



Aboriginal and Torres Strait
Islander Health Practice
Chinese Medicine
Chiropractic
Dental
Medical
Medical Radiation Practice
Nursing and Midwifery
Occupational Therapy
Optometry
Osteopathy
Pharmacy
Physiotherapy
Podiatry
Psychology

Australian Health Practitioner Regulation Agency

CONTRACT FOR SERVICES

Parties

This Contract for Services is between

Australian Health Practitioner Regulation Agency (ABN: 78 685 433 429) ('AHPRA')

And

Insert name of Contractor (ABN: insert ABN) ('Contractor')

1 What the Contractor must do

- 1.1 The term of this Contract ('Term'):
 - (a) begins on the date by which both parties have signed, unless a start date is specified in Item 3 of Schedule 1; and
 - (b) ends on the end date specified in Item 3 of Schedule 1, unless terminated before then.
- 1.2 During the Term, the Contractor must provide the services ('Services') and goods (if any) ('Goods') set out in item 3 of Schedule 1.
- 1.3 Further detail regarding the Services and Goods (if any) is set out in:
 - (a) AHPRA Request for Proposal **Development, implementation and delivery of Chinese Medicine Board of Australia regulatory examinations**, dated **15 August 2019** ('AHPRA RFP'), which is Schedule 2 to this Contract; and
 - (b) the Contractor's response to the AHPRA RFP, which is Schedule 3 to this Contract ('Contractor's Response to RFP').
- 1.4 If there is an inconsistency between this Contract and the documents referred to in clause 1.3, the documents are to be interpreted in the following order of priority:
 - (a) this Contract;
 - (b) the AHPRA RFP; and
 - (c) the Contractor's Response to the RFP.
- 1.5 During the Term, the Contractor must provide the Services in accordance with the terms of this Contract and:
 - (a) all applicable laws and regulations;
 - (b) relevant industry standards;
 - (c) AHPRA's policies and procedures as notified to the Contractor in writing from time to time; and
 - (d) any reasonable directions in relation to the Services given by AHPRA from time to time.

- 1.6 The Services must be provided by the Contractor:
- (a) in a professional manner with due skill and care;
 - (b) using appropriately skilled and qualified Personnel; and
 - (c) to a standard of price, performance, quality and efficiency expected of a highly skilled supplier of similar services and goods
- 1.7 Whilst on AHPRA premises, the Contractor and any of its Personnel must comply with AHPRA's reasonable and lawful directions and policies as notified.
- 1.8 If a Key Person ('**Key Person**') is specified in item 5 of Schedule 1, the Contractor must cause the Key Person to provide the Services and be available for all reasonably required consultations with the AHPRA Contract Manager. The Contractor may only replace the Key Person with a person of similar qualifications, skill and experience, and who AHPRA approves in advance in writing.
- 1.9 The Contractor warrants that:
- (a) it has the right to enter into this Contract and provide the Services;
 - (b) the execution, delivery and performance of this Contract by it does not contravene any contractual, legal or other obligation that applies to it;
 - (c) it holds all licences, permits, consents and authorisations required under law in relation to the provision of the Services;
 - (d) the provision by the Contractor, and the receipt by AHPRA, of the Services will not breach any right of a third party, including any Intellectual Property rights.
- 1.10 If the Contractor supplies goods under this Contract, those goods must be (unless AHPRA agrees otherwise):
- (a) new and unused;
 - (b) of acceptable quality, fit for purpose, match their description and comply with any requirements agreed between the parties;
 - (c) delivered free of any encumbrance; and
 - (d) supplied with all relevant third party or standard manufacturer's warranties.
- 1.11 If the Contractor fails to deliver the Services to AHPRA's reasonable satisfaction by the last day of the Term, AHPRA may at its own option extend the Term until the Services are delivered or until such date as AHPRA otherwise notifies the Contractor.

