



**Request for Tender for Professional Support
Coordinator Queensland (PSCQ) Panel of
Providers by Health and Community Services
Workforce Council Inc.
Part 2 – Draft Deed of Standing Offer**

I enclose a Deed (2 copies) which sets out details of the proposed Services.
Please read the Deed carefully.

If You are able to provide the Services on the terms and conditions set out in the Deed, please sign on the last page of each copy of the Deed and have Your signature witnessed by another person. Both copies must be returned, marked for my attention.

The Deed will commence when the Workforce Council signs and dates the documents. One copy of the Deed will be returned to You for Your records. You must not make any commitments in anticipation of the Deed until You have confirmation from Us that We have signed the Deed.

I also enclose a copy of our EFT Details Form. Please check the details (if any) printed on the form. Please amend or add details to the form as necessary and return it to me. The information on this form will be used to make payments to you.

Please contact me if You have any questions.

Yours sincerely

Project Manager, PSCQ
Health and Community Services Workforce Council Inc.

April 2009

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DEED OF STANDING OFFER

PSCQ /2009D

between

Health and Community Services Workforce Council Inc.

and

"Click here to insert the contractor's full legal name"

For the provision of professional support services – Professional Support
Coordinator Queensland (PSCQ) project

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Parties

Health and Community Services Workforce Council Inc, ABN 32 330 317 817 of Ground Floor, 303 Adelaide St, Brisbane 4000 ("**Workforce Council**", "**Us**", "**We**" or "**Our**")

("You" or "Your")

Note: this contract uses a number of words which are defined in the glossary in clause 30.1. Defined terms start with a capital letter, e.g., Conflict.

Purpose

- A. From time to time, We require the provision of Services to Us for the purposes of [Description of services](#).
- B. You have fully informed Yourself on all aspects of the work required and have submitted [***a proposal and quotation / tender entitled {state title} and dated {state date of contractor's proposal}**].
- C. We agree, and You accept, Your appointment on the terms and conditions of this Deed to provide the Services under a panel arrangement.
- D. You agree that, upon receipt of an Official Order from Us, You will perform the services set out in the Official Order in accordance with this Deed and the terms of the resultant Contract.
- E. You acknowledge that there is no guarantee or assurance of any particular volume or value of services under this Deed.

1 Term of Deed

- 1.1 This Deed commences on the Date of this Deed and, unless terminated earlier, it expires on the Completion Date.

2 Formation of Contracts

- 2.1 By this Deed You make an irrevocable standing offer to perform the Services upon receipt of an Official Order during the Term.
- 2.2 Where We require the performance of Services, We, following consultations with You, will complete, sign and send to You an Official Order.
- 2.3 You agree that each Official Order for Services sent by Us to You in accordance with this Deed will create a separate contract between the Parties for performance of the Services set out in the Official Order, in accordance with the Official Order and this Deed (a **Contract**).
- 2.4 The provisions of each Contract will be those set out in this Deed and in the Official Order.
- 2.5 In determining whether to place an Official Order, We:
 - (a) will have regard to Workforce Council internal policies relevant to the procurement of goods and services from time to time;
 - (b) may obtain an estimate of fees as a competitive bid from any other provider of the Services (including any who have entered into similar arrangements to this Deed with Us); and
 - (c) may seek refined offers for particular Services from any other provider of the Services (including those who have entered into similar arrangements to this Deed with Us),
in order to seek best value for money for the Workforce Council.

3 Workforce Council not bound to order from You

- 3.1 It is an express condition of this Deed that We are not obliged to place any Official Order with You and may at any time acquire the Services or similar services from any other entity.
- 3.2 We do not guarantee or make any assurances that any particular volume or value of Services (if any) will be ordered under this Deed.

4 Services

- 4.1 You must carry out the Services in accordance with the terms and conditions of this Deed and the relevant Contract. For the avoidance of doubt, You are only required to perform those Services specified in Contracts.
- 4.2 You warrant, and continue to warrant during the Term that:
 - (a) You and Your personnel have the requisite skills, qualifications, experiences and, if required by law and/or regulations, licences or permits to perform the Services;
 - (b) You have full corporate power and authority to enter into, perform and observe its obligations under this Deed, and that the execution, delivery and performance of this Deed has been duly and validly authorised by all necessary corporate action; and
 - (c) You enter into this Deed on your own behalf and not in Your capacity as a trustee for any trust.
- 4.3 The warranties in **clause 4.2** are repeated by You with respect to each Contract on and from the Contract Commencement Date and until the relevant Contract Completion Date.
- 4.4 If incidental services or functions are required for the proper performance of the Services, they will be taken to be included in the scope of the Services.
- 4.5 You must not act in a way that may bring the Services into disrepute.

