

Contractor/services agreement

This factsheet provides some useful information about the clauses that are typically contained in a contractor or services agreement for medical practitioners

The purpose of this factsheet is help you understand the terms and conditions of your contractor or services agreement and will give you a brief explanation of key terms and conditions, which may be included. This will also provide you some guidance on clauses that may be missing from your agreement.

Clause	Contractor/services agreement
Terms of agreement	The terms of an agreement may be contained in an agreement, a contract, a deed or a letter. Some terms of the agreement may be verbal (i.e. agreed orally but not written down).
Parties to the agreement	<p>There are generally two or three parties to an agreement:</p> <ul style="list-style-type: none"> ▶ the principal ▶ the contractor (which could be an individual or another legal entity) ▶ if the doctor's company is a contracting party, the doctor actually providing the services on behalf of the company may also be a party to the agreement. <p>TIP: The principal may be either the entity which operates the practice or the doctor / doctor's company depending on how the agreement is set up.</p>
Understanding the agreement	<p>You should read your proposed agreement carefully and ensure that you understand its terms.</p> <p>If there is anything that you do not understand or you do not agree with, you should speak with your principal before signing the agreement.</p>
Principal name	<p>Your agreement will generally have one named principal.</p> <p>Your agreement may have more than one named principal if your arrangement requires you to work for multiple principals (for example, if you work at two or more practices which are owned by different legal entities).</p> <p>Your agreement should state the name of the legal entity that is the principal. The legal entity may be an individual, a company, partnership or joint venture. Note a business name or a practice name is not a legal entity and cannot be a party to an agreement.</p> <p>For example, if you work for the City Medical Practice which is owned by Smith Pty Ltd, your agreement would be with Smith Pty Ltd rather than City Medical Practice.</p> <p>Your agreement should state the ABN of your principal.</p>
Contractor name	<p>A contractor may be an individual (i.e. you) or another legal entity (e.g. a company, partnership or joint venture). A business name or a practice name is not a legal entity and cannot be a party to an agreement.</p> <p>The contractor's proper name should be included in the agreement.</p> <p>If the contractor is a company or another legal entity, the doctor actually providing the services on behalf of the contractor may also be a party to the agreement. In this case, your full name should be included in the agreement.</p>
Position	The agreement should state the position in which you are engaged.

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Location	<p>The agreement should state the location from which you will perform your work.</p> <p>This may be a single location or may be multiple locations (for example, 'all practices operated by Smith Pty Ltd' or '12 Smith Street and any other location to which the practice locates').</p> <p>You should be clear about where you may be asked to work and ensure that you are comfortable working at all the locations that may be contemplated by the agreement. This could include locations that do not yet exist.</p>
Reporting arrangements	<p>Your agreement may state the person or position that you will report to.</p>
Your obligations	<p>Your agreement will set out the services that you are required to provide.</p> <p>It will also set out your duties and obligations.</p>
Services to be provided to you	<p>Your agreement should set out the services that your principal will provide you.</p> <p>Generally, the practice will determine the standard of services to be provided and whether certain services are appropriate or reasonable. For example, the practice may determine the duties that reception staff can perform to assist you or the consumables that are kept for use in the practice.</p> <p>If there are particular services that you require or you have particular requirements relating to the services, you may wish to seek the agreement of the practice about these matters upfront and have the agreed position set out in your written agreement.</p>
Commencement date	<p>Your agreement should state the date on which it will commence. This should be after the date you sign the agreement.</p> <p>Your agreement may say that it will commence when a certain event occurs such as, obtaining a Medicare provider number.</p>
Hours of work	<p>As a contractor, you should be able to work the hours that you want to work and which fit in with the practice's needs.</p> <p>However, many agreements state the minimum number of hours you are required to work each week or the minimum weeks you are required to work each year. You may be required to work in accordance with a roster to ensure the smooth functioning of the practice. Your agreement may also specify your entitlement to be absent (see below for further information about this).</p> <p>It is possible that the practice hours may vary in the future (for example, the practice may start to open on weekends or after 5pm). Your contract may require you to work such extended hours in the future.</p>
Leave / entitlement to be absent from work	<p>As a contractor, you are not entitled to annual leave, personal / carer's leave or other forms of leave.</p> <p>You are only entitled to be absent from work as specified in the agreement.</p> <p>It is common for an agreement to specify an agreed period that you can be absent from work each year. Depending on the terms of the agreement, you may be in breach of the agreement even if you are absent due to your own personal illness or injury for more time than is specified in the agreement.</p> <p>For example, the agreement may require you to provide your services at the practice for 46 weeks per year. This means that you can only be absent for six weeks per year. If you wish to be absent for a greater period, you will likely be in breach of your agreement.</p> <p>The agreement may require you to find a locum during any period of absence and may attach conditions to the locum arrangements. You should ensure that any locum has appropriate medical indemnity insurance.</p>
Period of engagement	<p>The term of your engagement may be:</p> <ul style="list-style-type: none"> ▶ ongoing (i.e. your agreement will end if it is terminated by one of the parties) ▶ fixed term (i.e. your engagement will end on the specified end date – it cannot be terminated by either party before this date. If it is terminated before this date, the other party may be able to commence a breach of contract claim seeking damages for the loss the party has suffered.) ▶ maximum term (i.e. your engagement will end on the specified end date – but either party can terminate before that date). <p>If your agreement is a fixed term or maximum term agreement, it is important that the commencement date and end date are clearly stated.</p> <p>If you would like to be able to terminate the agreement during its term, you should ensure that you can terminate by giving notice during the term.</p>