2 Fees

- 2.1 The Fees payable to the Contractor for the Services are specified in item 4 of Schedule 1 ('**Fees**').
- 2.2 The Contractor must send AHPRA an invoice after it has provided the Services and or in accordance with any Fee Schedule set out in Item 4 of Schedule 1. The invoice must provide details of the Services provided and:
- (a) be emailed to invoices@ahpra.gov.au with a cc email to the AHPRA Contract Manager; and
 - (b) include:
 - (i) a unique invoice number;
 - (ii) the details of the Contractor's bank account to which payment is to be made; and
 - (iii) quote AHPRA's Purchase Order number
- 2.3 If the Contractor is liable to pay GST for a taxable supply it makes under this Contract, its invoice must be a valid tax invoice, and AHPRA need not pay until it receives this tax invoice.
- 2.4 If the Fees are consideration for taxable supplies, they include an amount equal to the GST payable in respect of those supplies.
- 2.5 Without limiting clause 2.4, all taxes, duties and government charges regarding this Contract must be paid by the Contractor.
- 2.6 Unless AHPRA disputes an invoice, it will pay the Fees within thirty (30) days of receiving the invoice.
- 2.7 AHPRA may withhold payment of any amount which in good faith it disputes is payable until the dispute is resolved.
- 2.8 Words defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause and clause 3.

3 Expenses

- 3.1 The Contractor may only claim expenses:
- (a) where Item 4 of Schedule 1 specifies an amount for expenses or AHPRA agrees in writing, in advance, to pay expenses;
 - (b) up to the amount specified in Item 4 of Schedule 1 or approved by AHPRA in writing; and
 - (c) on the basis of actual expenses incurred, substantiated to AHPRA's satisfaction.
- 3.2 If AHPRA agrees to reimburse the Contractor for expenses, and the Contractor can obtain an input tax credit on an acquisition associated with those expenses, the amount AHPRA is required to pay is:
- (a) reduced by the amount of that input tax credit; but
 - (b) increased by any amount of GST payable by the Contractor in respect of the reimbursement.

4 Confidentiality and Privacy

- 4.1 In providing the Services, the Contractor must comply with the *Privacy Act 1988* (Cth) and the privacy provisions in Part 10, Division 1 of the *Health Practitioner Regulation National Law* ('the National Law') (as in force in each state and territory) in the same way that AHPRA would be bound to comply with those Acts. The Contractor must also do anything reasonably necessary within its power to ensure AHPRA complies with those Acts in relation to the Services, and that it handles any personal information acquired under the Contract in accordance with AHPRA's privacy policy (available at: <http://www.ahpra.gov.au/About-AHPRA/Privacy.aspx>).
- 4.2 AHPRA and the Contractor must keep each other's confidential information, as defined in clause 4.3 ('**Confidential Information**'), confidential and must not disclose, or permit disclosure, of that information except:
- (a) where necessary to perform obligations or exercise rights under this Contract, or to audit activities under the Contract;
 - (b) as authorised or required by law, or where the information is used in relation to legal proceedings;
 - (c) if the information is required by a public sector auditor (as defined in the National Law), a Parliament or committee of a Parliament, or the National Health Practitioners Ombudsman or Privacy Commissioner in the course of performing their statutory duties;
 - (d) where the information is already made public other than by breach of this Contract; or
 - (e) where the other party gives prior written consent to the disclosure.

Without limiting the foregoing, the Contractor must comply with the confidentiality provisions in Part 10, Division 2, of the National Law in the same way that AHPRA would be bound to comply with those provisions.

(For example, this means the Contractor and the people it engages have a duty of confidentiality regarding 'protected information' under the National Law – see Part 10 of the National Law).

- 4.3 Subject to clause 4.2(a) to (e), Confidential Information includes, but is not limited to:
- (a) any information that a party maintains in confidence or marks as confidential;
 - (b) information that by its nature, and in the circumstances, would be regarded as confidential by a reasonable person; and
 - (c) internal administrative, financial and personnel data of a party.
- 4.4 The Contractor must not collect, use or disclose:
- (a) personal information or health information (as defined in the *Privacy Act 1988* (Cth)); or
 - (b) protected information (as defined in the National Law),
- except to the extent reasonably necessary to provide the Services.
- 4.5 The Contractor must:
- (a) Subject to the terms of this clause, make each person it engages to perform the Services sign a confidentiality deed using the form attached to this Contract. This obligation will not extend to the Contractor's employees or consultants who are already bound in writing by confidentiality obligations as comprehensive as those in the attached Deed;
 - (b) On AHPRA's request, produce evidence of the confidentiality obligations agreed to under subclause (a)