5 Your responsibilities and obligations

- 5.1 Without limiting any other provision of this Deed or a Contract, in the performance of the Services, You must:
 - (a) complete the Services required to Our full satisfaction and within agreed time frames;
 - (b) comply with all reasonable directions given by Us from time to time;
 - (c) comply with all deadlines as specified in this Deed or the relevant Contract or as We may otherwise reasonably impose;
 - (d) make Your best efforts to comply with other deadlines imposed by Us, or notify Us within 10 Business Days if there is a difficulty;
 - (e) respond promptly in writing to all reasonable queries by Us in relation to the Services;
 - (f) immediately notify Us if an act or omission by You or any of Your personnel causes a problem or delay that has a material impact on Your ability to perform the Services;
 - (g) seek to identify, manage and mitigate risks within Your control;
 - (h) conduct Yourself in a spirit of cooperation and good faith;
 - (i) accommodate the financial, legal and accountability frameworks and constraints that apply to the Workforce Council;

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- (j) give to Us a just and faithful account of transactions related to this Deed and the relevant Contract and also upon every reasonable request give a full and correct explanation of them to Us; and
 - (k) not at any time intentionally do, or fail to do, anything which directly or indirectly may impair or be likely to impair the good name and reputation of the Workforce Council or its operations and functions.
- 5.2 You must acknowledge in a positive manner Our financial and other support in all publications, promotional Material and Services relating to this Deed and the relevant Contracts.

The form of acknowledgement of Our support is as follows:

On publications:

“Professional Support Coordinator QLD (PSCQ) is a project of the Health and Community Services Workforce Council Inc. The Professional Support Coordinator is an initiative funded by the Australian Government under the Inclusion and Professional Support Program.”

On handouts:

“This activity is presented by {Your organisation} and managed by the Professional Support Coordinator QLD (PSCQ), which is a project of the Health and Community Services Workforce Council Inc. The Professional Support Coordinator is an initiative funded by the Australian Government under the Inclusion and Professional Support Program.”

This needs to appear only once per document, preferably on the first or last page, or may be included in a footer.

6 Performance standards

- 6.1 In performing the Services, You must:
- (a) exercise high professional standards of skill, care and diligence consistent with the standards of well managed operations performing services similar to the Services;
 - (b) ensure that the Services meet their purposes, are complete and are performed in a manner that achieves all standards of performance included in or referred to in this Deed or the relevant Contract;
 - (c) ensure efficiency and effectiveness in the performance of the Services;
 - (d) ensure that We are fully and accurately informed on all matters which are relevant to the Services;
 - (e) comply with any relevant industry standards;
 - (f) comply with all legal requirements, including statutory and regulatory requirements, including safety standards; and
 - (g) ensure all obligations, including deadlines, specified in this Deed or the relevant Contract are fully satisfied.
- 6.2 Where the Services include the provision of reports or the production of other documents or information, You must ensure that:
- (a) all reports or other documents or information contain all requested information and are accurate and not misleading in any respect;
 - (b) all working papers are neatly and legibly compiled and contain adequate information to demonstrate the nature and extent of the Services and sufficient evidence to substantiate all conclusions, findings and opinions;

- (c) all observations, comments, conclusions and recommendations are clearly explained and substantiated;
- (d) copies of all supporting documents are retained for review by Us if required; and
- (e) all advice provided orally or in writing is fit for purpose and specifically answers all issues and questions specified in or relevant to the Services in accordance with this Deed and the relevant Contract.

7 Additional Services

- 7.1 Either Party may propose the inclusion in this Deed or any Contract of additional services (**Additional Services**). For any such proposal, the Parties must agree upon:
- (a) the detailed requirements and performance standards for the Additional Services, and
 - (b) if the Additional Services cannot be performed within the existing Charges, as substantiated by You, a fixed price or a fixed price basis (e.g. an hours/daily rate with the maximum number of hours or days specified for performance).
- 7.2 All variation to the Services to Additional Services must be effected by written agreement of the Parties in accordance with this **clause 7** and **clause 21**.

8 Fees, rates and charges

- 8.1 Subject to this Deed and the relevant Contract, We will pay the Charges to You in accordance with **Schedule 3** and, where applicable, including on the basis of the Payment Milestones.
- 8.2 No Charges are payable to You other than following the issue of and in accordance with an Official Order issued by Us to You.
- 8.3 The Charges as based on a price specified in **Schedule 3** for the Services. If Charges are based on hourly rates, the Services must be performed within the maximum number of hours specified in **Item 9** of the relevant Official Order. Charges will only be paid up to the maximum number of hours specified, unless otherwise agreed to in writing by Us. Failure of You to perform the Services within the maximum number of hours does not affect Your obligations to complete performance of the Services.
- 8.4 You must provide, within the Charges, all things necessary for the proper execution and performance of all Services in accordance with this Deed and the relevant Contract.
- 8.5 The Charges are inclusive of all costs, expenses, disbursements, levies and taxes (including GST) and the actual costs and expenses incurred by You in performing the Services. Any additional or unforeseen costs arising during the Services must be borne by You unless otherwise agreed in writing by Us.
- 8.6 Subject to **clause 8.5**, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of the Services must be borne by You.
- 8.7 Without limiting Our rights, We may withhold or suspend any payment in whole or in part, if:
- (a) You have not provided the Services required under this Deed or the relevant Contract;
 - (b) You have undertaken or provided the Services other than as required under this Deed or the relevant Contract;
 - (c) You do not provide Reports or other information as required by, or pursuant to, this Deed or the relevant Contract; or
 - (d) You have outstanding or unacquitted money under any arrangement (whether contractual or statutory) with Us.

