

**AUSTRALIAN HEALTH PRACTITIONER REGULATION AGENCY
(ABN 78685433429)
AGREEMENT FOR PROVISION OF GOODS OR SERVICES**

SCHEDULE

1 Contractor Name:
ACN (if applicable) ABN:
Address:
.....
Tel: Fax:
E-mail:
Contact Person:

2 Project
.....
.....

3 Goods or Services to be provided to AHPRA
.....
.....

(more fully set out in the attached Project Brief and the Contractor's Proposal attached, if any)

Start date:/...../..... End date:/...../.....

4 Fees and Expenses Fees payable for the Good and/or Services:

Option 1 - **[\$[insert a lump sum amount]** upon acceptance by AHPRA that the Services have been completed as required under this Agreement.

Option 2 - **[\$[insert a total amount]** in the following instalments:

- (a) **[\$[insert]** on delivery of **[insert milestone]** (due **[insert date]**);
- (b) **[\$[insert]** on delivery of **[insert milestone]** (due **[insert date]**);
- (c) **[\$[insert]** on delivery of **[insert milestone]** (due **[insert date]**);

Option 3 - **[\$[insert amount]** per **[insert hour/day/week]** up to a maximum amount of **[insert amount]**.

For additional requests made by AHPRA which the parties agree do not form part of the Services: **[insert amount per hour or other basis]**.

For the Expenses:

- (a) Travel - **[insert description]** up to a maximum of **[\$[insert]** per **[insert]**.
- (b) Accommodation - **[insert description]** up to a maximum of **[\$[insert]** per night.
- (c) Other - **[insert]**.

Maximum Amount payable for fees and expenses: **[insert]**

(All Fees and Expenses are GST inclusive unless otherwise stated - Clause 3.4)

5 Contractor's Key Person (if applicable – clause 2.3) Name:
 Tel: Fax:
 E-mail:

6 Representatives (clauses 2.5 & 2.6)
 (a) Contractor:
 Tel: Fax:
 E-mail:
 (b) AHPRA:
 Tel: Fax:
 E-mail:

7 Insurance (clause 7.4) Professional indemnity insurance required: yes no
[only tick 'no' if approved by CFO].

8 Special Conditions

This Agreement is made between AHPRA and the Contractor upon and subject to AHPRA's Conditions attached to this Schedule.

Date: / / 2012

Signed by [Name], [Position] as authorised representative for the Australian Health Practitioner Regulation Agency:

Signed for and on behalf of the CONTRACTOR by the person named below who warrants that he or she is a duly authorised representative able to execute on behalf of the Contractor:

.....
 Signature of [Name], [Position] as authorised contract signatory for the Australian Health Practitioner Regulation Agency:

.....
 Signature

.....
 Date

.....
 Name

.....
 Date

CONDITIONS

1 Definitions and Interpretation

1.1 In this Agreement:

Agreement means the agreement comprised of these conditions and the schedule to which they are attached.

AHPRA means the Australian Health Practitioner Regulation Agency.

Confidential Information of a party means any information or data, including Personal Information, whether or not in a material form, which is confidential to the party, including confidential information created, acquired, collected or developed for the purpose of the Project or obtained during the Term, but not information in

the public domain other than as a result of breach of this Agreement.

Commencement Date means the earlier of the date specified by AHPRA for the Contractor to start providing Services and the date on which AHPRA signs this Agreement.

Completion Date means the earlier of:

- (a) the date specified by AHPRA for completion of the Services; and
- (b) the date this Agreement is terminated in accordance with clause 8.

Fees Schedule means the schedule of fees and expenses specified in Item 4 of the Schedule.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Key Person means the person(s) specified in Item 5 of the Schedule, if any.

Intellectual Property means trade marks, patents, designs, circuit layouts, copyrights, know-how and all other rights as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation (including all statutory and other proprietary rights in respect of them).

Maximum Amount means the amount specified as such in Item 4 of the Schedule.

