

## Engagement of Therapists on a Sessional Basis

**Document Number** PD2013\_008

**Publication date** 14-May-2013

**Functional Sub group** Corporate Administration - Finance  
Corporate Administration - Fees  
Clinical/ Patient Services - Governance and Service Delivery  
Personnel/Workforce - Recruitment and selection

**Summary** Provides updated and revised direction and guidance about arrangements for engagement of therapists on a sessional basis as contractors or practice companies, provides two models for service agreements/contracts for individual contractors and practice companies.

**Replaces Doc. No.** Engagement of Therapists on a Sessional Basis [PD2010\_071]

**Author Branch** Workforce Planning and Development

**Branch contact** Paula Stewart 9391 9957

**Applies to** Local Health Districts, Board Governed Statutory Health Corporations, Chief Executive Governed Statutory Health Corporations, Specialty Network Governed Statutory Health Corporations, Affiliated Health Organisations, Public Health System Support Division, Community Health Centres, Public Health Units, Public Hospitals

**Audience** Chief Executive, Director of Clinical Operations /Workforce Development, Payroll, HR, All staff

**Distributed to** Public Health System, Health Associations Unions, Ministry of Health

**Review date** 14-May-2018

**Policy Manual** Not applicable

**File No.** 08/7762

**Status** Active

### Director-General

This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is **mandatory** for NSW Health and is a condition of subsidy for public health organisations.

## ENGAGEMENT OF THERAPISTS ON A SESSIONAL BASIS

### PURPOSE

This policy statement and procedures are intended to:

- Provide clear directions and requirements for the engagement of therapists on a sessional basis
- Improve consistency in sessional engagement arrangements
- Improve management and governance of engagement arrangements of sessional therapists or practice companies providing sessional services
- Issues a model for sessional therapist service contracts for use by Public Health Organisations

### MANDATORY REQUIREMENTS

This policy requires NSW Health agencies, the Chief Executive, or the Board where the agency is governed by a Board, to ensure that arrangements or sessional service agreements/contracts with therapists and practice companies engaged to provide services on a sessional basis comply with this policy statement.

In accordance with IB2007\_061 *NSW Health Service Health Professionals (State) Award – Consequential Changes to Awards and Determinations*, therapists who may be engaged on a sessional basis are: podiatrists, physiotherapists, occupational therapists, speech pathologists, orthoptists and music therapists.

This policy provides NSW Health agencies with a clear statement regarding conditions, management and governance of therapists engaged as sessional contractors within a NSW Health facility.

### IMPLEMENTATION

Chief Executives must ensure that this policy and its models for sessional service agreements/contracts are brought to the attention of all staff involved in sessional therapist agreement/contract matters, and are utilised for all applicable sessional therapist engagements unless the specific approval of the Ministry of Health to non-standard arrangements/contracts has been obtained.

### REVISION HISTORY

Version	Approved by	Amendment notes
Month 2013 (PD2013_XXX)	Director General	Replaces PD2010_071. Clarifies insurance requirements for individual contractors and practice companies
December 2010 (PD2010_071)	Director General	Replaces PD2005_023. Issues conditions and rates for engagement of sessional therapists
PD2005_023 (previously Circular 85/162)	Director General	New policy

### ATTACHMENTS

1. Engagement of Therapists on a Sessional Basis: Procedures.

## Engagement of Therapists on a Sessional Basis



---

**Issue date:** May-2013

PD2013\_008

## CONTENTS

<b>1</b>	<b>BACKGROUND</b> .....	<b>1</b>
1.1	About this document.....	1
1.2	Key definitions.....	1
1.3	Legal and legislative framework .....	1
<b>2</b>	<b>POLICY DIRECTIVE</b> .....	<b>3</b>
2.1	INTRODUCTION.....	3
2.2	ENGAGEMENT OF PRIVATE PRACTICE THERAPISTS.....	3
2.2.1	STATUS OF SESSIONAL THERAPISTS:.....	3
2.2.2	SESSIONS AND DURATION:.....	3
2.3	ENGAGEMENT OF INDIVIDUALS:.....	3
2.4	ENGAGEMENT OF A PRACTICE COMPANY:.....	4
2.5	REMUNERATION (Independent and Practice Company):.....	4
2.6	SUPERANNUATION:.....	5
2.7	INSURANCE: .....	6
2.8	FINANCIAL REPORTING: .....	7
2.9	RELEVANT POLICY DIRECTIVES: .....	7
<b>3</b>	<b>LIST OF ATTACHMENTS</b> .....	<b>7</b>
3.1	Appendix 1 – Summary of Standard Terms of Agreement.....	7
3.2	Appendix 2 – Model of Standard Sessional Service Agreement/Contract for Individuals.....	7
3.3	Appendix 3 – Model of Standard Sessional Service Agreement / Contract for Practice Companies.....	7

# 1 BACKGROUND

## 1.1 About this document

This policy and procedures have been developed to assist managers who engage therapists on a sessional basis to ensure that clinical governance and service arrangements are correctly detailed.

- Following a review in 2009, it was identified there was an inconsistent approach to the engagement of sessional therapists across health services. Written service agreements varied in content and comprehensiveness and in some cases were not being utilised.
- This policy and procedure seeks to revise PD2010\_071 to reflect changes since the establishment of Local Health Districts and Networks.
- The procedure also aims to encourage a standard and consistent approach to engagement of sessional therapists and provides service agreement templates for individuals and practice companies who are engaged to provide sessional services.

## 1.2 Key definitions

**Public health organisation (PHO):** as defined by section 7 of the *Health Services Act 1997(NSW)* is a local health network, a statutory health corporation or an affiliated health organisation in respect of its recognised establishments and recognised services.

**Sessional therapist:** is a podiatrist, physiotherapist, occupational therapist, speech pathologist, orthoptist and/or a music therapist engaged as an independent contractor or through a practice company to provide sessional services and remunerated under the *Health Professional and Medical Salaries (State) Award*.

**Independent contractor:** is an individual from one of the identified professions with relevant qualifications, registration (where applicable) or eligibility for membership to the relevant professional association (where registration is not applicable). Independent contractors are private practitioners and possess an Australian Business Number (ABN) and a WorkCover Subcontractor's Statement.

**Practice company:** is a private practice that is engaged to provide a sessional service and should have an ABN and meet their own superannuation contribution and insurance requirements in relations to their employees and sub-contractors.

## 1.3 Legal and legislative framework

**WorkCover:** Individuals engaged as independent sessional contractors must provide a signed WorkCover Subcontractor's Statement (WC05483) in accordance with s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996*.

**Australian Business Number (ABN):** Independent sessional contractors and practice companies must forward their ABN to the Public Health Organisation. If not supplied, the Public Health Organisation will withhold from any payment an amount as prescribed in accordance with the *Taxation Administration Act 1953*.

**Goods & Services Tax (GST):** Independent sessional contractors and practice companies must submit an invoice for services plus GST as prescribed by the Australian Tax Office requirements under the *GST Legislation [ANTS(Goods & Services Act) 1999]*.

**Superannuation:** The Public Health Organisation will pay superannuation contributions for independent contractors directly engaged as sessional therapists in accordance with the requirements of the *Superannuation Guarantee (Administration) Act 1992*. Practice companies engaged to provide sessional services are not entitled to superannuation payment by the Public Health Organisation.

**Professional indemnity insurance:** The *Health Practitioner Regulation National Law (NSW)* provides that a registered health practitioner, eg. Occupational Therapist, Podiatrist, Physiotherapist, cannot practice their profession unless appropriate professional indemnity insurance arrangements are in place or are

appropriately covered by their employer as a condition of registration. Health practitioners from self-regulated professions, eg Speech Pathologist, Orthoptist, Music Therapists will need to provide evidence that they have appropriate professional indemnity insurance in place to be engaged as independent contractors.

## 2 POLICY DIRECTIVE

### 2.1 INTRODUCTION

This Policy Directive applies to therapists who may be contracted on a sessional basis by a Public Health Organisation and are defined as: podiatrists, physiotherapists, occupational therapists, speech pathologists, orthoptists and music therapists in Information Bulletin IB2007\_061 *NSW Health Service Health Professionals (State) Award – Consequential Changes to Awards and Determinations*.

**Direct employment of therapists as permanent employees is the preferred option.**

However in recognition of the difficulty recruiting the types of therapists defined in this policy in some geographic locations, Public Health Organisations are permitted to consider the engagement of private practice therapists on a sessional contract basis in accordance with this Policy Directive to increase access to the range of services provided by these allied health professionals especially in regional and rural NSW.

This Policy Directive replaces PD2010\_071 *Engagement of Therapists on a Sessional Basis*. The conditions have been reissued to clearly communicate engagement arrangements, management and governance of therapists as sessional contractors within a NSW Health facility.

Private practice therapists who may be engaged on a sessional contract basis are: podiatrists, physiotherapists, occupational therapists, speech pathologists, orthoptists and music therapists in accordance with IB2007\_061 *NSW Health Service Health Professionals (State) Award – Consequential Changes to Awards and Determinations*.