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- 8.8 If We exercise Our rights under **clause 8.7**, You must continue to perform any obligations under this Deed or the relevant Contract, unless We agree otherwise in writing.
- 8.9 If one party is required to reimburse or pay to another party an amount calculated by reference to a cost, expense or an amount paid or incurred by that party [the 'reimbursement amount'];
- (a) the reimbursement amount will be reduced by an amount equal to the value of any input tax credits to which the party being reimbursed is entitled in respect of that cost, expense or amount; and
 - (b) after making the adjustment under paragraph (a), where the payment of the reimbursement attracts GST, the reimbursement amount will be increased by the rate of the GST.

9 Overpayments

- 9.1 If, at any time, an overpayment occurs for any reason (including where an invoice is found to have been incorrectly rendered after payment), then this amount must be repaid to Us within 20 business days of a written notice from Us, or dealt with as directed in writing by Us.
- 9.2 An overpayment may be recovered from You, including by offsetting that overpayment against any amount subsequently due to You under this Deed, any relevant Contract or any other arrangement between the parties.
- 9.3 If an overpayment is not repaid to Us, Interest is payable on the amount after the expiry of the 20 business days notice referred to in **clause 9.1**, until the amount is paid in full.
- 9.4 Any amount owed to Us under **clause 9.1** and any Interest owed under **clause 9.3**, is recoverable by Us as a debt due to Us by You without further proof of the debt by Us.
- 9.5 An adjustment note must be provided to Us if required by the GST Act, including where You repay some or all of the fees or allowances to Us.

10 Subcontracting

- 10.1 You must not, without Our prior written approval, subcontract the performance of any obligations under this Deed and the relevant Contract. In giving approval, We may impose terms and conditions as We think fit.
- 10.2 The subcontractors We have approved at the Date of this Deed, and any terms and conditions relating to their use, are identified in **item C** of **Schedule 1**.
- 10.3 You are fully responsible for the performance of Your obligations under this Deed and the relevant Contract, even if You subcontract some or all of them.
- 10.4 Despite any approval given by Us under **clause 10.1**, You are responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that the work meets the requirements of this Deed and the relevant Contract.
- 10.5 We may revoke Our approval of a subcontractor on any reasonable ground by giving written notice to You. On receipt of the notice You must, at Your own cost, promptly cease using that subcontractor and arrange their replacement with personnel or another subcontractor acceptable to Us.
- 10.6 If We withdraw Our approval of a subcontractor, You remain liable under this Deed and the relevant Contract for the past acts or omissions of Your subcontractors as if they were current subcontractors.

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- 10.7 You must not enter into a subcontract under this Deed or the relevant Contract with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999*.

11 Specified Personnel

- 11.1 You must ensure that the Specified Personnel, if any, listed in **item D of Schedule 1** undertake work on the Services in accordance with the terms of this Deed and the relevant Contract.
- 11.2 Where Specified Personnel are unable to undertake work on the Services, You must notify Us immediately. You must, if requested by Us, provide replacement personnel acceptable to Us without additional payment and at the earliest reasonable opportunity.
- 11.3 We may give notice on reasonable grounds related to performance of the Services requiring You to remove personnel (including Specified Personnel) from work on the Services. You must, at Your own cost, promptly arrange for the removal of the personnel from work on the Services and their replacement with personnel acceptable to Us.
- 11.4 If You are unable to provide acceptable replacement personnel, We may terminate this Deed under **clause 26**.

12 Insurance

- 12.1 You must, for as long as any obligations remain in connection with the Services, have insurance as specified in **item E of Schedule 1**.
- 12.2 When requested, You must provide Us, within 10 business days of the request, with evidence satisfactory to Us that You have complied with Your obligation to insure.

13 Liaison

- 13.1 You must liaise with and provide information to the Project Manager, or a person nominated by the Project Manager, as reasonably required by the Project Manager.

14 Our Material

- 14.1 **"Our Material"** means any Material We provide to You for the purposes of this Deed or the relevant Contract or which is copied or derived from that Material. **"Our Material"** does not however include Agreement Material (the definition of **"Agreement Material"** is in **clause 15**).
- 14.2 We own and will continue to own Our Material.
- 14.3 At the Completion Date or at the earlier termination of this Deed, You must return to Us all Our Material remaining in Your possession, or under Your control, unless, before the Completion Date or earlier termination, We otherwise agree in writing.
- 14.4 You must ensure that You only Use Our Material for the purposes of this Deed or the relevant Contract. Subject to **clause 14.5**, We license You to use Our Material for, and only for, these purposes.
- 14.5 You agree to Use Our Material strictly in accordance with any conditions or restrictions which We may notify to You from time to time in writing.

- 14.6 For the purposes of **clauses 14.4** and **14.5**, "Use" means copying, supplying and reproducing Our Material where this is necessary for the purposes of this Deed or the relevant Contract.
- 14.7 You will be responsible for the safe keeping and maintenance of Our Material and bear all risks relating to such Material.