- (c) if it becomes aware of a breach (or possible or anticipated breach) of the Deed or relevant confidentiality terms, take action to enforce those terms, including all reasonable actions directed by AHPRA (and authorises AHPRA to enforce those terms if the Contractor fails to do so).
- 4.6 The Contractor must keep all of AHPRA's Confidential Information and any personal information in its control secure and protect it from unauthorised use.
- 4.7 The Contractor must:
 - (a) return to AHPRA, or at AHPRA's request, securely destroy any hard copies of AHPRA's Confidential Information and any personal information acquired under this Contract it holds; and
 - (b) delete any electronic copies of AHPRA's Confidential Information and any personal information acquired under this Contract it holds, or securely destroy the medium (e.g. disc) on which those electronic copies are held, after it completes the Services, unless it is legally required to keep that information for record-keeping purposes. To avoid doubt, the confidentiality and privacy obligations imposed by this Contract continue to apply to that information.
- 4.8 AHPRA may conduct audits to verify the Contractor's compliance with clause 4. The Contractor must provide access to its records and premises, and provide assistance, as reasonably required to enable AHPRA to carry out audits under this clause.
- 4.9 AHPRA will:
 - (a) provide at least 72 hours notice to the Contractor of a proposed audit;
 - (b) use its best endeavours to schedule and carry out audits so as to minimise impact on the Contractor's operations;
 - (c) only exercise this audit power as many times as reasonably required to confirm compliance with clause 4;
 - (d) in carrying out an audit, comply with the Contractor's reasonable and lawful policies and directions; and
 - (e) pay the Contractor's reasonable and substantiated expenses incurred in relation to an audit unless the audit finds material non-compliance with this clause 4.

5 Freedom of Information

- 5.1 The Contractor must promptly provide AHPRA with all documents in its control that are necessary for AHPRA to comply with the *Freedom of Information Act 1982* (Cth) (**'the FOI Act'**) in relation to this Contract and the provision of the Services and Goods (if any), on request and at no cost. In this clause 'document' has the same meaning as in the FOI Act.

6 Intellectual Property

- 6.1 AHPRA does not obtain any interest in the Intellectual Property created by the Contractor independently of this Contract (**'Background Intellectual Property'**).
- 6.2 Where the Services include Background Intellectual Property, the Contractor grants AHPRA a perpetual, non-exclusive, world-wide, royalty-free licence to use and adapt it (and to sub-licence it) so that AHPRA is able to enjoy the full benefit of the Services.
- 6.3 The Contractor assigns AHPRA ownership of all Intellectual Property in materials created in the course of providing the Services (**'Project Intellectual Property'**). If Project Intellectual Property belongs to Personnel engaged by the Contractor, the Contractor will arrange for it to be assigned to AHPRA.
- 6.4 AHPRA grants a non-exclusive, non-transferable, royalty-free licence to the Contractor to use and adapt AHPRA's and National Boards' Intellectual Property to the extent necessary for the Contractor to perform the Services, solely for the purpose of performing those Services. To avoid doubt, the Contractor is not licensed to use or adapt AHPRA's or a National Board's Intellectual Property for any other purposes, and this licence only applies during the Term.
- 6.5 The parties warrant that they have the necessary rights, or will obtain them, to perform this clause 6.

7 Moral Rights

- 7.1 The Contractor:
 - (a) agrees not to enforce against AHPRA or a National Board any moral rights (as defined in the *Copyright Act 1968* (Cth)) it may have in the Background Intellectual Property and Project Intellectual Property, so that AHPRA is able to enjoy the full benefit of the Services; and

- (b) warrants that use of the Background Intellectual Property and Project Intellectual Property by AHPRA or a National Board for the purpose of enjoying the full benefit of the Services will not infringe the moral rights of any other person.

('Moral rights' are defined in the *Copyright Act 1968* (Cth) to include, for example, a right to attribution of authorship of a work, and a right to object to modifications of that work).

8 No Publication

- 8.1 The Contractor is not permitted to publish, publicly present or otherwise disclose to any third party (including for peer review) any information gained in the course of this Contract (including data, advice and findings), the Contract terms or any other Confidential Information, unless it first obtains AHPRA's written consent to such publication or disclosure or it is permitted under clause 4.2 of this Contract.