### 2.2 ENGAGEMENT OF PRIVATE PRACTICE THERAPISTS

Public Health Organisations may approve the engagement of these private practice therapists as sessional contractors as follows:

#### 2.2.1 STATUS OF SESSIONAL THERAPISTS:

- a) A sessional therapist, whether engaged as an individual through a practice company, is an independent contractor. Unless specifically indicated otherwise, a reference in this policy directive to a “sessional contractor” or “sessional therapist” includes both individual therapists operating as an independent contractor or in a private practice and practice companies.

#### 2.2.2 SESSIONS AND DURATION:

- a) A session to consist of a maximum of 3 ½ hours
- b) A maximum of two (2) sessions per day
- c) A maximum limit of four (4) sessions per week.
- d) The term of contracts for sessional services is to be for a period not exceeding five (5) years, unless terminated earlier by either party, with annual review every twelve months from the date of Agreement/Contract.

### 2.3 ENGAGEMENT OF INDIVIDUALS:

- a) Guidance for the procurement of sessional contractor services can be found in the NSW Health’s Supply Procedures Manual and referenced in PD2009\_054 *Tendering – Department of Health*.
- b) The sessional therapists agree to accept the sessional appointment as an independent contractor to provide services at certain facilities of the public health organisation for the period of this contract. To ensure compliance and possession of appropriate professional qualifications and clinical skills,

selection of sessional therapists is to be in accordance with NSW Health Policy Directive PD2012\_028 – *Recruitment and Selection of Staff of the NSW Health Service*.

- c) Verification of identity, relevant qualifications, registration (where applicable), skills, all forms of pre-engagement screening and assessment in compliance with health and safety principles should be in line with NSW Health Policy Directive PD2012\_028 – *Recruitment and Selection of Staff of the NSW Health Service*.
- d) Individuals engaged as sessional contractors must provide ABN, Superannuation fund details and a signed WorkCover Subcontractor's Statement (WC05483) in accordance with s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996*. The form is available on the WorkCover website.
- e) If temporarily unable to provide contracted sessions, a sessional therapist engaged as an independent contractor may NOT provide a substitute. The Public Health Organisation reserves the right to cancel the session and determine the best option for service provision.
- f) Standard terms of agreement for the engagement of independent private practice sessional therapists are included in Appendix 2. Sessional therapists are engaged by way of a contract, which should be based on the standard form agreement in Appendix 2.
- g) The agreement must state the period and details of service that the contracting therapist is to provide each week.
- h) The agreement will specify the period of engagement, location of the services to be provided and identify service delivery performance monitoring and review dates.
- i) Therapists engaged as private practice sessional contractors are NOT eligible to access or accrue leave entitlements (for example sick, annual, study, maternity, FACS or long service leave)
- j) Sessional therapists engaged as individual contactors or sole traders must provide their own professional indemnity insurance and public liability insurance.

### 2.4 ENGAGEMENT OF A PRACTICE COMPANY:

- a) Practice companies that tender to provide a sessional service must comply with health and safety principles specified in NSW Health Policy Directive PD2005\_227 – *Contractors - Better Practice Guidelines Including Health/Safety in Engagement/Management/Evaluation*.
- b) Standard terms of agreement for the engagement of a practice company that provides therapist services on a sessional basis is included in Appendix 3. Practice company principals must be signatories to the agreement
- c) All individuals employed or contracted by a company to provide the services must be specified in the agreement and appropriate verification, employment screening, criminal record checks and health assessment as required by NSW Health Policy Directive PD2012\_028 must be completed for these sessional workers by the contracted company and provided to the Public Health Organisation.
- d) The practice company will not be allowed to substitute workers not vetted and identified in the service contract.
- e) Practice companies that are engaged to provide sessional services should have an ABN, and must meet their own superannuation contribution and insurance requirements in relation to their employees and contractors.

### 2.5 REMUNERATION (Independent and Practice Company):

- a) **Sessional rate:** The sessional rates are derived from the maximum base grade salary applicable to the classifications. The *NSW Health Service Health Professionals (State) Award - Consequential Changes to Awards/Determinations* (IB2007\_061) has been varied to increase the sessional rates in line with the new Level 2, Year 4 salary under the Health Professionals (State) Award and a single rate now applies to all the above classifications.
- b) **Award:** The current rate payable for a 3 ½ hour session as of 1 July 2012 is \$194.40. Current sessional pay rates are included in IB2012\_023 *Salary Increases for Staff – NSW Health Service – HSU and ASMOF*. Details of conditions for sessional therapists is contained in the *NSW Health Professional and Medical Salaries (State) Award*. These documents should be checked prior to engaging in a contractor.
- c) **Industrial Codes:** Rates of sessional payments are to be on the following:

• Occupational Therapist	11OCCTS01
• Orthoptist	10ORTHSE01
• Physiotherapist	10PHYSE01
• Podiatrist	43PODS01
• Speech Pathologist	12SPPS01
• Music Therapist	43MUTS01

- d) **Income tax:** No deductions on account of income tax are to be made by Public Health Organisations.
- e) **GST:** Sessional contractors will submit an invoice for services plus GST as per Australian Tax Office requirements for independent contractors.
  - 1) The sessional contractor will forward their Australian Business Number (ABN) to the Public Health Organisation at the commencement of the Service Agreement/Contract. Where no ABN is supplied, the Public Health Organisation will withhold from any payment an amount as prescribed in accordance with Taxation Administration Act 1953. At the date of writing this policy the rate is 46.5%. Reference should be made to the current ATO rates for withholding tax.<sup>1</sup>
  - 2) For purposes of payments under the Service Agreement/Contract, the sessional contractor will provide invoices to the Public Health Organisation in the form of a GST Tax Invoice as prescribed in the GST Legislation [ANTS (Goods & Services Act) 1999].
  - 3) The sessional contractor warrants and undertakes that at the time of any supply on which GST is imposed is made by it to the Public Health Organisation under the Service Agreement/Contract it is or will be registered under the GST Legislation. If the Public Health Organisation requires written evidence of registration, the sessional contractor will promptly produce evidence satisfactory to the Public Health Organisation
- f) **Payment:** Public Health Organisation managers who engage independent and/or practice companies to provide sessional services will make appropriate arrangements for tax invoicing and superannuation contributions after consultation with their respective Finance Department Area Tax Accountant.

## 2.6 SUPERANNUATION:

Public Health Organisations with therapists engaged on an independent contractor basis as sessional worker are required to meet the superannuation guarantee obligations to these workers – see NSW Policy

<sup>1</sup> ATO Website <http://www.ato.gov.au>

Directive PD2005\_523, PD2007\_028 and PD2008\_035. Registered practice companies that are engaged to provide sessional services are not entitled to superannuation payment by the Public Health Organisation.

- a) Superannuation contributions in respect of therapists engaged on an independent contractor basis are to be paid by the Public Health Organisation in accordance with the requirements of the *Superannuation Guarantee (Administration) Act 1992*. The contributions are additional to the fees paid to individual sessional therapists in accordance with applicable NSW Health policy. The individual sessional therapists will be responsible for the production of any documentation required to be completed in this regard, otherwise superannuation contributions will be paid to NSW Health's fund of choice, ie First State Super.
- b) Superannuation should be paid on ordinary hourly sessional rates only.
- c) Superannuation contributions are only payable in respect of ordinary Time Earnings (Other sessional component and other remuneration arrangements are excluded)
- d) Superannuation contributions are to be made at the rate of 9.25% of ordinary time earnings as of 1 July 2013. <sup>(1)</sup> The Superannuation guarantee rate should be checked in the ATO website for successive financial years. <sup>(1)</sup>
- e) Superannuation is not payable where a sessional therapist is paid less than \$450 in a calendar month. <sup>(1)</sup>
- f) Superannuation is not payable in respect of remuneration paid to a sessional therapist which exceeds \$45,750 per quarter in the 2012/13 financial year. <sup>(1)</sup> The maximum limit is indexed each year. The maximum limit on the remuneration paid should be checked in the ATO Website for successive financial years. <sup>(1)</sup>

## 2.7 INSURANCE:

Insurance requirements apply to both individuals engaged as sessional therapists as private contractor as well as practice companies. Individuals engaged as a sessional therapist are required to obtain insurance relevant to the goods and/or services being provided. A practice company engaged to provide sessional services is also required to obtain appropriate insurance, and to ensure that all employees or contractors of the company are covered by the company's insurance policy. Relevant types of insurance may include the following:

- a) *Workers compensation insurance* – This covers practice companies who have direct employees or who engage sub contractors to provide services on behalf of the contractor for any injuries occurring while engaged by the practice company. This insurance is a legislative requirement in NSW
- b) *Public Liability Insurance* – This covers the all sessional contractor's legal liability to the public for bodily injury or property damage. It includes cover for injuries to third parties which occur on the premises. The standard terms of agreement with sessional therapists requires public liability insurance for not less than \$20 million in respect to any one occurrence and in the aggregate of any one period of cover.
- c) *Professional Indemnity Insurance* – This covers the sessional contractor's liability to third parties for breach of professional duty of care. The standard terms of agreement with sessional therapists requires professional indemnity insurance for not less than \$20 million in the aggregate for any one period of cover, and where the policy is a "claims made" policy it must continue to be maintained by the sessional contractor or practice company for a period of not less than six (6) years after the expiry or termination of the Agreement.