15 Agreement Material

- 15.1 Subject to this **clause 15**, You Own the Agreement Material and the Intellectual Property Rights (IPR) in the Agreement Material immediately on their creation.
- 15.2 This clause does not affect the ownership of any Intellectual Property Rights in any Existing Material, including that which is included in Agreement Material.
- 15.3 You grant Us a Licence to Use the IPR in Agreement Material and in Existing Material owned or controlled by You or a subcontractor for any Workforce Council purpose associated with this project.
- 15.4 We may, upon a written request by You, grant written approval for You to sublicense all or any specified part of Existing Material which We own or control:
- (a) to a specified person;
 - (b) for a specified use or purpose; and
 - (c) subject to any other specified terms and conditions or limitations.
- 15.5 We are under no obligation to approve any request made by You under **clause 15.4**, and We may at Our discretion impose any limitations or requirements on Our approval.
- 15.6 If a third party has IPR in Existing Material (not owned or controlled by You or a subcontractor):
- (a) You must notify Us of this before providing Agreement Material to Us (including providing all details We require of such a third party and the nature of their IPR) and use Your best efforts to arrange for that third party to grant to Us a licence on the same terms as the Licence You grant to Us to Existing Material under **clause 15.3**; and
 - (b) If You cannot obtain all of the rights from a third party to Existing Material in accordance with **clause 15.6 (a)**, You must:
 - (i) promptly notify Us of this in writing; and
 - (ii) arrange for the third party to grant to Us a licence which:
 - a. as a minimum includes a right for Us to Use the Existing Materials in conjunction with the Agreement Material so that We can enjoy the full benefit of Our rights to the Agreement Material; and
 - b. is otherwise on the same terms as the third party licenses its IPR in the Existing Material to You.
 - (c) You must immediately after negotiating a licence with such a third party for the purposes of this **clause 15.6**, notify Us in writing of the terms and conditions You have so negotiated.
- 15.7 If We ask You to, You agree, in a timely manner, to do such things as are necessary (including creating or signing documents) to give effect to this **clause 15**.
- 15.8 You warrant and undertake that:
- (d) the author of any Agreement Material, other than Existing Material, has given, or will on or before the creation of the Agreement Material give, a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for Our benefit; and

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- (e) the author of any Existing Material has given, or will give, before the creation of the Agreement Material, a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for Our benefit in relation to such material Used in conjunction with Agreement Material.
- 15.9 You warrant that You are now entitled, or that You will be entitled at the relevant time, to deal with the IPR in the Agreement Material and any Existing Material in the way that this **clause 15** provides.

16 Disclosure of Information

- 16.1 Subject to **clause 16.5**,
- (a) You must not, without Our prior written approval, disclose any of Our Confidential Information to a third party; and
 - (b) We must not, without Your prior written approval, disclose any of Your Confidential Information to a third party.
- 16.2 In giving written approval to disclosure, a party may impose conditions as it thinks fit, and the other party agrees to comply with the conditions.
- 16.3 We may at any time require You to arrange for any person engaged in, or in relation to, the performance or management of this contract to give written undertakings, in a form required by Us, relating to the non-disclosure of Our Confidential Information.
- 16.4 If You receive a request under **clause 16.3**, You must promptly arrange for all undertakings to be given.
- 16.5 The obligations on the parties under this **clause 16** will not be breached if information:
- (a) is disclosed by Us to any Commonwealth department, agency, authority or Minister;
 - (b) is disclosed by Us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - (c) is disclosed to any third person, including any court, tribunal, or governmental committee, where such disclosure would be permitted or required by law, or otherwise would be consistent with Commonwealth government policy; or
 - (d) is in the public domain otherwise than due to a breach of this **clause 16**.
- 16.6 Nothing in this **clause 16** limits Your obligations under **clause 17**.

17 Protection of Personal Information

- 17.1 You agree:
- (a) to comply with the Information Privacy Principles when doing any act or engaging in any practice in relation to Personal Information for the purposes of this contract, as if You were an agency as defined in the Privacy Act; and
 - (b) to deal with Personal Information received, created or held by You for the purposes of this contract only to fulfil Your obligations under this contract and in accordance with any conditions or restrictions specified in **item G of Schedule 1**.
- 17.2 An act done or a practice engaged in by You or a subcontractor to meet (directly or indirectly) an obligation under this contract:
- (a) is authorised by this **clause 17** for the purposes of sub-sections 6A(2) and 6B(2) of the Privacy Act even if the act or practice is inconsistent with a national privacy principle or an approved privacy code that applies to You or the subcontractor; but
 - (b) is subject to the other obligations in this contract including this **clause 17**.

17.3 If You subcontract Your obligations under this Agreement, You must ensure that the subcontract places the same obligations about Personal Information on the subcontractor as this **clause 17** (including this **clause 17.3**) places on You.