National Law means the Health Practitioner Regulation National Law Act 2009 (Qld)

Personal Information means information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Project means the project to be undertaken by the Contractor, for which the Services are to be provided as set out in Item 2 of the Schedule.

Proposal means the proposal submitted by the Contractor in relation to the Project.

Public Sector Authority has the same meaning as defined in the National Law.

Representative means, for each party, the person specified as such in Item 6 of the Schedule (or a replacement approved by the other party).

Services means the services to be provided by the Contractor as set out in Item 3 of the Schedule.

Term means the period commencing on the Commencement Date and concluding on the Completion Date (except that where the Contractor fails to deliver Services to the satisfaction of AHPRA by the Completion Date the Term continues, at the option of AHPRA, until the Services are so provided or AHPRA otherwise notifies the Contractor).

Definitions for Information/Communications Technology (ICT) Procurements

1.1A The following definitions apply if this Agreement is for an ICT Procurement or a procurement that incorporates or includes an ICT Procurement.

Acceptance means written notification by AHPRA that acceptance test criteria or alternative acceptance formalities that have been agreed upon by the parties, have been satisfied.

Associated Documentation means documentation that is created by the Contractor and is associated with Developed Software in that it either describes the characteristics of the Developed Software or provides instructions on how to use, install or configure the Developed Software.

Associated Tools means any tools, object libraries or methodologies created by the Contractor in connection with the Developed Software.

Developed Software means Software created by the Contractor under this Agreement.

Existing Software means Software of which the Contractor is the owner of intellectual property rights or in which the Contractor has sufficient rights to grant sub-licences.

Existing Tools means tools, object libraries or methodologies existing at the commencement of the Agreement and owned by the Contractor, or in which the Contractor has sufficient rights to grant sub-licences.

Hardware means the machines, wiring and other physical parts of a computer.

ICT Goods means any software, including the Developed Software, or hardware.

ICT Services means any services relating to information and/or communications technology and includes any services relating to ICT Goods.

ICT Procurement means any purchase of ICT Goods or ICT Goods and ICT Services.

Software means any "computer program" as defined in the *Copyright Act 1968* (Cth), namely, a set of statements or instructions to be used directly or indirectly in order to bring about a certain result and includes but is not limited to:

- (a) "firmware" (a computer program stored in integrated circuits, read only memory or similar devices); or
- (b) a new and independent software application; or
- (c) an enhancement or modification to an existing software application.

1.2 In this Agreement:

- (a) a reference to a party includes that party's successors and permitted assigns;
- (b) including and includes are not words of limitation;
- (c) a requirement to do anything includes a requirement to cause that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done.

1.3 In performing this Agreement, both parties must act reasonably and in good faith.

1.4 Despite anything contained in this Agreement, the obligations of clauses 4, 5 and 7 are continuing obligations and will not cease on the completion, expiry or termination of this Agreement.

2 Contractor's obligations

2.1 The Contractor must provide the Services during the Term in accordance with this Agreement to the satisfaction of AHPRA.

2.2 The Contractor must:

- (a) provide the Services in a proper, timely and efficient manner using due care, skill and diligence and at all times in accordance with standards reasonably to be expected from a prudent, expert, ethical and experienced provider of services such as the Services;
- (b) ensure that any person employed by the Contractor to perform any work under this Agreement possesses adequate levels of skill and experience to perform that work to the satisfaction of AHPRA;
- (c) ensure that the Services and the provision of the Services comply with all applicable laws, regulations and standards, as current from time to time.
- (d) whilst on AHPRA's premises it and its employees, agents and contractors will comply with AHPRA's lawful directions and policies.

- 2.3 If applicable (as indicated in the Schedule), the Contractor must cause the Key Person to provide the Services, and may only replace that person with a person of similar qualifications, skill and experience who is approved by AHPRA in advance.
- 2.4 The Contractor warrants to AHPRA that the provision of the Services does not and will not infringe any right of any third party (including any Intellectual Property Right), law, regulation or rule.
- 2.5 The Contractor must ensure its Representative oversees the provision of the Services and in doing so is available for all reasonably required consultations with the AHPRA Representative.
- 2.6 Each party's Representative will be the agent of the party, with authority to bind it regarding all matters relating to the Services (excluding, in relation to AHPRA, payment of any money beyond the Maximum Amount).