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Remuneration	<p>Your agreement should set out:</p> <ul style="list-style-type: none"> ▶ how much you will be paid (e.g. an hourly rate or a percentage of billings) ▶ how you will be paid (e.g. by EFT into your bank account) ▶ when you will be paid (e.g. fortnightly). <p>Many practices will pay on the basis of 'receipted billings' (i.e. money that is actually received by the practice from Medicare and other sources) rather than amounts that are billed. You may wish to clarify with your practice how it calculates billings.</p> <p>It is helpful for the agreement to specify whether you are entitled to a share of incentive payments paid to the practice (for example Services Incentive Payments (SIPs) and Practice Incentive Payments (PIPs)).</p> <p>Your agreement should explain the invoicing and taxation requirements.</p>
Medicare	<p>You are personally responsible for all amounts billed against your Medicare provider number. You should ensure that invoicing is done correctly.</p> <p>You are personally entitled to receive all payments from Medicare for services rendered under your provider number. However, it is common for an agreement to require you to assign all Medicare payments to your principal and for those Medicare payments to be deposited into the practice's bank account.</p> <p>Your principal will distribute payments to you in accordance with the remuneration requirements in your agreement.</p> <p>Your practice should provide to you billing sheets on a daily basis (or within another agreed timeframe) so you can assess whether Medicare has been billed correctly. The practice may do this by giving you a hard copy of the information or by giving you access to the information on the system.</p> <p>We recommend that you carefully review your daily sheets as you are ultimately responsible for their accuracy.</p>
Taxation	<p>In general, GST is payable and there are specific requirements about GST. You should speak with your accountant to obtain advice.</p>
Invoicing arrangements	<p>You may be required to provide an invoice for the work that you have performed.</p> <p>In some cases, the practice will prepare an invoice on your behalf as part of its service to you.</p> <p>In other cases, the practice may invoice you for the services that it provides to you.</p> <p>You should ensure that invoices are created and that you review and retain a copy of invoices for tax and other purposes.</p>
Policies, procedures and other documents	<p>Your agreement will generally require you to comply with practice policies, procedures, and other documents (such as <i>Good Medical Practice: A code of conduct for doctors in Australia</i>).</p> <p>You should ensure that you have read and understand those policies and procedures. You can ask the practice to provide a copy of the policies, procedures and other documents to you.</p> <p>You should also keep up to date with the policies.</p>
Room allocation	<p>You do not have a right to an allocated room or location in the practice unless your agreement provides for it.</p>
Restrictions on your ability to practise	<p>It is sensible to disclose any restrictions on your ability to practise upfront so that suitable arrangements can be made.</p> <p>Restrictions may include:</p> <ul style="list-style-type: none"> ▶ conditions on your AHPRA registration ▶ supervision requirements ▶ medical issues ▶ personal belief restrictions such as refusal to write scripts for the contraceptive pill or referrals for pregnancy terminations.
Termination	<p>If your agreement is for a fixed term or maximum term, your engagement will automatically come to an end at the end of the term. You can only end the engagement in accordance with the terms of the agreement.</p> <p>If your engagement is ongoing, your agreement should state the period of notice that you can give and that the practice can give to terminate your engagement. You should consider whether the termination provisions are reasonable.</p> <p>Some agreements provide for a long notice period (say, three or six months). You should consider whether you will be able to continue working for the principal for this period of time after you give notice of termination.</p>
Extension of the term	<p>Your agreement may provide for an extension of its term and may set out the conditions for the grant of such an extension.</p>