17.4 In this **clause 17**, "received" includes "collected".

18 Indemnity

18.1 You agree to indemnify Us against any:

- (a) loss or liability incurred by Us;
- (b) loss of or damage to Our property; or
- (c) loss or expense incurred by Us in dealing with any claim against Us, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by Us;

arising from:

- (i) any act or omission by You, or any of Your employees, agents, or subcontractors in connection with this Deed or the relevant Contract, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
- (ii) any breach by You or any of Your employees, agents, or subcontractors of obligations or warranties under this Deed or the relevant Contract;
- (iii) any use or disclosure by You, Your officers, employees, agents or subcontractors of Personal Information held or controlled in connection with this Deed or the relevant Contract; or
- (iv) the use by Us of the Agreement Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights (including moral rights) in Agreement Material.

18.2 Your liability to indemnify Us under this **clause 18** will be reduced proportionately to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.

18.3 Our right to be indemnified under this **clause 18** is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant loss, damage, expense or liability.

18.4 In this **clause 18**, "fault" means any negligent or unlawful act or omission or wilful misconduct.

19 Conflict of Interest

19.1 You warrant that, to the best of Your knowledge after making reasonable inquiries, at the Date of this Deed no Conflict exists or is likely to arise in the performance of Your obligations under this Deed or any relevant Contract.

19.2 If during the term of this Deed, a Conflict arises, or is likely to arise, You must:

- (a) immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;
- (b) make full disclosure to Us of all relevant information relating to the Conflict; and
- (c) take steps as We may, if We choose to, reasonably require to resolve or otherwise deal with that Conflict.

19.3 If You fail to notify Us under this **clause 19**, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate this Deed under **clause 26**.

20 Negation of Employment, Partnership and Agency

- 20.1 You will not, by virtue of this Deed or any relevant Contract, be or for any purpose be deemed to be Our employees, partners or agents.
- 20.2 You must not represent Yourself, and must ensure that Your employees, partners, agents or sub-contractors do not represent themselves, as being Our employees, partners or agents.

21 Entire Agreement, Variation and Severance

- 21.1 This Deed records the entire agreement between the parties in relation to its subject matter. This Deed supersedes all prior communications, negotiations, arrangements, and agreements, whether oral or written, between the Parties about the subject matter of this Deed
- 21.2 Except for action We are expressly authorised to take elsewhere in this Deed, no variation of this Deed or any relevant Contract is binding unless it is agreed in writing and signed by the parties.
- 21.3 If any provision of this Deed is found to be invalid, in whole or in part, this does not affect the other provisions which will continue to operate as if the invalid part is excluded.

22 Waiver

- 22.1 If a Party does not enforce a provision of this Deed, this does not mean that the Party will not, or cannot, enforce any other provision of the Deed, or that same provision at a later time.

23 Assignment and Novation

- 23.1 You must not assign Your rights under this Deed without prior written approval from Us.
- 23.2 You agree not to negotiate with any other person to enter into an arrangement that will require novation of this Deed without first consulting Us.
- 23.3 For the purposes of **clause 23.2, "Novation"** includes the transfer of Your obligations, rights and/or liabilities under this Deed to another person.

24 Dispute Resolution

- 24.1 The Parties agree that if any dispute or difference ("**dispute**") arises during the course of this Agreement, it will, subject to **clause 24.3**, be dealt with in this way:
- (a) the Party claiming that there is a dispute will send to the other Party a notice setting out the nature of the dispute;
 - (b) the Parties will try to resolve the dispute by direct negotiation by persons to whom the Parties have given authority to resolve the dispute;
 - (c) the Parties have 10 Business Days from the sending of the notice to resolve the dispute or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure;
 - (d) if:
 - (v) the dispute is not resolved; or
 - (vi) there is a submission to mediation or some other form of alternative dispute resolution procedure, and the dispute is not resolved within 15 Business Days of that submission, or an extended time that the Parties agreed in writing before the expiration of the 15 Business Days,then either Party may start legal proceedings.

24.2 Even though there may be a dispute, each Party must continue to perform its obligations under this Agreement.

24.3 This **clause 24** does not apply:

- (a) If a Party seeks urgent interlocutory relief¹ from a court, that Party does not need to follow the dispute resolution procedures set out in this **clause 24**.
- (b) If We take action or try to take action under **clauses 3, 25 or 26**, We do not need to follow the dispute resolution procedures set out in this **clause 24**.

25 Termination with Costs and Reduction

25.1 We may terminate, or reduce the scope of, this Deed.

- (a) We may terminate, or reduce the scope of, this Deed at any time by giving You notice in writing.
- (b) If We terminate, or reduce the scope of, this Deed under paragraph (a), We will only be liable to You for:
 - (vii) payments that were due to You, before the date of termination or reduction; and
 - (viii) subject to **clauses 25.3 and 25.4**, any reasonable costs that You incur which are a direct result of the termination or reduction of this Deed.

25.2 If we terminate, or reduce the scope of, the Deed under this **clause 25** You must:

- (a) immediately stop performing Your obligations under this Deed (or if this Deed is reduced in scope those obligations removed in the reduction of scope); and
- (b) immediately do everything that You can to lessen all losses, costs and expenses, that You or others may suffer arising from the termination or reduction.

25.3 We will only pay You the reasonable costs referred to in **clause 25.1(b)(ii)** if You:

- (a) strictly comply with this **clause 25**; and
- (b) give Us written evidence that is satisfactory to Us of any amount You claim under **clause 25.1(b)(ii)**.