3 Payment

- 3.1 The Contractor must:
- (a) submit invoices for payment for the Services monthly in arrears, or in accordance with such other schedule of payments specified in the Fee Schedule;
 - (b) provide information in support of the value of any invoice if requested by AHPRA.
- 3.2 Unless AHPRA questions or disputes any amount stated in the invoice, AHPRA will pay the invoiced amount within thirty (30) days of receiving the invoice.
- 3.3 The Contractor may only claim expenses on the basis of actual expenses incurred, in accordance with the limits specified in Item 4 of the Schedule, as evidenced to the satisfaction of AHPRA, and only if AHPRA agrees in writing before the expense is incurred.
- 3.4 Unless otherwise stated, in respect of any *taxable supply* by the Contractor, AHPRA is not required to pay to the Contractor any additional amount (for the *GST* or otherwise) beyond the amount specified in this Agreement as being payable. Words in italics have the meanings given to them in the GST Act.
- 3.5 If the total amount payable under this Agreement is more than \$25,000, AHPRA may withhold 20% of any amount payable to the Contractor until AHPRA is satisfied that the Project is completed.
- 3.6 If an amount is due and payable by AHPRA to the Contractor under this Agreement and remains unpaid, AHPRA will pay simple interest on the daily balance of the unpaid amount.
- (a) Interest will be calculated at the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Vic), starting from the day after the amount became overdue;
 - (b) will not be payable in respect of a period during which any amount is disputed; and
 - (c) will only become payable after the Contractor gives AHPRA notice under clause 3.7 requesting payment of interest.
- 3.7 For the purposes of clause 3.6, notice cannot be given prior to, or more than 30 days after, the amount becomes overdue. Notice must be in writing delivered to:

Financial Accountant
 AHPRA
 8/111 Bourke Street
 Melbourne VIC 3000.

4 Confidentiality and Privacy

- 4.1 Each party must keep the Confidential Information of the other party absolutely confidential and must not

communicate, publish or release, or permit the communication, publication or release of any Confidential Information except:

- (a) as is necessary for the parties to perform their obligations under this Agreement;
 - (b) as required by law.
- 4.2 The Contractor must not collect, use or disclose personal or health information in connection with this Agreement except to the extent reasonably necessary for the performance of its obligations.
- 4.3 The Contractor must cause its officers, employees, contractors and agents to comply with the provisions of the *Privacy Act 1988* (Cth) with respect to any conduct by the Contractor for the purposes of this Agreement in the same way and to the same extent as AHPRA would have been bound by them in respect of that conduct had it been engaged in by AHPRA.
- 4.4 The Contractor must:
- (a) procure from each person employed or engaged by it for this Agreement an undertaking that is consistent with the Contractor's obligations under clause 4.1 before giving them access to any Confidential Information;
 - (b) on being informed, or otherwise becoming aware, of any breach or anticipated breach of the undertaking given under paragraph (a), take such action as may be necessary to enforce that undertaking, including all reasonable actions directed by AHPRA (and authorises AHPRA to enforce that undertaking if the Contractor fails to do so).
- 4.5 The Contractor must keep all Confidential Information secure for so long as that Confidential Information is within its control, and in so doing must ensure that the Confidential Information is protected at all times from access, use or misuse, damage or destruction, by any person not authorised by this Agreement to have access to it.
- 4.6 The Contractor must return to AHPRA all copies of AHPRA's Confidential Information at the end of this Agreement.
- 4.7 Despite anything else in this Agreement:
- (a) the terms of this Agreement may be disclosed to the public, including disclosure on the internet, provided such disclosure does not involve trade secrets or proprietary information of a party where disclosure would result in a significant commercial disadvantage to that party; and
 - (b) if requested by a public sector auditor or the Commonwealth Ombudsman in the course of performing their statutory duties, Confidential Information and the terms of this Agreement may be disclosed to the Auditor-General or the Ombudsman as the case may be.