<sup>(1)</sup> ATO Website <http://www.ato.gov.au> Document "Super - What employers need to know"

### 2.8 FINANCIAL REPORTING:

The additional cost involved for Public Health Organisations should be calculated both for the current year and on an annual basis. This information should be included in the next monthly advice forwarded to the Department in respect to the cost of Awards, Agreements, etc.

### 2.9 RELEVANT POLICY DIRECTIVES:

- a) PD2012\_028 – *Recruitment and Selection of Staff of the NSW Health Service*
- b) PD 2012\_018 *Code of Conduct*
- c) PD2005\_227 *Contractors – Better Practice Guidelines Including Health/Safety in Engagement/Management/Evaluation*
- d) PD2012\_037 *Non Admitted Patient Activity*
- e) PD2012\_069 – *Health Care Records – Documentation and Management*
- f) PD2010\_010 *Conflicts of Interest and Gifts and Benefits*
- g) PD2008\_029 *Employment Screening Policy*
- h) PD2008\_035 *Superannuation for Employees Aged 65 and over*
- i) PD2007\_028 *Superannuation Guarantee Contribution for Sessional Interpreters*
- j) PD2006\_073 *Complaint Management Policy*
- k) PD2005\_593 *Privacy Manual (Version 2) - NSW Health*
- l) PD2005\_554 *Privacy Management Plan – NSW Health*
- m) PD2005\_523 *Superannuation Liability – Consultants – Contractors*
- n) PD2005\_370 *Intellectual Property Arising from Health Research – Policy – NSW Department of Health*
- o) IB2012\_023 *Salary Increases for Staff – NSW Health Service – HSU and ASMOF*
- p) IB2007\_061 *NSW Health Service Health Professionals (State) Award Consequential Changes to Awards/Determinations*
- q) IB2007\_059 *NSW Health Service Health Professionals (State) Award*

## 3 LIST OF ATTACHMENTS

### 3.1 APPENDIX 1 – Summary of Standard Terms of Agreement

### 3.2 APPENDIX 2 – Model of Standard Sessional Service Agreement/ Contract for Individuals

### 3.3 APPENDIX 3 – Model of Standard Sessional Service Agreement/ Contract for Practice Companies

### APPENDIX 1

#### SUMMARY OF STANDARD TERMS OF AGREEMENT/CONTRACT FOR ENGAGEMENT OF THERAPISTS ON A SESSIONAL BASIS

1. **Appendix 2** provides a standard form of agreement for engagement of sessional therapists on an individual basis. **Appendix 3** provides a standard form of agreement for engagement of a practice company to supply therapist services on a sessional basis.
2. Agreements should not be for a period longer in duration than five (5) years as a maximum. Review periods for delivery of services and performance should be included in Agreements on an annual basis or twelve months from the date of Agreement/Contract similar to annual performance management review.
3. In preparing the Agreement for engagement of sessional therapists, guidance can be found in the Instructions of the Standard Services/Consultancy Contract developed by Legal Branch (see <http://internal.health.nsw.gov.au/legal/pdf/standard.doc>).
4. Guidance for the procurement of sessional contractor services can be found in the NSW Health's Supply Procedures Manual and referenced in PD2009\_054 Tendering – Department of Health
5. The contracting therapist agrees to provide his/her services in the capacity of an independent contractor as outlined by agreement. As such, superannuation, insurances and liability are the responsibility of the individual.
6. Individuals engaged as independent or sole traders may not provide a substitute.
7. If individuals wish to include the ability to use substitute or additional workers, the individual should enter the service agreement through a company. As such, superannuation, insurances and liability are the responsibility of the practice company.
8. The sessions to be rendered will be negotiated and rendered at agreed times.
9. Pay rates are in accordance with IB2007\_061 in the *NSW Health Service Health Professionals (State) Award – Consequential Changes to Awards and Determinations*. Latest award pay rates are included in IB2012\_023 *Salary Increases for Staff – NSW Health Service – HSU and ASMOF*. Details of conditions for sessional therapists are contained in the *Health Professional and Medical Salaries (State) Award*. Current rates should be checked prior to engagement and completion of the agreement/contract for services.
10. The contracting therapist may be required to provide all or some of the equipment associated with the practice of his/her profession. If required to provide equipment, the contractor will be required by the contracting Public Health Organisation to provide proof of compliance with NSW Health policy and statutory regulations regarding infection control, equipment safety, OH&S and related duty of care requirements in compliance with NSW Health Policy Directive PD2005\_227 *Contractors – Better Practice Guidelines Including Health/Safety in Engagement/Management/Evaluation*.
11. If the contracting therapist provides some or all of equipment associated with the practice, ownership of equipment should be easily identifiable and an itemised list of all equipment is to be included in the Schedule to the agreement.
12. The contracting therapist will provide evidence of an ABN to the Public Health Organisation and invoice the organisation as appropriate for the sessional services provided.

13. The contracting therapist as an **Individual** will be required to satisfy the Public Health Organisation regarding proof of insurance: professional indemnity insurance for professional practice and public liability. Professional indemnity insurance which is a “claims made” policy must be maintained for a period of no less than six (6) years after the expiration of the Agreement/Contract.
14. Sub-contracting therapist engaged as a **Practice company** will be required to provide evidence that the company’s insurance covers pertaining to professional indemnity, public liability and workers compensation for all employees and contractors. Professional indemnity insurance which is a “claims made” policy must be maintained for a period of no less than six (6) years after the expiration of the Agreement/Contract.
15. The Public Health Organisation will have an appropriate system of payment that will enable calculation and payment of superannuation contributions in accordance the *Superannuation Guarantee (Administration) Act 1992*. The Service Manager should contact the Area Tax Accountant for information about payment method for invoices and superannuation contributions for individuals engaged as sole providers. Practice companies are responsible for superannuation for all sub-contractors or employees engaged to provide sessional services under this Agreement/Contract.
16. Payment for services rendered will be made on an interval agreed by both parties or as determined by the Public Health Organisation.
17. Either party may cancel a session on a particular day subject to giving the other party reasonable notice (a minimum of 24 hours is required). In the event that a session is cancelled by either party, the contracting therapist will not be entitled to any payment in respect to that day.
18. Either party may terminate the Agreement for any or no reason upon the giving of seven (7) days notice in writing to the other party.
19. Sessional contractors shall be required to attend mandatory training required by the Public Health Organisation and shall be paid as per the contractual sessional rate of payment for attending such training.
20. Sessional contractors must comply with NSW Health policy regarding Code of Conduct and avoid conflicts of interest (such as self promotion or referral of patients to their own private practice). PD2012\_018 *Code of Conduct* and PD2010\_010 *Conflicts of Interest and Gifts and Benefits*
21. Performance and completion of mandatory documentation and activity recording will be in accordance with Public Health Organisation requirements.
22. Patient right to privacy and confidentiality will be maintained in accordance with NSW Health privacy policy.
23. Patient complaints will be handled in accordance with PD2006\_073 *Complaint Management Policy*.
24. Public Health Organisations will provide appropriate levels of supervision of professional clinical practice and service provision.
25. Intellectual property clauses refer to the use of existing material or development of material relevant to the provision of agreed services such as patient education information, written material for publication or presentation, assessments, checklists or other materials related to the services provided. Note, PD2005\_370 *Intellectual Property Arising from Health Research – Policy—NSW Department of Health*

---

**APPENDIX 2**

**Standard Sessional Service Agreement/Contract**  
**for**  
**Individuals only**

(see separate template of agreement for practice companies)

AGREEMENT

BETWEEN

THE \_\_\_\_\_ PUBLIC HEALTH ORGANISATION

AND

(NAME OF INDIVIDUAL)

[insert ABN]

This Agreement is made on the \_\_\_\_\_ day of \_\_\_\_\_(month) \_\_\_\_\_(year)

**BETWEEN**

The \_\_\_\_\_ **Public Health Organisation**, [insert ABN and Address] ('the Public Health Organisation')

**AND**

(**Full Name**, ABN and Address) ('the sessional therapist')