25.4 If We terminate the Agreement under this **clause 25**, We will not, and are not liable to, pay You compensation for any loss by You of profits or benefits that You would have received had the termination not occurred.

26 Termination for Default

26.1 We may immediately (or at such other time as We in Our sole discretion determine) terminate this Deed by giving You notice in writing if:

- (c) We are satisfied that any statement made is incorrect, incomplete, false or misleading in a way which may have affected Our original decision to enter into this Deed with You;
- (d) You commit a breach of this Deed which cannot be remedied;
- (e) You fail to remedy to Our satisfaction a breach of this Deed which is capable of remedy, where:
 - (ix) We have previously given You a written notice to remedy that breach within 10 Business Days (or such further period of time specified by Us in writing); and

¹ Interlocutory relief occurs where, following application by a party, the court makes a preliminary order for urgent relief prior to the court deciding the case and a final order being made.

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- (x) You have failed to remedy that breach within the period of time We have given You under paragraph (ix);
- (f) another provision of this Deed gives Us the right to terminate this Deed; or
- (g) You become bankrupt or insolvent or subject to any form of administration, or We in Our sole discretion form the view that You are, or may become, insolvent or are suffering financial difficulty which We consider is affecting or may affect, Your ability to perform or meet Your obligations under this Deed.

27 Applicable Law and Jurisdiction

- 27.1 The laws of Queensland apply to the interpretation of this Deed and any relevant Contract.
- 27.2 The parties agree to submit to the non-exclusive jurisdiction of the courts of Queensland in respect to any dispute under this Deed or any relevant Contract.

28 Notices

- 28.1 A party giving notice under this contract must do so in writing or by Electronic Communication:
- (a) if given by You, marked for the attention of the Project Manager specified in **item D of Schedule 2**; or
 - (b) if given by Us, marked for the attention of the person specified in **item H of Schedule 1**; and
- hand delivered or sent by pre-paid post or Electronic Communication to the address of the other party specified in **item H of Schedule 1** or **item D of Schedule 2**.
- 28.2 A notice given under **clause 28.1** is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by pre-paid post, 5 business days after the date of posting; or
 - (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* if a notice was being given under a law of the Commonwealth.

29 Survival of Clauses

- 29.1 These clauses survive the expiration or earlier termination of this contract: **9, 14, 16, 17, 18, 24** and **27**.

30 Interpretation

- 30.1 In this contract, unless the contrary intention appears:
- ‘**ABN**’ has the same meaning as it has in section 41 of the *A New Tax System (Australian Business Number) Act 1999*;
- ‘**Agreement Material**’ means any Material brought into existence as part of, or for the purposes of performing the Services, or as an outcome of the Services, and is not limited to documents, information or data stored by any means;
- ‘**Author**’ means a person who is an author of any Contract Material or Existing Material for the purposes of Part IX of the *Copyright Act 1968* (Moral Rights);
- ‘**Business Day**’ in relation to the doing of any action in a place, means any day other than a Saturday, Sunday, public or bank holiday in that place;
- ‘**Charges**’ means the charges for the Services as specified in **Schedule 3**;

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'Workforce Council Material' means any Material provided by Us to You for the purposes of this Deed or any relevant Contract or which is copied from that Material, except for Agreement Material;

'Completion Date' means the date specified in **item A** of **Schedule 1**;

'Conflict' refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through You engaging in any activity or obtaining any interest that is likely to interfere with or restrict You in providing the Services to Us fairly and independently;

'Contract' means a contract formed under **clause 2** of this Deed for the performance of specific Services as ordered by the Workforce Council under an Official Order issued to You;

'Contract Commencement Date' means the starting date for Your provision of specific Services as specified in **Item 3** of the relevant Official Order.

'Contract Completion Date' means the completion date for Your provision of specific Services as specified in **Item 4** of the relevant Official Order.

'Date of this Deed' means the date written on the signature page of this Deed, and if no date or more than one date is written there, then the date on which this Deed is signed by the last party to do so;

'Deed' means this Deed of Agreement between the Workforce Council and You and includes its Schedules and any Appendices and Annexes.

'Electronic Communication' has the same meaning as it has in section 5 of the *Electronic Transactions Act 1999*;

'Existing Material' means all Material in existence prior to the execution of this Deed or developed independently of this Deed:

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with, or as part of,

the Agreement Material;

'GST' has the same meaning as it has in section 195-1 of the GST Act;

'GST Act' means the *A New Tax System (Goods and Services Tax) Act 1999*;

'Information Privacy Principle' has the meaning given in the Privacy Act;

'Intellectual Property Rights' or 'IPR' means all copyright (including Moral Rights), neighbouring rights, rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from the intellectual activity in the industrial, scientific, literary or artistic fields;

'Interest' means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Tax Administration Act 1953*, on a daily compounding basis;

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'Licence' means a permanent, irrevocable, free, world-wide non-exclusive licence and includes a right of sublicense.

'Moral Rights' means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship granted to authors under the *Copyright Act 1968*.

