (12) trainee specialists of the nominated Specialist College.
 - addresses the identified learning objectives.
-

- uses simulation methods for at least 70% of learning activities with 100% of the activities delivered from synthetic learning environments.
 - uses at least two approved simulation technologies.
 - is supported by a written course outline and relevant learning materials.
 - includes recruiting and administrative support, liaison and communication for participants.
 - cooperating with the consultant who is responsible for independently evaluating this pilot.
- (d) The Contractor shall address NTS topics relevant to the nominated Specialist College. This may include Crisis Resource Management, advanced communication or other NTS, if advised by the Project Officer (for the Principal).
- (e) The Contractor shall maintain accurate and detailed records of financial transactions and allocate funding within the agreed upon budget.
- (f) The Contractor shall acknowledge ASSH, the Commonwealth Department of Health and Ageing in any advertising or presentation of this pilot.

5. REPORTING GUIDELINES & TIMING OF DELIVERABLES WITH PROGRESS PAYMENTS

- (a) The first progress report which will include
- (b) The Final Report (due after completion of the pilot training activity) will include a descriptive report of the pilot training activity inclusive of the learning objectives, learning formats, any learning materials developed in relation to the pilot training activity or the project, and a financial statement (complying with Australian financial reporting standards).

Milestones	Deliverables	Key dates for deliverables and progress payments
Pre-Pilot Training Activity	Progress Report	December 19 2009
Pilot Training Completed	Pilot Training Activity	February 27 2009
Post-Pilot Training Activity	Final Report	March 30 2009

SCHEDULE 2

Item 1: Commencement Date

(clause 1.1) []

Item 2: Notices

(clause 30) All notices for the Principal are to be addressed to:

Name: Peter Hill
Position Title: SIAA Executive Officer
Address: PO Box 226, Lindfield, NSW 2070
Telephone: (02) 9415 3600
Facsimile Number: (02) 9415 3611
Email: ASSHchair@siaa.asn.au

All notices for the Contractor are to be addressed

Name: Dr Janet Chan
Position Title: Intensivist
Address: Intensive Care Unit
St Vincents Hospital
Victoria Street, Darlinghurst, NSW 2010
Telephone: 0402 097 930 / (02) 8382 3947
Facsimile Number: (02) 8382 3947
Email: jchan@stvincents.com.au

Item 3: Project Officer

(clause 1.1) The nominated Project Officer is:

Name: Dr Leonie Watterson
Position Title: ASSH Chair
Address: PO Box 226, Lindfield, NSW 2070
Telephone: 0401 719 220
Facsimile Number: (02) 9415 3611
Email: ASSHchair@siaa.asn.au

Item 4 Insurance

(clause 20.2) Workers Compensation Insurance: As required by law

Public Liability Insurance: \$10,000,000.00

Professional Indemnity Insurance: \$10,000,000.00

Item 6: Key Personnel

(clause 1.1)

Name	Organisation	Task Title / Duties
Dr Janet Chan	St Vincent's Hospital Sydney	<Insert>
Mrs Margaret Bramwell	Department of Social Work , Royal North Shore Hospital	<Insert>
Professor Stewart Dunn	Director of Pam McLean Cancer Communications Centre, Royal North Shore Hospital	<Insert>
Mr Geoff Bloom	Geoffrey Bloom and Associates	<Insert>

Item 7: Reimbursable Expenses

(clause 5.4)

Nil.

Item 8: Contractor Details

Company Name: St Vincent's Hospital Sydney Limited
 ABN: 77 054 038 872
 Address: Intensive Care Unit
 Victoria Street, Darlinghurst, NSW 2010

Item 9: Sub-Contractor Details

(clause 25)

Sub-contractor details:

Company Name: <Insert>
 ABN: <Insert>
 Personnel: <Insert>
 Position Title: <Insert>
 Address: <Insert>
 Services: <Insert>

SCHEDULE 3

Payment Schedule

Milestone	Stage of completion	Payment (exc GST)
1	Upon signing contract	\$10,000
2	Progress Report	\$10,000
3	Final Report	\$20,000
	TOTAL	\$40,000

SCHEDULE 4

Contractor's response to the "Expressions of Interest to provide NON-TECHNICAL SKILLS TRAINING FOR SPECIALIST TRAINEES USING SIMULATION METHODS – PILOT TRAINING IN PROJECTS "

Note: In the event of a conflict between this Contractors Agreement including Schedules 1 to 3, and Schedule 4, the Contractors Agreement including Schedules 1 to 3 shall take precedence.

SIGNED as an AGREEMENT

SIGNED by)
SIMULATION INDUSTRY)
ASSOCIATION OF AUSTRALIA)
LTD ABN 13 087 862 619)
in accordance with section 127 of the)
Corporations Act 2001:)

)
)
)
)
)

.....)
Signature of Director/Secretary)
)
.....)
Name of Director/Secretary)

.....
Signature of Director
.....
Name of Director

SIGNED by **St Vincent's Hospital**)
Sydney Limited ABN 77 054 038 872)

)
in the presence of:)

)
)
)
.....)
Witness)

)
)
)
.....)
Name (printed)

.....