**IT IS AGREED AS FOLLOWS:**

**1. DEFINITIONS**

- 1.1. **"Agreement"** means this document including all Schedules and Annexures;
- 1.2. **"Public Health Organisation"** means the [insert the name of the Public Health Organisation] and its agents and employees;
- 1.3. **"Public Health Organisation Materials"** means any documentation, information, data or material including electronic information or data given by the Public Health Organisation to the sessional therapist by whatever means;
- 1.4. **"Fee"** means payment for the Services in accordance with the sessional rate prescribed in IB2007\_061 NSW Health Service Health Professionals (State) Award Consequential Changes to Awards/Determinations;
- 1.5. **"GST"** means Goods and Services Tax imposed in accordance with the A New Tax System (Goods and Services Tax) Act 1999, related Acts and Regulations;
- 1.6. **"GST legislation"** means the A New Tax System (Goods and Services Tax) Act 1999, related Acts and Regulations (including the Taxation Administration Act 1953);
- 1.7. **"National Registration and Accreditation Scheme"** means the Health Practitioner National Law Act 2009
- 1.8. **"Intellectual Property"** includes all industrial and intellectual property rights including but not limited to copyright, future copyright, patents, trade/business or company names, registered and unregistered trademarks, registered designs, trade secrets, know how, rights in relation to circuit layouts and all other rights of intellectual property as recognised by the law in force in New South Wales;

- 1.9. “**NSW Health**” means public health organisations, the Ministry of Health, the Ambulance Service of NSW, and all other organisations under the control and direction of the Minister for Health or the Director General of Health;
- 1.10. “**Proposal**” means the response submitted to the Public Health Organisation by the sessional therapist to perform the work required by any expression of interest, advertisement, or any other document issued by the Public Health Organisation for the purpose of obtaining a proposal which describes the services to be performed by the sessional therapist;
- 1.11. “**Services**” means the services described in the Annexure 1 and includes the Proposal;
- 1.12. “**Session**” means a period of service to a maximum of 3 ½ hours;
- 1.13. “**Sessional therapist**” means an allied health professional as defined by the *NSW Health Service Health Professionals (State) Award* and covered in IB2007\_061 *NSW Health Service Health Professionals (State) Award Consequential Changes to Awards/Determinations*. Details of conditions for sessional therapists are contained in the *Health Professional and Medical Salaries (State) Award*. Current rates should be checked prior to engagement and completion of the agreement/contract for services.

## 2. ENGAGEMENT

### 2.1. Services

- a) The Public Health Organisation engages the sessional therapist to provide the services in accordance with this Agreement and detailed in Annexure 1.

## 3. SESSIONAL THERAPIST’S OBLIGATIONS

### 3.1. Due Diligence

- a) The sessional therapist must perform the services in a diligent manner and with all necessary skill and care expected in accordance with the provision of such Services and in accordance with all representations and warranties as to the sessional therapist’s experience and ability expressly or impliedly made by reference to the Proposal and this Agreement, or by law.
- b) The Public Health Organisation reserves the right to assess the sessional therapist’s performance and determine if additional supervision or training is required to meet service standards.
- c) The sessional therapist agrees to perform the services in compliance with the requirements of Annexure 1.

### 3.2. Public Health Organisation’s Property and Materials

- a) The sessional therapist accepts all responsibility for the secure guardianship of all property, equipment and materials provided by the Public Health Organisation for the purpose of the Services.
- b) Upon completion of this Agreement or in the event of termination, the sessional therapist must as soon as practicable return to the Public Health Organisation all property, equipment and materials of the Public Health Organisation.

### 3.3. Privacy

In the course of providing the Services, the sessional therapist must:

- a) comply with its obligations under the *Privacy Act 1988 (Cth)*, *Privacy and Personal Information Act 1998 (NSW)*, *Health Records & Information Privacy Act 2002 (NSW)*, any other legislation relating to privacy to the extent that such legislation is relevant to this Agreement and/or the

performance of the Services, and NSW Health and Public Health Organisation policies in relation to privacy; and;

- b) not do anything that would cause the Public Health Organisation to breach its obligations under any such legislation or policies.

### 3.4. Sub-contracting, substitution, and assignment

- a) The sessional therapist must perform the Services personally, and cannot assign, substitute or sub-contract any part of the Services specified in this Agreement.

### 3.5. Conflict of Interest

- a) The sessional therapist must comply with NSW Health policy PD2010\_010 *Conflicts of Interest and Gifts and Benefits*
- b) Breach of this policy by the sessional therapist will entitle the Public Health Organisation to terminate this Agreement under Clause 14.
- c) The sessional therapist warrants that as at the date of this Service Agreement he or she has no past, current and anticipated interest which may conflict with or restrict the Sessional therapist in performing the Services fairly and independently.
- d) Immediately upon becoming aware of the existence, or possibility, of an interest which may conflict with or restrict the sessional therapist in performing the Services fairly and independently, the sessional therapist must advise the Public Health Organisation in writing, in which event the Public Health Organisation may at its absolute discretion terminate this Agreement under Clause 14.

### 3.6. Assessment of performance, etc

- a) At any time upon request the sessional therapist must permit the Public Health Organisation to assess the sessional therapist's performance, or to inspect or assess the workplace, materials and documentation or other aspects related to the provision of the Services.

## 4. PUBLIC HEALTH ORGANISATION'S OBLIGATIONS

### 4.1. Provide Information for Service Provision

- a) The Public Health Organisation will as soon as practicable, or as required by this Agreement, make available to the sessional therapist all instructions, information, and documentation required for the performance of the Services.

## 5. FEES

### 5.1. Fees

- a) The Public Health Organisation will, in consideration of the sessional therapist performing the Services, pay to the sessional therapist the Fee in accordance with Annexure 2.

### 5.2. Payment of Fees

- a) Payment of the Fee or any instalment thereof by the HAC is subject to:
  - (1) satisfactory performance of the Services in accordance with this Agreement; and
  - (2) the provision of an appropriate tax invoice before the due date for the payment of the Fee or the relevant instalment of the Fee in accordance with Annexure 2.

### 6. GST

#### 6.1. Invoices

- a) Invoices issued by the sessional therapist for Services supplied under this Agreement must include the Fee plus as well as any applicable GST on the supply of the Services.

#### 6.2. Australian Business Number

- a) The sessional therapist will forward their Australian Business Number (ABN) to the Public Health Organisation at the commencement of the Agreement. Where no ABN is supplied, the Public Health Organisation will withhold from any payments an amount of 46.5% in accordance with *Taxation Administration Act 1953*.

#### 6.3. Goods & Services Tax

- a) For purposes of payments under this Agreement, the sessional therapist must provide invoices to the Public Health Organisation in accordance with Appendix 2 and in the form of a GST Tax Invoice as prescribed in the *GST Legislation [ANTS (Goods & Services Act) 1999]*.
- b) The sessional therapist warrants and undertakes that at the time of any supply on which GST is imposed is made by it to the Public Health Organisation under this Agreement, he or she is or will be registered under the GST legislation. If the Public Health Organisation requires written evidence of registration, the sessional therapist will promptly produce evidence satisfactory to the Public Health Organisation.

### 7. VARIATIONS

#### 7.1. Request

- a) The Public Health Organisation may request (in writing) the sessional therapist to vary the services provided the variation is within the general scope of the services described in Annexure 1.
- b) The sessional therapist may request (in writing) to vary the services provided in the variation is within the general scope of the services described in the Annexure 1.
- c) The variation must be agreed in writing between the parties prior to the variation being implemented.

### 8. INTELLECTUAL PROPERTY

#### 8.1. Ownership

- a) Unless it has obtained the prior written approval of the Public Health Organisation to do otherwise, the sessional therapist must ensure that Public Health Organisation materials or materials developed in the course of the provision of the Services are used, copied, supplied or reproduced only for the purposes of the providing the services under this Agreement. The approval of the Public Health Organisation to use or disclose such materials for any other purpose may be given or withheld in its absolute discretion, and may be subject to such terms and conditions as the Public Health Organisation considers appropriate.
- b) Ownership of intellectual property in or in relation to materials developed in the course of the provision of the services vests upon its creation in the Public Health Organisation. The sessional therapist must, upon request by the Public Health Organisation, do all things necessary to vest ownership and title of intellectual property in the Public Health Organisation.

- c) The sessional therapist must ensure all licence fees and/or consents required under law are paid and/or obtained in connection with any reproduction, adaptation or use of any Intellectual Property or materials necessary for the provision of the Services.
- d) The sessional therapist agrees to indemnify the Public Health Organisation and NSW Health for any demand, cost and expense made, sustained, brought or prosecuted as a result of any breaches by the sessional therapist of the intellectual property rights of third parties while performing the services under this Agreement.

### 8.2. Publications

- a) The sessional therapist must not publish any articles, statements or any other information arising from the provision of the services under this Agreement without the Public Health Organisation's approval in writing beforehand. The NSW Health logo must not be used by the sessional therapist without the Public Health Organisation's approval in writing beforehand.
- b) Without limiting clause 8.2(a), the sessional therapist agrees to acknowledge the support of the Public Health Organisation in any publications.

## 9. INDEMNITY

### 9.1. Coverage

- a) Subject to Clause 9.2, the sessional therapist agrees to indemnify the Public Health Organisation and NSW Health, their employees, officers and agents ("those indemnified"), against any liability, claim or demand (including reasonable legal costs and expenses), made or prosecuted in any manner, arising from any injury to any person (including death) or any damage to any property, where such injury or damage arose as a result of or in connection with the performance of the services by the sessional therapist .