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Return of property	Your agreement will generally require you to return property belonging to your principal at the end of your engagement and when required during your engagement.
Confidential information	This clause will prevent you from using or disclosing confidential information for purposes that are not related to your engagement. Confidential information will generally include patient contact information and patient medical records. Generally, this information will be owned by the practice and you will not be able to use it after you leave the practice. See 'Medical Records' below for further information.
Intellectual property	<p>The law about intellectual property is complex. If you may create intellectual property while you are engaged by the practice (including in another job or at your home), you should seek specific advice about your right to retain ownership of the intellectual property.</p> <p>In some cases, you might have conflicting intellectual property obligations (for example, to a University who employs you as an academic and a principal who engages you to undertake clinical work). You need to carefully manage any potential conflict.</p>
Moral rights	<p>There is legislation which protects your 'moral rights' in work that you have created. Your moral rights are your rights to ensure that:</p> <ul style="list-style-type: none"> ▶ no-one can alter your work in a derogatory way; ▶ your name is associated with your work; and ▶ no-one else's name is associated with your work. <p>Your agreement may require you to agree to the 'infringement' of your moral rights. This means that you cannot assert the rights set out above.</p>
Non-competition (restraint of trade)	<p>A non-competition clause seeks to prevent you from working or providing defined services within a defined area during the term of the agreement and for a defined period after the agreement ends.</p> <p>A court would generally consider a non-competition clause to be invalid unless it is reasonably necessary to protect the legitimate business interests of the practice. Courts have found that a medical practice does have a legitimate business interest to protect and that non-competition clauses valid if they are reasonable.</p> <p>In considering whether a clause is reasonable, the courts will consider:</p> <ul style="list-style-type: none"> ▶ the geographical restriction ▶ the time restriction ▶ the restraint scope (i.e. the work that is restrained). <p>Even if a clause is not enforceable, the practice may take steps to enforce it if you work in contravention of it.</p> <p>You should be prepared to comply with the clause.</p> <p>You should seek specific advice about the enforceability of the clause if you think there is a possibility that you will not be able to comply with it.</p>
Non-solicitation	<p>A non-solicitation clause seeks to prevent you from activities which might include:</p> <ul style="list-style-type: none"> ▶ soliciting employees of the principal ▶ soliciting suppliers to the principal ▶ soliciting patients of the principal. <p>You should read the non-solicitation clause carefully and ensure that you understand what is being restrained. For example, some clauses will prevent you from approaching patients or encouraging them to move to a new practice with you while other clauses will prevent you from treating patients, even if they have moved independently.</p> <p>You should seek specific advice about the enforceability of the clause if you think there is a possibility that you will not be able to comply with it.</p>
Medical records	<p>An agreement will typically state whether you or your principal own the medical records. If the agreement is silent, you should clarify the position with your principal.</p> <p>If your principal owns the medical records, you should ask for the agreement to state that, if there is a complaint, claim or disciplinary or other process against you, you have a right to obtain a complete copy of any patient records from the principal to assist you in responding to such claim, complaint or process.</p>
Insurance – medical indemnity	<p>An agreement will typically require you to hold medical indemnity insurance to a certain value.</p> <p>You can contact Avant member services on 1800 128 268 to discuss your policy coverage.</p>

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Insurance – Workers compensation	<p>Worker’s compensation insurance protects a worker if they are injured as a result of the worker’s work.</p> <p>It is generally not possible to obtain worker’s compensation insurance to cover yourself personally.</p> <p>In some cases, a principal’s worker’s compensation insurance policy can be extended to cover contracted workers. You can discuss this with the principal.</p>
Insurance – public liability	<p>Public liability insurance protects a business or person from the financial consequences of causing property damage or personal injury to another person.</p> <p>Increasingly, practices are requiring doctors to hold public liability insurance.</p> <p>You may wish to clarify the need to have such insurance with the practice or an insurance broker/common insurer.</p> <p>Alternatively you can ask for an endorsement with your name to be placed on the practice’s public liability insurance policy.</p> <p>Your professional indemnity insurance policy does not provide public liability insurance coverage. You can contact Avant member services on 1800 128 268 to discuss your policy coverage if you wish.</p>
Indemnity	<p>Please see our fact sheet about indemnity clauses.</p>
Entire agreement	<p>Your agreement may include a clause that says that the words contained in the written agreement are the entire agreement between the parties.</p> <p>If you are relying on any verbal representations that have been made to you, you should ensure that they are included in the written agreement.</p>
Law of the contract	<p>The agreement will specify which laws apply to the agreement. This will generally be the laws of the state in which you work and also federal laws.</p>

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