'Use' includes reproducing, publishing, adapting and exploiting.

'Material' includes documents, equipment, software (including source code and object code versions), goods, information and data stored by any means including all copies and extracts of the same;

'Official Order' means the official document issued by the Workforce Council to You in accordance with **clause 2** to place a specific order for Services, substantially in the form of **Schedule 10**, and in relation to a specific Contract, means the Official Order used to create that Contract in accordance with **clause 2**;

'Our Confidential Information' means information that:

- (a) is described in **item F** of **Schedule 1**;
- (b) We identify, by notice in writing to You after the Date of this Contract, as confidential information for the purposes of this contract; or
- (c) You know or ought to know is confidential;

'Personal Information' has the same meaning as it has in section 6 of the Privacy Act;

'Privacy Act' means the *Privacy Act 1988*;

"Project Manager" means the person for the time being holding, occupying or performing the duties of an employee of the Workforce Council, as specified in item D of Schedule 2, or any other persons specified by the Workforce Council and notified in writing to You from time to time as being the Project Manager;

'Services' means:

- (a) in relation to this Deed, the broad range of services detailed in **Schedule 12** to this Deed; and
- (b) for a Contract, the services as specified in an Official Order;

'Specified Personnel' means the personnel, if any (whether Your employees, subcontractors or volunteers), or people with specific skills, specified in item D of Schedule 1 as personnel required to undertake the Services or any part of the work constituting the Services;

'Specified Acts' means any of the following acts or omissions on behalf of Us:

- (a) using, reproducing, adapting, or exploiting all or any part of the Contract Material, with or without attribution of authorship;
- (b) supplementing the Contract Material with any other Material; or
- (c) using the contract Material in a different context to that originally envisaged;

but does not include false attribution of authorship;

'Term' means the period that this Deed remains in force as set out in **clause 1**;

'Us', 'We' and 'Our' includes the Workforce Council's officers, delegates, employees and agents, and Our successors;

'You' and 'Your' includes, where the context admits, Your officers, employees, agents and subcontractors and Your successors;

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'Your Confidential Information' means information that is described in item E of Schedule 2.

- 30.2 In this contract, unless the contrary intention appears:
- (a) words in the singular include the plural and vice versa;
 - (b) words importing a gender include the other gender;
 - (c) a reference to a person includes a partnership and a body whether corporate or otherwise;
 - (d) clause headings or words in bold format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
 - (e) all references to dollars are to Australian dollars;
 - (f) unless stated otherwise, a reference to legislation is to legislation of the Commonwealth, as amended from time to time;
 - (g) an uncertainty or ambiguity in the meaning of a provision of this contract will not be interpreted against a party just because that party prepared the provision; and
 - (h) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.
- 30.3 The schedules (and annexures and documents incorporated by reference, if any) form part of this contract.
- 30.4 In the event of any conflict or inconsistency between any part of:
- (a) the terms and conditions contained in the clauses of this contract;
 - (b) the schedules
 - (c) the annexures, if any;
 - (d) documents incorporated by reference, if any
- then the material mentioned in any one of paragraphs (a) to (c) above has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.
- 30.5 For the avoidance of doubt, no right or obligation in this contract is to be read or understood as limiting Your rights to enter into public debate or criticism of Us.

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THIS CONTRACT is made on the **completed when the Workforce Council signs** day of [leave blank]

Parties Health and Community Services Workforce Council Inc, **ABN 32 330 317 817** of Ground Floor, 303 Adelaide St, Brisbane 4000 ("**Workforce Council**", "**Us**", "**We**" or "**Our**")

Your details inserted here
("**You**" or "**Your**")

The Common Seal of Health and Community Services Workforce Council Inc.
ABN 32 330 317 817 was affixed here in accordance with its rules in the presence of:

(Signature of Public Officer)

(Signature of committee member/secretary)

(Name of Public Officer)

(Name of committee member/secretary in full)

Used for organisations
The Common Seal of ABN was affixed here in accordance with its rules in the presence of:

(Signature of Public Officer)

(Signature of committee member/secretary)

(Name of Public Officer)

(Name of committee member/secretary in full)

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Used for sole proprietors

Signed by:

ABN

In the presence of:

(Signature)

(Signature)

(Name)

(Name)

Schedule 1 Your Obligations

A. Term of contract (clause 1)

A.1 The Completion Date for this contract is

B. Invoice Requirements (clause 8)

B.1 Invoices forwarded by You must be correctly addressed and include the:

- (a) title of Services;
- (b) Your name and ABN;
- (c) name of Project (PSCQ);
- (d) contract number from Official Order and date of service/s;
- (e) fees and expenses to be invoiced (including a description of the deliverables or milestones that the invoice relates to); and
- (f) bank account details for payment of the invoice by electronic funds transfer.