### 9.2. Liability

- a) The sessional therapist's liability to indemnify those indemnified under Clause 9.1 shall be reduced proportionately to the extent that any unlawful or negligent act or omission on the part of those indemnified contributed to the injury or damage.

## 10. INSURANCE

### 10.1. Type of insurance

- a) The sessional therapist must take out and maintain with a reputable insurance company the insurance policies of the type and in the amount set out in clauses 10.3, and 10.4.

### 10.2. Period of insurance

- a) If the sessional therapist 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 sessional therapist must maintain the policy during the term of this Agreement and for a period not less than six (6) years after the expiry or earlier termination of this Agreement.

### 10.3. Occurrence

- a) If the sessional therapist 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 sessional therapist must maintain the policy during the term of this Agreement.

### 10.4. Certificate of Currency

- a) A certificate of currency(s) for the policy(s) set out below shall be made available by the sessional therapist for inspection by the Public Health Organisation at the date of signing this Agreement and thereafter annually at the date of policy renewal

### 10.5. Public Liability Insurance

- a) A broad form public liability policy of insurance in the amount of not less than twenty million dollars (\$20,000,000) in respect of any one occurrence and in the aggregate for any one period of cover.

### 10.6. Professional Indemnity Insurance

- a) A professional indemnity policy of insurance in the amount of not less than twenty million dollars (\$20,000,000) in respect of any one claim and in the aggregate for any one period of cover.

### 10.7. Workers compensation insurance

- a) A signed WorkCover Subcontractor's Statement (WC05483) in accordance with s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996*.

### 10.8. Superannuation Guarantee

- a) The Fees paid to the sessional therapist under this Agreement are exclusive of any liability of Public Health Organisation to make superannuation contributions under the provisions of the *Superannuation Guarantee (Administration) Act 1992*. The sessional therapist will be responsible for the production of any documentation required to be completed in this regard.

## 11. KEEPING OF RECORDS

### 11.1. Medical Records/Patient Files

- a) The sessional therapist must maintain medical records and treatment documentation in accordance with Public Health Organisation requirements.
- b) All medical records and patient files will be managed in compliance with NSW Health policy PD2012\_069.

### 11.2. Activity Statistics

- a) The sessional therapist must maintain and submit activity statistics in accordance with Public Health Organisation requirements.
- b) The Public Health Organisation agrees to provide adequate instruction for the collection, maintenance and submission of activity statistics in accordance with Public Health Organisation, NSW Health and other funding body requirements.

### 11.3. Invoices

- a) The sessional therapist must keep proper accounts, records (including information stored by computer or other devices) and time sheets in accordance with accounting principles generally applied in relevant commercial practice in respect of its charges, and/or billing, and any reimbursements payable pursuant to this Agreement.

### 11.4. Access

- a) The sessional therapist must, within a reasonable time of any request, give the Public Health Organisation access to any information which may be reasonably required to enable any claim to be substantiated and verified.

## 12. PERFORMANCE

### 12.1. Professional Practice

- a) The sessional therapist will comply with relevant professional standards of practice at all times.
- b) The sessional therapist is responsible for ensuring that he/she is professionally competent and that his or her skills are up-to-date.
- c) Where the sessional therapist is required to be registered under the National Registration and Accreditation Scheme, the sessional therapist must:
  - 1) ensure that he or she maintains current registration at all times;
  - 2) immediately advise the Public Health Organisation of the imposition of any condition or order (including but not limited to an order suspending or deregistering the sessional therapist) made in respect of the sessional therapist under the National Registration and Accreditation Scheme; and
  - 3) provide the Public Health Organisation with documentary evidence of currency of professional registration annually.
- d) If upon review the Public Health Organisation determines at its absolute discretion that the sessional therapist's professional practice skills, competence, behaviour or conduct is not satisfactory to meet the service delivery requirements of this Agreement, the Public Health Organisation may terminate the Agreement under clause 14.1.
- e) Sessional therapists will be responsible for the cost of their own continuing professional development and, where applicable, professional registration. This excludes mandatory training that applies to all Public Health Organisation staff as required by the Public Health Organisation.

### 12.2. Service Provision

- a) The sessional therapist warrants and undertakes that the performance of the Services will comply and conform with all:
  - 1) applicable legislation and any regulations, by laws, ordinances, or orders made under such legislation;
  - 2) applicable Public Health Organisation codes of conduct, policies and guidelines; and
  - 3) relevant Australian professional standards of practice.
- b) The sessional therapist will be responsible for all duties and tasks associated with the Services as outlined in the Schedule of this Agreement.

### 12.3. Service Cancellation

- a) Either party may cancel a session on a particular day subject to giving the other party reasonable notice of at least 24 hours notice. In the event that a session is cancelled by either party, the sessional therapist will not be entitled to any payment in respect to that day.

### 13. NEGATION OF ENGAGEMENT UNDER THE AGREEMENT/CONTRACT

#### 13.1. Representation

- a) The sessional therapist shall not represent himself or herself, or permit himself or herself to be represented, as being an employee or agent of the Public Health Organisation or NSW Health.

#### 13.2. Status of sessional therapist

- a) The sessional therapist shall not by virtue of this Agreement be, or for any purpose be deemed to be, an employee or agent of the Public Health Organisation or NSW Health.

### 14. TERMINATION OR SUSPENSION OF AGREEMENT/CONTRACT

#### 14.1. Termination by either party

- a) Either party may terminate the Agreement at any time, and for any or no reason, upon the giving of seven (7) days notice in writing to the other party.
- b) Subject to sub-clauses 14.2 and 14.3, either party may terminate this Agreement if the other party breaches any term of this Agreement and such breach are not remedied within 14 days of receipt of written notice of the breach.

#### 14.2. Termination by Public Health Organisation

- a) If the sessional therapist:
  - 1) becomes bankrupt or insolvent or enters into a scheme or arrangements with creditors;
  - 2) fails to carry out the services according to the terms of this Agreement;
  - 3) without reasonable cause suspends the carrying out of the Services;
  - 4) fails to provide evidence on an annual basis evidence of current insurance coverage required by this Agreement;
  - 5) commits a serious breach of Public Health Organisation or NSW Health policy;
  - 6) where he or she is required to be registered under the National Registration and Accreditation Scheme:
    - i. fails to provide evidence on an annual basis of professional registration; or
    - ii. becomes subject to an order or condition that prevents or restricts him or her from carrying out the Services;

the Public Health Organisation may immediately terminate this Agreement by written notice addressed to the sessional therapist.

- b) The Public Health Organisation will only be liable to pay that part of any outstanding fee that relates to Services provided up to the date of termination.

#### 14.3. Termination by sessional therapist

- a) If the Public Health Organisation fails to pay the sessional therapist in accordance with this Agreement the sessional therapist may immediately terminate this Agreement by written notice address to the Public Health Organisation.

#### **14.4. Sessional therapist's continuing liability**

- a) Termination by the Public Health Organisation will not release the sessional therapist from liability in respect to any breach of, or non-performance of, any obligation by the sessional therapist pursuant to this Agreement.

#### **14.5. Suspension**

- a) The Public Health Organisation may at any time with reasonable cause, and with immediate effect, suspend the sessional therapist from performing the Services for the purpose of carrying out any review or investigation considered necessary by the Public Health Organisation.
- b) During the period of suspension the sessional therapist shall not be entitled to the payment of any Fees.

### **15. TERMINATION WITHOUT PREJUDICE**

#### **15.1. Expiration or termination**

- a) The expiration or termination of this Agreement is without prejudice to any accrued rights or remedies of each party.

### **16. CONTINUING OBLIGATIONS**

#### **16.1. Obligations**

- a) The expiration or termination of this Agreement shall not affect such of its provision as are expressed to operate or have effect thereafter.

### **17. DISCONTINUANCE OF THE PUBLIC HEALTH ORGANISATION**

#### **17.1. New entity**

- a) If the Public Health Organisation is reconstituted, renamed or replaced or if its powers or functions are transferred to another entity, this Agreement is deemed to refer to that new entity.

#### **17.2. Cessation of entity**

- a) If the Public Health Organisation ceases to exist, this Agreement is deemed to refer to that entity which services substantially the same purpose or object as the former entity.

### **18. INCONSISTENCIES**

#### **18.1. Precedence of Agreement**

- a) If there are any inconsistencies between the Services to be provided and/or the terms and conditions for the provision of Services as detailed in this Agreement, any expression of interest, advertisement, or any other document issued by the Public Health Organisation for the purpose of obtaining a proposal, and the proposal, to the extent of any inconsistency this Agreement will have precedence over the expression of interest, advertisement, other document and the proposal.

### **19. NOTICES**

### 19.1. Giving Notices

- a) The addresses of the parties for the purposes of giving any notice shall be as set out in the Schedule or as may from time to time be specified in writing between the parties.

