

7 Insurance (clause 9.5) Professional indemnity insurance required: yes no

8 Special Conditions

.....

.....

This Agreement is made between the Australian Health Practitioner Regulation Agency (AHPRA) and the Contractor upon and subject to AHPRA's Conditions attached to this Schedule.

Date: / / 2012

Signed for and on behalf of AHPRA:

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

.....
Signature

.....
Name and position

.....
Name and position

.....
Signature of witness

.....
Signature of witness

.....
Name of witness

.....
Name of witness

.....
Date

.....
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.

Background Intellectual Property means Intellectual Property in materials created independently of this Agreement.

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. Confidential information includes protected information under the National Law.

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 10.

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 as in force in each state and territory.

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.

Project Intellectual Property means Intellectual Property in materials created in the course of providing the Services.

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

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).

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, 6, 8 and 10 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 to the best of the knowledge of the Key Person without the Key Person having made enquiries 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 Key Person 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 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, 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.

4 Confidentiality and Privacy

4.1 The Contractor must comply with the Health Practitioner Regulation National Law Act 2009 and a duty of confidentiality when performing functions under the National Law and as it relates to protected information.

4.2 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.

4.3 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.

4.4 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.

4.5 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).

4.6 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.

4.7 The Contractor must return to AHPRA all copies of AHPRA's Confidential Information at the end of this Agreement.

4.8 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 Health Practitioner 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 Health Practitioner Ombudsman as the case may be.

5 Freedom of Information

5.1 The Contractor shall provide AHPRA with all information necessary to enable AHPRA to discharge its obligations under the Freedom of Information Act 1982 (Cth) in relation to matters relating to this Agreement.

6 Intellectual property

6.1 As between the Contractor and AHPRA, the Contractor retains ownership of its Background Intellectual Property.

6.2 Where the Services comprise any Background Intellectual Property, the Contractor grants to AHPRA, a non-exclusive, irrevocable, world-wide, payment-free licence to use, reproduce, publish, adapt and exploit that Background Intellectual Property to the extent necessary to enable AHPRA to enjoy the full benefit of the Project and the Services.

6.3 The Contractor assigns to AHPRA ownership of all Project Intellectual Property.

6.4 If the Contractor's employees or contractors own the Project Intellectual Property, 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 6.2.

6.5 AHPRA grants to the Contractor a non-exclusive, irrevocable, world-wide, payment-free licence to use, reproduce, publish, adapt and exploit the Project Intellectual Property for internal non-commercial purposes including scholastic purposes.

7 Publication

7.1 AHPRA acknowledges that the Contractor may wish to publish or otherwise publicly disclose papers which relate to the Services. Prior to any publication or such presentation, the Contractor must provide a copy of the relevant manuscript or abstract to AHPRA, in-confidence, at least thirty (30) days prior to any public disclosure or submission for publication, for AHPRA's review and consent. The Contractor agrees to consider AHPRA's comments in relation to the proposed presentation or publication in good faith and will modify and/or delete any part of the publication that AHPRA reasonably believes contains Protected Information and/or Confidential Information.

7.2 The Contractor agrees to acknowledge AHPRA's contribution in any publication.

8 Status of Contractor

8.1 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.

9 Indemnity and insurance

9.1 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 directly 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.

9.2 For the purposes of clause 9.1:

'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.

9.3 The Contractor's liability under clause 9.1 will be reduced to the extent that Liability is caused or contributed to by the negligent or unlawful act or omission of AHPRA. For the avoidance of doubt, the Contractor shall not be liable to AHPRA under clause 9.1 for any loss of profits, loss of anticipated savings, loss of revenue, loss of opportunity or any other indirect or consequential loss.

9.4 AHPRA must take reasonable steps to mitigate its loss.

9.5 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.

10 Termination

10.1 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).

10.2 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.

10.3 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.

10.4 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.

11 General

11.1 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.

11.2 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).

11.3 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.

11.4 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.

11.5 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.

11.6 This Agreement may only be varied with the written consent of each party.

11.7 The Contractor confirms that to the best of the knowledge of the Key Person 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.

Attachment One – Project brief