5 Intellectual property

- 5.1 The Contractor retains ownership of its Intellectual Property in materials created independently of this Agreement.
- 5.2 Other than in the circumstances outlined in clause 5A.7 (if applicable), where the Services comprise any Intellectual Property referred to under clause 5.1 or of a third party, the Contractor grants to AHPRA, a non-exclusive, irrevocable, world-wide, payment-free licence to use, reproduce, publish, adapt and exploit that Intellectual Property to the extent necessary to enable AHPRA to enjoy the full benefit of the Project and the Services.

5.3 Subject to clause 5A.2 (if applicable), the Contractor assigns to AHPRA exclusive ownership of all Intellectual Property in materials created or acquired in the course of providing the Services or otherwise for the purposes of the Project (including in all documents, reports, charts, drawings, data bases, software, source codes, models, systems, slides, tapes and specifications).

5.4 If the Contractor's employees or contractors own the Intellectual Property in any materials created or acquired under this Agreement, the Contractor will procure that the owner of that Intellectual Property will assign those rights to the Contractor so that the Contractor can assign them to AHPRA as required under clause 5.3.

5.5 In relation to any material in which the Contractor or a person employed or engaged by it has a moral right, the Contractor consents, and will procure the consent of any person employed or engaged by it, to AHPRA, doing or omitting to do anything that, but for this consent, would constitute an infringement of those moral rights. The Contractor must ensure that any such consents are genuinely given and not obtained by duress or by the making of any false or misleading statement.

5A Information/Communications Technology (ICT) Procurements

5A.1 This clause 5A will apply if this Agreement is for an ICT Procurement or a procurement that incorporates or includes an ICT Procurement.

5A.2 The Intellectual Property in all Developed Software, Associated Documentation and Associated Tools created, discovered, or brought into existence as a result of, for the purposes of, or in connection with the Project, the Services or this Agreement, vests in and is owned by the Contractor.

5A.3 Upon the creation of any Developed Software, Associated Documentation or Associated Tools, the Contractor must give written notice to AHPRA identifying the Developed Software, Associated Documentation or Associated Tools and must provide to AHPRA a copy of the Developed Software (including source code), Associated Documentation and Associated Tools to which the notice refers upon Acceptance by AHPRA of that Developed Software, that Associated Documentation or those Associated Tools, as the case may be, or within 14 days of a written request from AHPRA.

5A.4 Except where expressly stated to the contrary, this Agreement does not affect the ownership of Intellectual Property in data (if any), Existing Software, Existing Tools or other items that existed at the commencement of the Contract.

5A.5 The Contractor hereby grants AHPRA a non-exclusive, perpetual, irrevocable, payment free licence to exercise all rights of Intellectual Property in the Developed Software (including the source code), Associated Documentation and Associated Tools, except that AHPRA may not commercially exploit the Developed Software (including the source code), Associated Documentation or Associated Tools.

5A.6 The licence granted in clause 5A.5 is not conditional on any obligation by AHPRA to receive support, maintenance or other services, or to purchase Software, Hardware or other products.

Use of Existing Software and Existing Tools

5A.8 Where any Existing Software is necessary for the proper functioning (including as to functionality and performance)

of any Developed Software, the Contractor grants to AHPRA a non-exclusive, perpetual and irrevocable licence, at the charges specified in Item 8 of the Schedule:

(a) to use, support, maintain, modify and enhance the Existing Software or to engage other contractors to use, support, maintain, modify and enhance the Existing Software on its behalf; and

(b) to use, reproduce, revise, adapt and modify any technical and user documentation relating to the Existing Software for non-commercial purposes or to engage other contractors to do any of these things on its behalf.

5A.9 Where the exercise of the licences granted under clause 5A.5 or 5A.8 necessitates or involves use of any Existing Tools, the relevant licence is deemed to include an entitlement to use the necessary Existing Tools. The Contractor will provide those Existing Tools to AHPRA at the same time as it provides the Existing Software or the Developed Software to which they relate.