## 20. DISPUTES

### 20.1. Resolution

- a) Disputes shall as far as possible, be satisfied by agreement between the parties.

### 20.2. Mediation

- a) If the dispute is not resolved, then the dispute is to be referred to the Australian Commercial Disputes Centre for mediation or any other agreed venue which conducts mediation.

## 21. APPLICABLE LAW

### 21.1. Governance

- a) This Agreement will be governed by, and construed in accordance with, law for the time being in force in New South Wales, and the parties submit to the jurisdiction of the courts of that State.

## 22. DURATION

### 22.1. Term of agreement/contract

- a) This Agreement will commence on the date of this Agreement and, unless terminate earlier, will expire on the date stated in the Schedule or, if no date is specified, on the day 5 (five) years after the date on which the Agreement commences.



**THE SCHEDULE**

**Item 3**           Duration of Agreement:

.....  
(specify date Agreement is to end)

**Item 4**           Notices to:

Public Health Organisation Contact Name: .....

Address: .....

Telephone: .....

Facsimile: .....

Email: .....

Sessional therapist Contact Name: .....

Address: .....

Telephone: .....

Facsimile: .....

Email: .....

**ANNEXURE 1**

**THE SERVICES**

**(Describe the Services to be provided. Use the following headings for guidance. Retain the heading but delete the notes in bold once the Agreement is finalised)**

**1. Service Description**

**(The Service Description should be a summary of the sessional services and what is to be provided. Also provide a concise statement which presents the reader with a clear statement of the reasons for engagement of a sessional therapist. The Service Description should be a precise statement of intent. As part of the Sessional Service Description, set out what the components of service entails, e.g.**

- **Appointment Management**
- **Clinical Service Provision (individual, group, clinic)**

- Medical Record Documentation
- Equipment and Materials Management
- Data Collection and Activity Statistics including submission dates
- Staff supervision, liaison or collaboration
- Attendance to orientation, training or meetings

**2. Objectives of the Sessional Service**

(This should be specific and not general, and set out the specific objectives to be achieved, e.g. activity goals or types of services to be provided and outcomes of services. This section can also include description of service and performance review, e.g. annual performance management review)

**3. Deliverables**

(Deliverables should relate directly to the Objectives and mark the Key Performance Indicators for the sessional service provision, e.g.

- number of sessions per week
- number of patients per session
- submission of activity data within 7 days of close of calendar month.
- completion of patient documentation after each session.
- delivery of patient education
- delivery of services to group or clinic e.g. a high risk foot care clinic
- supervision of undergraduate students

**ANNEXURE 2**

**FEES**

(Specify the TOTAL FEE payable. Then specify the payment schedule according to an agreed schedule of invoicing after discussion with the Public Health Organisation Tax Accountant on appropriate arrangements for tax invoicing and superannuation contributions. As a matter of principle, there should not be payments upfront. Payment should be made only after completion of the agreed sessions as per the schedule outlined in this section. Ensure to cite relevant clauses for GST – Clause 6 and for Superannuation – Clause 10.5 and General Instructions when the Invoice Schedule.)

For Example:

**Sessional Payment: \$194.40 plus GST plus Superannuation**

**Number of Sessions per week: .....**

**Number of Weeks of the Agreement:** .....

**Invoice Schedule:** (Description of schedule, e.g. once a month on the first Monday of each Month with date of annual performance management review of delivery of service and practice performance)

**Invoice 1- Date**

**Invoice 2- Date**

**Invoice 3- Date**

**Invoice 4- Date**

APPENDIX 3

**Standard Sessional Service Agreement/Contract for Use  
with  
Practice Companies**

(see separate form of agreement for individuals)

AGREEMENT

BETWEEN

THE \_\_\_\_\_ PUBLIC HEALTH ORGANISATION

AND

(NAME OF PRACTICE COMPANY)

[insert ABN]

This Agreement is made on the \_\_\_\_\_ day of \_\_\_\_\_(month) \_\_\_\_\_(year)

**BETWEEN**

The \_\_\_\_\_ **Public Health Organisation**, [insert ABN and Address] ('the Public Health Organisation')

**AND** \_\_\_\_\_

(Full Name of Practice Company, ABN and Address) ('the Company')

**IT IS AGREED AS FOLLOWS:**

**1. DEFINITIONS**

- 1.1. **"Agreement"** means this document including all Schedules and Annexures;
- 1.2. **"Public Health Organisation"** means the [insert the name of the Public Health Organisation] and its agents and employees;
- 1.3. **"Public Health Organisation Materials"** means any documentation, information, data or material including electronic information or data given by the Public Health Organisation to the sessional therapist by whatever means;
- 1.4. **"Fee"** means payment for the Services in accordance with the sessional rate prescribed in IB2007\_061 NSW Health Service Health Professionals (State) Award Consequential Changes to Awards/Determinations;
- 1.5. **"GST"** means Goods and Services Tax imposed in accordance with the A New Tax System (Goods and Services Tax) Act 1999, related Acts and Regulations;
- 1.6. **"GST legislation"** means the A New Tax System (Goods and Services Tax) Act 1999, related Acts and Regulations (including the Taxation Administration Act 1953);
- 1.7. **"National Registration and Accreditation Scheme"** means the Health Practitioner National Law Act 2009
- 1.8. **"Intellectual Property"** includes all industrial and intellectual property rights including but not limited to copyright, future copyright, patents, trade/business or company names, registered and unregistered trademarks, registered designs, trade secrets, know how, rights in relation to circuit layouts and all other rights of intellectual property as recognised by the law in force in New South Wales;
- 1.9. **"NSW Health"** means public health organisations, the Ministry of Health, the Ambulance Service of NSW, and all other organisations under the control and direction of the Minister for Health or the Director General of Health;

- 1.10. **“Proposal”** means the response submitted to the Public Health Organisation by the sessional therapist to perform the work required by any expression of interest, advertisement, or any other document issued by the Public Health Organisation for the purpose of obtaining a proposal which describes the services to be performed by the sessional therapist;
- 1.11. **“Services”** means the services described in the Annexure 1 and includes the Proposal;
- 1.12. **“Session”** means a period of service to a maximum of 3 ½ hours;
- 1.13. **“Sessional therapist”** means an allied health professional as defined by the *NSW Health Service Health Professionals (State) Award* and covered in IB2007\_061 *NSW Health Service Health Professionals (State) Award Consequential Changes to Awards/Determinations*. Details of conditions for sessional therapists are contained in the *Health Professional and Medical Salaries (State) Award*. Current rates should be checked prior to engagement and completion of the agreement/contract for services.
- 1.14. **“Practice company”** means a private practice that is engaged to provide a sessional service and should have an ABN and meet their own superannuation contribution and insurance requirements in relations to their employees and contractors. The sessional service is to be provided by an allied health professional as described in clause 1.13.

## 2. ENGAGEMENT

### 2.1. Services

- a) The Public Health Organisation engages the practice company to provide the services of sessional therapist(s) to provide the services in accordance with this Agreement and detailed in Annexure 1.

## 3. PRACTICE COMPANY’S OBLIGATIONS

### 3.1. Due Diligence

- a) The practice company must perform the services in a diligent manner and with all necessary skill and care expected in accordance with the provision of such services and in accordance with all representations and warranties as to the sessional therapist’s experience and ability expressly or impliedly made by reference to the Proposal and this Agreement, or by law.
- b) The Public Health Organisation reserves the right to assess the sessional therapist’s performance and determine if additional supervision or training is required to meet service standards.
- c) The practice company agrees to perform the services in compliance with the requirements of Annexure 1.

### 3.2. Public Health Organisation’s Property and Materials

- a) The practice company accepts all responsibility for the secure guardianship of all property, equipment and materials provided by the Public Health Organisation for the purpose of the services.
- b) Upon completion of this Agreement or in the event of termination, the practice company must as soon as practicable return to the Public Health Organisation all property, equipment and materials of the Public Health Organisation.

### 3.3. Privacy

In the course of providing the services, the practice company and the provided sessional therapist(s) must:

- a) comply with its obligations under the *Privacy Act 1988* (Cth), *Privacy and Personal Information Act 1998* (NSW), *Health Records & Information Privacy Act 2002* (NSW), any other legislation relating to privacy to the extent that such legislation is relevant to this Agreement and/or the performance of the Services, and NSW Health and Public Health Organisation policies in relation to privacy; and;
- b) not do anything that would cause the Public Health Organisation to breach its obligations under any such legislation or policies.

### 3.4. Sub-contracting, substitution, and assignment

- a) The practice company and the provided sessional therapist(s) must perform the services personally, and cannot assign, substitute or sub-contract any part of the services specified in this Agreement.