9 Status of Contractor

- 9.1 AHPRA is engaging the Contractor as an independent contractor and nothing in this Agreement is intended to make the Contractor, or any person it engages or employs, an agent, representative, partner or employee of AHPRA.

10 Indemnity and insurance

- 10.1 The Contractor indemnifies the National Boards, AHPRA and its Personnel against any cost, loss, claim, charge, liability or damage that a National Board, AHPRA or its Personnel may reasonably sustain or incur directly or indirectly as a result of:

- (a) breach of the Contract by the Contractor or any person it engages; and
- (b) any negligent, unlawful or fraudulent act or omission or wilful misconduct in connection with the Contract by the Contractor or any person it engages.

- 10.2 For the purposes of clause 10.1, 'claim' includes all demands, rights, actions and proceedings of any kind.

- 10.3 The Contractor's liability under clause 10.1 is reduced to the extent a National Board, AHPRA or its Personnel caused or contributed to it by a negligent or unlawful act or omission.

- 10.4 The Contractor will not be liable to a National Board or AHPRA under clause 10.1 for any loss of profits.

- 10.5 AHPRA holds the benefit of this indemnity on trust for the benefit of the National Boards and AHPRA's Personnel.

- 10.6 AHPRA must take reasonable steps to mitigate its loss.

- 10.7 Nothing in this Contract is intended to limit or otherwise contract out of proportionate liability legislation.

- 10.8 The Contractor must on and from the start of the term of this Contract have:

- (a) public liability insurance coverage for at least \$5,000,000 for any one occurrence;
- (b) if this Contract includes the provision of goods, product liability insurance coverage for at least \$5,000,000;
- (c) workers compensation insurances required by Australian laws;
- (d) Unless Item 7 of Schedule 1 states to the contrary, professional indemnity insurance coverage for at least \$2,000,000 for any one claim; and
- (e) any other insurance nominated in Item 7 of Schedule 1,

with an insurer authorised under the *Insurance Act 1973* (Cth) and provide certificates of currency if AHPRA requests them.

- 10.9 Any insurance policies that provide cover on a 'claims made' basis must be maintained for no less than six years after the completion of the Services or termination.

11 Termination

- 11.1 This Contract may be terminated if both parties consent, or by AHPRA giving thirty (30) days' prior written notice to the Contractor.

- 11.2 AHPRA may immediately terminate this Contract by written notice to the Contractor if:

- (a) the Contractor breaches the Contract, and does not rectify the breach within seven (7) days of being asked to do so;
- (b) the Contractor is unable to pay all its debts when they become due, or enters into any form of insolvency, external administration or bankruptcy;

- (c) there is a change in the identity of the person who has control of the Contractor (that is, the power to direct or cause the direction of the management and policies of the Contractor, whether through ownership of voting securities, by contract or otherwise) from the person who had control at the time the Contractor signed this Contract, or in the case of a professional partnership that partnership merges or otherwise combines with another professional service firm without the prior approval of AHPRA;
 - (d) the Contractor's conduct brings its reputation into disrepute and AHPRA believes its continued association with the Contractor will be detrimental to AHPRA's reputation; or
 - (e) a conflict of interest exists or arises as described in clause 13.11.
- 11.3 Any termination of this Contract will not affect the accrued rights, claims or liabilities of a party under this Contract.
- 11.4 If this Contract is terminated, AHPRA is not liable to pay for Services provided after termination unless the parties otherwise agree in writing.

12 Dispute Resolution

- 12.1 Subject to clause 12.7, if there is a dispute about this Contract or an invoice issued by the Contractor, the parties must do the following.
- 12.2 Senior representatives from each party must meet and try to resolve the dispute quickly and informally.
- 12.3 If the parties cannot agree within ten (10) business days, either may give the other a notice requiring mediation by a mediator appointed jointly by the parties. The notice must state the matters in dispute. If the parties cannot agree on a mediator, the mediator will be appointed by the President of the Law Institute of Victoria.
- 12.4 Each of the parties must co-operate fully with the mediator.
- 12.5 A party may only commence legal proceedings when the mediator states in writing that it is no longer productive to continue the mediation.
- 12.6 Despite the existence of a dispute, the Contractor must (unless requested in writing by AHPRA not to do so) continue to perform the Services.
- 12.7 This procedure for dispute resolution does not apply to an act relating to termination or legal proceedings for urgent interlocutory relief.