5A.10 The Contractor warrants that it has the right to grant any licences it is required to grant under clauses 5A.5 and 5A.8, and agrees to indemnify AHPRA in respect of all Liability AHPRA may incur in respect of any Claim for breach of Intellectual Property rights arising in any manner from or in any way connected with a breach of this warranty.

6 Status of Contractor

6.1 The Contractor is engaged as an independent contractor and nothing in the Agreement will be deemed to constitute the Contractor nor any person employed or engaged by it as an agent or employee of AHPRA.

7 Indemnity and insurance

7.1 The Contractor indemnifies AHPRA against all Liability AHPRA may incur in respect of any Claim, including Claims in respect of:

(a) personal injury or the death of any person;

(b) loss of or damage to any property;

(c) breach of a person's Intellectual Property; or

(d) a contravention of the requirements of clause 4 or the applicable privacy legislation,

arising in any manner out of a breach by the Contractor of its obligations under this Agreement, any negligent or unlawful act or omission or wilful misconduct of the Contractor or any personnel employed or retained by the Contractor in the course of providing the Services.

7.2 For the purposes of clause 7.1 and 5A.10:

'Liability' includes all damages, costs, expenses or loss;

'Claim' includes all demands, rights, actions, suits or proceedings of any kind; and

'AHPRA' includes its officers and employees.

7.3 The Contractor's liability under clause 7.1 will be reduced to the extent that Liability is caused or contributed to by the negligent or unlawful act or omission of AHPRA.

7.4 The Contractor must on and from the date of this Agreement effect:

(a) public liability insurance coverage for at least \$5,000,000 for any one occurrence;

(b) if the Services include the provision of goods, product liability insurance coverage for at least \$5,000,000; and

- (c) unless the Schedule states to the contrary, professional indemnity insurance coverage for at least \$2,000,000 for any one claim,

with an insurer authorised under the Insurance Act 1973 and provide certificates of currency if AHPRA so requests. 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.

8 Termination

- 8.1 AHPRA may terminate this Agreement at any time and in its sole discretion by giving 30 days prior written notice to the Contractor, in which case AHPRA must pay the Contractor for the Services prior to the date of termination and an amount equal to the extra costs necessarily incurred by the Contractor as a result of the termination (which the Contractor must keep to a minimum).
- 8.2 AHPRA may immediately terminate this Agreement by notice to the Contractor if:
 - (a) the Contractor is in breach of its obligations under this Agreement, and does not rectify that breach within 7 days after being requested to do so;
 - (b) the Contractor enters into any form of insolvency or external administration or bankruptcy;
 - (c) there is a change in the identity of the person who has control of the Contractor (namely 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 that which was in effect as at the date of this Agreement 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; or
 - (d) the Contractor engages in any conduct which brings the reputation of the Contractor into disrepute and as a consequence AHPRA believes that its continued association with the Contractor will be detrimental to the reputation of AHPRA.
- 8.3 Any termination of the Contractor's appointment under this Agreement will not prejudice or affect the accrued rights, claims or liabilities of AHPRA under this Agreement.
- 8.4 The provisions of this Agreement dealing with intellectual property, confidentiality and privacy, insurance and consequences of termination survive the end of this Agreement and may be enforced at any time.

9 General

- 9.1 The laws of the State in a participating jurisdiction, unless excluded by the National Law, govern this Agreement, and each party submits to the jurisdiction of the courts of the State.
- 9.2 If any clause or part of any clause 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) is to be severed from this Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses).
- 9.3 This Agreement constitutes the entire agreement between the parties regarding the matters set out in it and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing, and whether made before the execution of this Agreement or during the provision of the Services.
- 9.4 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.

- 9.5 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 Contractor's obligations,

under this Agreement.

- 9.6 This Agreement may only be varied with the written consent of each party.
- 9.7 The Contractor confirms no conflict of interest exists in relation to this Agreement or is likely to arise during the period of this Agreement. The Contractor must inform AHPRA as soon as it becomes aware of any matter that may give rise to a conflict of interest.