### 3.5. Conflict of Interest

- a) The practice company and the provided sessional therapist(s) must comply with NSW Health policy PD2010\_010 *Conflicts of Interest and Gifts and Benefits*
- b) Breach of this policy by the practice company and the provided sessional therapist(s) will entitle the Public Health Organisation to terminate this Agreement under Clause 14.
- c) The practice company warrants that as at the date of this Service Agreement he or she has no past, current and anticipated interest which may conflict with or restrict the practice company and the provided sessional therapist(s) in performing the services fairly and independently.
- d) Immediately upon becoming aware of the existence, or possibility, of an interest which may conflict with or restrict the practice company or the sessional therapist(s) in performing the services fairly and independently, the practice company must advise the Public Health Organisation in writing, in which event the Public Health Organisation may at its absolute discretion terminate this Agreement under Clause 14.

### 3.6. Assessment of performance, etc

- a) At any time upon request the practice company must permit the Public Health Organisation to assess the sessional therapist's performance, or to inspect or assess the workplace, materials and documentation or other aspects related to the provision of the Services.

## 4. PUBLIC HEALTH ORGANISATION'S OBLIGATIONS

### 4.1. Provide Information for Service Provision

- a) The Public Health Organisation will as soon as practicable, or as required by this Agreement, make available to the practice company all instructions, information, and documentation required for the performance of the services.

## 5. FEES

### 5.1. Fees

- a) The Public Health Organisation will, in consideration of the Services, pay to the practice company the Fee in accordance with Annexure 2.

### 5.2. Payment of Fees

- a) Payment of the Fee or any instalment thereof by the HAC is subject to:

- 1) satisfactory performance of the services in accordance with this Agreement; and
- 2) the provision of an appropriate tax invoice before the due date for the payment of the Fee or the relevant instalment of the Fee in accordance with Annexure 2.

## 6. GST

### 6.1. Invoices

- a) Invoices issued by the practice company for services supplied under this Agreement must include the Fee plus as well as any applicable GST on the supply of the services.

### 6.2. Australian Business Number

- a) The practice company will forward their Australian Business Number (ABN) to the Public Health Organisation at the commencement of the Agreement. Where no ABN is supplied, the Public Health Organisation will withhold from any payments an amount of 46.5% in accordance with *Taxation Administration Act 1953*.

### 6.3. Goods & Services Tax

- a) For purposes of payments under this Agreement, the practice company must provide invoices to the Public Health Organisation in accordance with Annexure 2 and in the form of a GST Tax Invoice as prescribed in the *GST Legislation [ANTS (Goods & Services Act) 1999]*.
- b) The practice company warrants and undertakes that at the time of any supply on which GST is imposed is made by it to the Public Health Organisation under this Agreement, he or she is or will be registered under the GST legislation. If the Public Health Organisation requires written evidence of registration, the practice company will promptly produce evidence satisfactory to the Public Health Organisation.

## 7. VARIATIONS

### 7.1. Request

- a) The Public Health Organisation may request (in writing) the practice company to vary the services provided the variation is within the general scope of the services described in Annexure 1.
- b) The practice company may request (in writing) to vary the services provided in the variation is within the general scope of the services described in the Annexure 1.
- c) The variation must be agreed in writing between the parties prior to the variation being implemented.

## 8. INTELLECTUAL PROPERTY

### 8.1. Ownership

- a) Unless it has obtained the prior written approval of the Public Health Organisation to do otherwise, the practice company must ensure that Public Health Organisation materials or materials developed in the course of the provision of the services are used, copied, supplied or reproduced only for the purposes of the providing the services under this Agreement. The approval of the Public Health Organisation to use or disclose such materials for any other purpose may be given or withheld in its absolute discretion, and may be subject to such terms and conditions as the Public Health Organisation considers appropriate.

- b) Ownership of intellectual property in or in relation to materials developed in the course of the provision of the services vests upon its creation in the Public Health Organisation. The practice company must, upon request by the Public Health Organisation, do all things necessary to vest ownership and title of intellectual property in the Public Health Organisation.
- c) The practice company must ensure all licence fees and/or consents required under law are paid and/or obtained in connection with any reproduction, adaptation or use of any Intellectual Property or materials necessary for the provision of the services.
- d) The practice company agrees to indemnify the Public Health Organisation and NSW Health for any demand, cost and expense made, sustained, brought or prosecuted as a result of any breaches by the practice company or provided sessional therapist(s) of the intellectual property rights of third parties while performing the services under this Agreement.

### 8.2. Publications

- a) The practice company and the provided sessional therapist(s) must not publish any articles, statements or any other information arising from the provision of the services under this Agreement without the Public Health Organisation's approval in writing beforehand. The NSW Health logo must not be used by the practice company or the provided sessional therapist(s) without the Public Health Organisation's approval in writing beforehand.
- b) Without limiting clause 8.2(a), the practice company and the provided sessional therapist(s) agrees to acknowledge the support of the Public Health Organisation in any publications.

## 9. INDEMNITY

### 9.1. Coverage

- a) Subject to Clause 9.2, the practice company agrees to indemnify the Public Health Organisation and NSW Health, their employees, officers and agents ("those indemnified"), against any liability, claim or demand (including reasonable legal costs and expenses), made or prosecuted in any manner, arising from any injury to any person (including death) or any damage to any property, where such injury or damage arose as a result of or in connection with the performance of the services by the practice company or the provided sessional therapist(s) .

### 9.2. Liability

- a) The practice company's liability to indemnify those indemnified under Clause 9.1 shall be reduced proportionately to the extent that any unlawful or negligent act or omission on the part of those indemnified contributed to the injury or damage.

## 10. INSURANCE

### 10.1. Type of insurance

- a) The practice company must take out and maintain with a reputable insurance company the insurance policies of the type and in the amount set out in clauses 10.3, and 10.4.

### 10.2. Period of insurance

- a) If the practice company 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 practice company must maintain the policy during the term of this Agreement and for a period not less than six (6) years after the expiry or earlier termination of this Agreement.

### 10.3. Occurrence

- a) If the practice company 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 practice company must maintain the policy during the term of this Agreement.

### 10.4. Certificate of Currency

- a) A certificate of currency(s) for the policy(s) set out below shall be made available by the practise company for inspection by the Public Health Organisation at the date of signing this Agreement and thereafter annually at the date of policy renewal

### 10.5. Public Liability Insurance

- a) A broad form public liability policy of insurance in the amount of not less than twenty million dollars (\$20,000,000) in respect of any one occurrence and in the aggregate for any one period of cover.

### 10.6. Professional Indemnity Insurance

- a) A professional indemnity policy of insurance in the amount of not less than twenty million dollars (\$20,000,000) in respect of any one claim and in the aggregate for any one period of cover and must be maintained by the practice company and the provided or sub-contracted sessional therapists until the expiry or termination of the Agreements and a period of not less than six (6) years after the expiry or termination of the Agreement.

### 10.7. Workers compensation insurance

- a) The practice company is required to obtain worker's compensation insurance to cover all therapists or sub-contractors employed to provide sessional services by the contracted practice company as required by law.

### 10.8. Superannuation

- a) Practice companies engaged to provide sessional services are not entitled to superannuation payment by the Public Health Organisation.

## 11. KEEPING OF RECORDS

### 11.1. Medical Records/Patient Files

- a) The practice company must maintain medical records and treatment documentation in accordance with Public Health Organisation requirements.
- b) All medical records and patient files will be managed in compliance with NSW Health policy PD2012\_069 *Health Care Records – Documentation and Management..*

### 11.2. Activity Statistics

- a) The practice company must maintain and submit activity statistics in accordance with Public Health Organisation requirements.
- b) The Public Health Organisation agrees to provide adequate instruction for the collection, maintenance and submission of activity statistics in accordance with Public Health Organisation, NSW Health and other funding body requirements.

### 11.3. Invoices

- a) The practice company must keep proper accounts, records (including information stored by computer or other devices) and time sheets in accordance with accounting principles generally applied in relevant commercial practice in respect of its charges, and/or billing, and any reimbursements payable pursuant to this Agreement.

### 11.4. Access

- a) The practice company must, within a reasonable time of any request, give the Public Health Organisation access to any information which may be reasonably required to enable any claim to be substantiated and verified.

## 12. PERFORMANCE

### 12.1. Professional Practice

- a) The practice company will comply with relevant professional standards of practice at all times.
- b) The parties acknowledge the practice company provided sessional therapist(s) is responsible for ensuring that he/she is professionally competent and that his or her skills are up-to-date.
- c) Where the practice company provided sessional therapist is required to be registered under the National Registration and Accreditation Scheme, the sessional therapist must:
  - 1) ensure that he or she maintains current registration at all times;
  - 2) immediately advise the Public Health Organisation of the imposition of any condition or order (including but not limited to an order suspending or deregistering the sessional therapist) made in respect of the sessional therapist under the National Registration and Accreditation Scheme; and
  - 3) provide the Public Health Organisation with documentary evidence of currency of professional registration annually.
- d) Where the provided sessional therapist is not required to be registered under the National Registration and Accreditation Scheme, the practice company must ensure that the sessional therapist provided complies with the code of conduct for unregistered health practitioners contained in Schedule 3 of the *Public Health (General) Regulation 2002*.
- e) If upon review the Public Health Organisation determines at its absolute discretion that the sessional therapist's professional practice skills, competence, behaviour or conduct is not satisfactory to meet the service delivery requirements of this Agreement, the Public Health Organisation may terminate the Agreement under clause 14.1.
- f) The parties acknowledge the sessional therapist(s) will be responsible for the cost of their own continuing professional development and, where applicable, professional registration. This excludes mandatory training that applies to all Public Health Organisation staff as required by the Public Health Organisation.