13 General

- 13.1 The laws of Victoria (excluding its choice of law rules) apply to this Contract, and the parties submit to the exclusive jurisdiction of the Courts of that State.
- 13.2 The Contractor must ensure that it and the people it engages comply with all relevant laws in connection with this Contract.
- 13.3 If any clause or part of any clause of this Contract is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part of the clause) is to be severed from this Contract without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses).
- 13.4 This Contract is the entire agreement of the parties regarding the matters set out in it and supersedes all other representations, agreements, statements and understandings between them, whether verbal or written, and whether made before the signing of this Contract or during the provision of the Services.
- 13.5 This Contract may only be varied with the written consent of each party.
- 13.6 Notices regarding this Contract must be sent to the Contract Managers specified in Item 6 of Schedule 1.
- 13.7 An obligation or warranty on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally.
- 13.8 Except with the prior written consent of AHPRA, the Contractor may not:
- (a) assign the whole or any part of the Contractor's rights; or
 - (b) assign or sub-contract the whole or any part of the Contractors obligations, under this Contract.
- 13.9 If AHPRA does consent to the Contractor sub-contracting any of its obligations under this Contract, the Contractor:
- (a) remains liable for the due performance of those obligations as if it were performing them itself; and

- (b) must ensure that the sub-contractor is bound to comply with the terms of this contract in relation to those obligations, including but not limited to confidentiality, freedom of information and privacy.
- 13.10 If any party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.
- 13.11 The Contractor warrants that no conflicts of interest exist, or are expected, relevant to the performance of its obligations under this Contract. If a conflict of that kind arises, the Contractor must notify AHPRA as soon as practicable. AHPRA may decide in its absolute discretion, without limiting its other rights under this Contract, that the Contractor may continue to provide the Services under the Contract.
- 13.12 The Contractor represents and warrants that:
- (a) the individual who executes this Contract for the Contractor has authority to do so; and
 - (b) it has the capacity to deliver and comply with its obligations under this Contract.
- 13.13 In carrying out the Services the Contractor agrees to strictly comply with applicable laws prohibiting the bribery of public officials and private persons. The Contractor also undertakes to put in place and implement all necessary and reasonable policies to prevent corruption.

14 Definitions and Interpretation

14.1 In this Contract:

Intellectual Property means all intellectual property rights, including, but not limited to:

- (a) trade marks, patents, designs, circuit layouts, copyright and domain names; and
- (b) any right to apply for registration of such rights,

whether those rights are registered or capable of being registered.

National Board means a National Health Practitioner Board established under the National Law;

Personnel of a party means the officers, employees, agents and contractors of that party. AHPRA's Personnel include any Personnel of a National Board.

14.2 In this Contract:

- (a) a reference to a party includes that party's executors, administrators, successors and permitted assigns;
- (b) the singular includes the plural and vice versa and words importing a gender include every other gender;
- (c) 'including' and 'includes' are not words of limitation;
- (d) a reference to '\$' or 'dollar' is a reference to Australian currency; and
- (e) a reference to any legislation, delegated legislation or statutory instrument ('**Legislation**') includes that Legislation as in force from time to time, or as repealed and replaced with substantially equivalent legislation.

14.3 In performing this Contract, both parties must act reasonably and in good faith, except in relation to a decision by AHPRA under clause 11.1 (termination for convenience).

14.4 To avoid doubt, and despite anything contained in this Contract, the obligations of clauses 4, 5, 6, 7, 8, 10 and 12, and the consequences of termination under clause 11, are continuing obligations and will not cease on the completion, expiry or termination of this Contract.

This Contract is made between AHPRA and the Contractor.

Date: / /20

Signed for AHPRA by the person named below who warrants that he or she is authorised to sign for AHPRA.