C. Subcontractors (clause 10)

C.1

D. Specified Personnel (clause 11)

D.1

E. Insurance (clause 12)

E.1 You must maintain:

- (a) workers' compensation insurance for an amount required by the relevant State or Territory legislation;
- (b) public liability insurance for \$10,000,000 (ten million dollars) or more per claim;
- (c) professional indemnity insurance for \$5,000,000 (five million dollars) or more per claim

Relevant Insurance Policies

Public Liability Insurance

Name of Insurer:

Amount of Coverage per each and every occurrence:

Policy Number:

Renewal Date:

Professional Indemnity Insurance

Name of Insurer:

Amount of Coverage per each and every occurrence:

Policy Number:

Renewal Date:

Products Liability:

Workers Compensation Insurance

Name of Insurer:

Amount of Coverage per each and every occurrence:

Policy Number:

Renewal Date:

F. Our Confidential Information (clause 16)

F.1

G. Protection of Personal Information (clause 17)

G.1

H. Notices (clause 28)

H.1 The person who can accept notices for You is:

Name:

Office Address:

Postal Address:

Fax:

Phone:

Email:

Schedule 2 Services (clause 4)

Note to Tenderers: For each contractor selected (if any), the Workforce Council will construct this Schedule from the Tender and the RFT according to which Services the Workforce Council has accepted into the Deed from that Tenderer.

Schedule 3 Charges (clause 8)

A. Charges

Subject to this Deed, the relevant Contract and performance of the Services to the satisfaction of the Workforce Council, in its sole and absolute discretion, the Charges payable by the Workforce Council for the Services (GST inclusive) are:

<i>Services</i>	<i>Charges</i>
<i>[Insert the description of the Services to which the Charges relate based on the Services specified in Schedule 2.]</i>	<i>[Specify the agreed fixed price for the Services or hourly rates.]</i>

- 1) Charges in excess of the Contract Price will not be paid without the express written agreement of the Workforce Council. The Contract Price is specified in Item 9 of the relevant Official Order.
- 2) The Payment Milestones are set out in Item 8 of the relevant Official Order.
- 3) You must provide with every Tax Invoice any required reports or paperwork as outlined in the Official Order.

Schedule 4 Our Obligations

A. Fees (clause 8)

AA.1 Subject to this Deed and the relevant Contract, correctly rendered Tax Invoices will be paid within 30 days after receipt.

AA.2

B. Allowances (clause 8)

AA.3

C. Assistance (clause 5)

AA.4

D. Project Manager (clauses 13 and 28)

AA.5 The Project Manager is:

Name:

Office Address:

Postal Address:

Fax:

Phone:

Email:

E. Your Confidential Information (see clause 16)

AA.6

Schedule 5 Official Order

THIS OFFICIAL ORDER IS ISSUED IN ACCORDANCE WITH THE DEED OF AGREEMENT BETWEEN THE WORKFORCE COUNCIL (ABN 32 330 317 817) AND ***[SPECIFY FULL NAME OF CONTRACTOR AND ABN/ACN]*** NUMBERED ***[SPECIFY DEED OF AGREEMENT REFERENCE NUMBER]***

Item 1	Official Order Number	<i>[Insert Official Order No.]</i>
Item 2	Date of Official Order	<i>[Insert Date of Official Order]</i>
Item 3	Contract Commencement Date	<i>[Insert Contract Commencement Date of this particular Official Order]</i>
Item 4	Contract Completion Date	<i>[Insert Contract Completion Date of this particular Official Order]</i>
Item 5	Intellectual Property	<i>[Specify any modifications to the Intellectual Property regime in clause 26]</i>
Item 6	Services Ordered	<i>[Specify details of Services ordered based on the descriptions in Schedule 2, when the Services are required to be performed by, and any other requirements of the Workforce Council, such as reports, deliverables, format, quality, etc. If details are extensive an Attachment may be made to the Official Order.]</i>
Item 7	Our Material and Assistance	<i>[Specify any Workforce Council Material or other assistance (such as premises) to be provided to the Contractor, along with any terms of use for that Workforce Council Material or assistance.]</i>
Item 8	Payment Milestones <i>[Specify any Payment Milestones for instalment/ progress payments of Charges to the Contractor. The Payment Milestones should be objectively measurable – they may include the delivery of specific reports or achievement of objectives etc.]</i>	Payment Amount: <i>[Insert the amount of the Contract Price that will be paid on achievement of the Payment Milestone.]</i>
Item 9	Contract Price	<i>[Specify the maximum amount payable under the Contract and the basis for calculation, in accordance with Schedule 2]</i>
Item 10	Authorised Personnel: (Specify each Full Name)	Service to be Performed: <i>[Specify functions of each Authorised Personnel]</i>

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Signed Date/...../.....

.....

[Insert Project Manager Name and Position Title]

THIS OFFICIAL ORDER CREATES A SEPARATE CONTRACT BETWEEN THE WORKFORCE COUNCIL AND [CONTRACTOR].

BY SENDING THIS OFFICIAL ORDER TO YOU, THE WORKFORCE COUNCIL IS AUTHORISING YOU TO BEGIN WORK ON THE SERVICES DETAILED ABOVE.

PLEASE SIGN BELOW TO INDICATE YOUR ACCEPTANCE OF THIS OFFICIAL ORDER AND ALL ITS CONDITIONS AS OUTLINED.

Signed Date/...../.....

.....

[Insert Name and Position Title]