### 12.2. Service Provision

- a) The practice company warrants and undertakes that the performance of the Services will comply and conform with all:
  - 1) applicable legislation and any regulations, by laws, ordinances, or orders made under such legislation;

- 2) applicable Public Health Organisation codes of conduct, policies and guidelines; and
  - 3) relevant Australian professional standards of practice.
- b) The parties acknowledge the sessional therapist will be responsible for all duties and tasks associated with the services as outlined in the Schedule of this Agreement.

### 12.3. Service Cancellation

- a) Either party may cancel a session on a particular day subject to giving the other party reasonable notice of at least 24 hours notice. In the event that a session is cancelled by either party, the Public Health Organisation in accordance with this clause, the practice company will not be entitled to any payment in respect to the cancelled session. Where a session is cancelled by the practice company, there will be no payment in respect to that session.

## 13. NEGATION OF ENGAGEMENT UNDER THE AGREEMENT/CONTRACT

### 13.1. Representation

- a) The practice company warrants that the provided sessional therapist(s) shall not represent himself or herself, or permit himself or herself to be represented, as being an employee or agent of the Public Health Organisation or NSW Health.

### 13.2. Status of sessional therapist

- a) The parties agree that the provided sessional therapist(s) shall not by virtue of this Agreement be, or for any purpose be deemed to be, an employee or agent of the Public Health Organisation or NSW Health.

## 14. TERMINATION OR SUSPENSION OF AGREEMENT/CONTRACT

### 14.1. Termination by either party

- a) Either party may terminate the Agreement at any time, and for any or no reason, upon the giving of seven (7) days notice in writing to the other party.
- b) Subject to sub-clauses 14.2 and 14.3, either party may terminate this Agreement if the other party breaches any term of this Agreement and such breach are not remedied within 14 days of receipt of written notice of the breach.

### 14.2. Termination by Public Health Organisation

- a) If the practice company or, where applicable, the provided sessional therapist(s):
- 1) has liquidation or administration proceedings commenced against it (in the case of the practice company), or is declared bankrupt or has bankruptcy proceedings commenced against him or her (in the case of the sessional therapist);
  - 2) fails to carry out the services according to the terms of this Agreement;
  - 3) without reasonable cause suspends the carrying out of the services;
  - 4) fails to provide evidence on an annual basis evidence of current insurance coverage required by this Agreement;
  - 5) commits a serious breach of Public Health Organisation or NSW Health policy;

- 6) where the sessional therapist is required to be registered under the National Registration and Accreditation Scheme:
  - a. fails to provide evidence on an annual basis of professional registration; or
  - b. becomes subject to an order or condition that prevents or restricts him or her from carrying out the Services;
- 7) where the sessional therapist is not required to be registered under the National Registration and Accreditation Scheme becomes subject to an order or condition by the Health Care Complaints Commission that prevents or restricts him or her from carrying out the services, the Public Health Organisation may immediately terminate this Agreement by written notice addressed to the practice company.
- b) The Public Health Organisation will only be liable to pay that part of any outstanding fee that relates to services provided up to the date of termination.

### **14.3. Termination by the practice company**

- a) If the Public Health Organisation fails to pay the practice company in accordance with this Agreement the practice company may immediately terminate this Agreement by written notice address to the Public Health Organisation.

### **14.4. Practice company's Continuing Liability**

- a) Termination by the Public Health Organisation will not release the practice company from liability in respect to any breach of, or non-performance of, any obligation by the sessional therapist pursuant to this Agreement.

### **14.5. Suspension**

- a) The Public Health Organisation may at any time with reasonable cause, and with immediate effect, suspend the practice company from performing the services for the purpose of carrying out any review or investigation considered necessary by the Public Health Organisation.
- b) During the period of suspension the practice company shall not be entitled to the payment of any Fees.

## **15. TERMINATION WITHOUT PREJUDICE**

### **15.1. Expiration or termination**

- a) The expiration or termination of this Agreement is without prejudice to any accrued rights or remedies of each party.

## **16. CONTINUING OBLIGATIONS**

### **16.1. Obligations**

- a) The expiration or termination of this Agreement shall not affect such of its provision as are expressed to operate or have effect thereafter.

## **17. DISCONTINUANCE OF THE PUBLIC HEALTH ORGANISATION**

### **17.1. New entity**

- a) If the Public Health Organisation is reconstituted, renamed or replaced or if its powers or functions are transferred to another entity, this Agreement is deemed to refer to that new entity.

### 17.2. Cessation of entity

- a) If the Public Health Organisation ceases to exist, this Agreement is deemed to refer to that entity which services substantially the same purpose or object as the former entity.

## 18. INCONSISTENCIES

### 18.1. Precedence of Agreement

- a) If there are any inconsistencies between the services to be provided and/or the terms and conditions for the provision of services as detailed in this Agreement, any expression of interest, advertisement, or any other document issued by the Public Health Organisation for the purpose of obtaining a proposal, and the proposal, to the extent of any inconsistency this Agreement will have precedence over the expression of interest, advertisement, other document and the proposal.

## 19. NOTICES

### 19.1. Giving Notices

- a) The addresses of the parties for the purposes of giving any notice shall be as set out in the Schedule or as may from time to time be specified in writing between the parties.

## 20. DISPUTES

### 20.1. Resolution

- a) Disputes shall as far as possible, be satisfied by agreement between the parties.

### 20.2. Mediation

- a) If the dispute is not resolved, then the dispute is to be referred to the Australian Commercial Disputes Centre for mediation or any other agreed venue which conducts mediation.

## 21. APPLICABLE LAW

### 21.1. Governance

- a) This Agreement will be governed by, and construed in accordance with, law for the time being in force in New South Wales, and the parties submit to the jurisdiction of the courts of that State.

## 22. DURATION

### 22.1. Term of agreement/contract

- a) This Agreement will commence on the date of this Agreement and, unless terminate earlier, will expire on the date stated in the Schedule or, if no date is specified, on the day 5 (five) years after the date on which the Agreement commences.

**EXECUTED** for and on behalf of the

.....

(name of Public Health Organisation)

But not so as to incur personal liability

By:

.....

(Signature)

.....

(Print Name and Position)

.....

(Signature of Witness)

.....

(Print Name of Witness)

**EXECUTED** by and behalf of:

.....

(Practice Company)

.....

(Signature of Director)

.....

(Signature of Director/Secretary)

.....

(Name of Director)

.....

(Name of Director/Secretary)

.....

(Signature of Witness)

.....

(Print Name of Witness)



intent. As part of the Sessional Service Description, set out what the components of service entails, eg

- Appointment Management
- Clinical Service Provision (individual, group, clinic)
- List of individuals who will be providing sessional services as part of Agreement/Contract on behalf of the Company
- Medical Record Documentation
- Equipment and Materials Management
- Data Collection and Activity Statistics including submission dates
- Staff supervision, liaison or collaboration
- Attendance to orientation, training or meetings

### 3. Objectives of the Sessional Service

(This should be specific and not general, and set out the specific objectives to be achieved, eg activity goals or types of services to be provided and outcomes of services. This section can also include description of service and performance review, e.g. annual performance management review)

### 4. Deliverables

(Deliverables should relate directly to the Objectives and mark the Key Performance Indicators for the sessional service provision, e.g.

- number of sessions per week
- number of patients per session
- submission of activity data within 7 days of close of calendar month.
- completion of patient documentation after each session.
- delivery of patient education
- delivery of services to group or clinic e.g. a high risk foot care clinic
- supervision of undergraduate students

## ANNEXURE 2

### FEES

(Specify the TOTAL FEE payable. Then specify the payment schedule according to an agreed schedule of invoicing after discussion with the Public Health Organisation Tax Accountant on appropriate arrangements for tax invoicing and superannuation contributions. As a matter of principle, there should not be payments upfront. Payment should be made only after completion of

the agreed sessions as per the schedule outlined in this section. Ensure to cite relevant clauses for GST – Clause 6 and for Superannuation – Clause 10.5 and General Instructions when the Invoice Schedule.)

For example:

**Sessional Payment:** \$194.40 plus GST plus Superannuation

**Number of Sessions per week:** .....

**Number of Weeks of the Agreement:** .....

**Invoice Schedule:** ( Description of schedule, e.g. once a month on the first Monday of each Month with date of annual performance management review of delivery of service and practice performance)

**Invoice 1- Date**

**Invoice 2- Date**

**Invoice 3- Date**

**Invoice 4- Date**