.....
Signature

.....
Name and position

.....
Signature of witness

.....
Name of witness

.....
Date signed

Signed for the Contractor in accordance with section 127(1) of the *Corporations*

.....
Signature

.....
Name of Director/Secretary

.....
Date Signed

.....
Signature

.....
Name of Director/Secretary

.....
Date signed

Note: For single director/secretary companies only that person needs to sign to bind the company

SCHEDULE 1

- 1 **Contractor** Name: **insert**
ABN: **insert**
Address (contact for notices sent under this Contract): **insert**
Tel: **insert**
Fax: **insert**
e-mail: **insert**
- 2 **Project** [**insert title** and project description]
- 3 **Services (including goods if any) to be provided to AHPRA** [**Insert a detailed description of the Services (and goods if any) to be provided. If the description of the services is lengthy, attach it at Schedule 1A and insert the following words here: 'As set out in the project brief in Schedule 1A')**
(clause 1) **If the Services are to be performed by a particular key person, insert this requirement in the description of the Services.**
If the Services are to be provided in 'work packages', specify what must be done and when.]
Start date for providing the Services: **insert**
End date: **insert**
- 4 **Fees and Expenses** Fees payable for the Services:
(clauses 2 and 3) **[Insert fixed amount or fee schedule – as set out immediately below. Consider milestone payments.**
If an estimate is to be inserted here, also insert these words: 'This estimate is the maximum amount AHPRA will pay, unless AHPRA consents in writing to pay a higher amount']
(a) \$Total fixed [agreed] amount of \$ **Xx** in the following instalments:
(b) **Xx**
(c) **Xx**
(All Fees are GST inclusive – cl.2.4)
- Expenses: [**as required – if not required insert 'Not Applicable' here**]
(a) Travel – AHPRA to arrange economy flights where required and agreed in advance.
(b) Accommodation - AHPRA to arrange where required and agreed in advance.
(c) Other – **insert** .
(For GST in relation to Expenses, see cl.3.2)
- 5 **Key Person** Name: **insert**
(clause 1.6) Tel:..... Fax:.....
e-mail:.....

6 Contract Managers (clause 13.6) (a) Contractor: insert – or if these are the same details as in item 1, insert ‘See item 1’

Tel: Fax:

e-mail:

(b) AHPRA: insert

Tel: Fax:

e-mail:

7 Insurance (clause 10.8)

Please indicate insurance coverage:

Management liability: Amount of cover:

Miscellaneous Civil Liability: Amount of cover:

(If no amount is inserted for Management Liability or Miscellaneous Civil Liability, those types of insurance are not required).

Amount of Professional Indemnity Insurance Amount of cover:

(if cover greater than \$2,000,000 required)

Other (specify type of insurance and amount of cover):

.....
.....
.....

Attachment – Clause 4.5 (a)

Attachment



CONFIDENTIALITY DEED POLL

BACKGROUND

1. The Australian Health Practitioner Regulation Agency ('**AHPRA**') administers the *Health Practitioner Regulation National Law* ('**the National Law**').
2. [insert name of Contractor] ('**the Contractor**') has agreed to provide services to AHPRA ('**the Services**').
3. The Contractor has engaged you to help it provide the Services.
4. The National Law imposes strict confidentiality requirements on people who obtain information for the purposes of that Law, and the Contractor has promised that it and you will comply with those requirements.

DUTY OF CONFIDENTIALITY

5. You acknowledge that you have a duty to keep any confidential information of AHPRA's you obtain in providing the Services secure and not to disclose it except for the purpose of providing the Services.
6. You promise that you will:
 - a. keep confidential any of AHPRA's confidential information (including documents and things you hear or see) that you obtain in the course of providing the Services;
 - b. only use the Confidential Information for the purpose of providing the Services;
 - c. continue to keep this information confidential after you finish providing the Services; and
 - d. tell the Contractor as soon as possible if AHPRA's confidential information is improperly disclosed, or there is an increased risk that this might happen.
7. Your obligations under this Deed will not be breached if: you are legally required to disclose information; AHPRA consents to the disclosure; or it is reasonably necessary to disclose information to provide the Services.
8. This Deed is governed by the laws of Victoria.

.....
Signature of person receiving AHPRA information

.....
Name

.....
Signature of witness

.....
Name of witness

.....
Date signed
Signed sealed and delivered as a Deed Poll