

Schedule 1: Standard Form of Agreement (Agency Agreement)

**Prequalification Scheme SCM2231:
Employment Related Medical Services**

Agreement between:

**[Insert Agency name]
(‘the Principal’)**

And

**[Insert Service Provider name and ABN]
(the ‘Service Provider’)**

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THIS AGREEMENT is made on the _____ day of _____ 20__

BETWEEN

[insert Agency name] acting for and on behalf of the Crown in right of the State of New South Wales or [insert name of statutory authority, statutory corporation] of [insert address] ABN [...] (“the Principal”)

AND

[Insert legal business name of Service Provider as approved under the prequalification scheme and ABN] of [insert address] in the State of [Insert State] (the “Service Provider”).

1. Interpretation

1.1 Definitions

Unless the context indicates otherwise, the following terms, where used in this Agreement, must have the meanings set out below:

ABN means an Australian Business Number as provided in *A New Tax System (Australian Business Number) Act 1999* (Cth).

Agency means a NSW government agency or public body and includes a government sector agency within the meaning of the *Government Sector Employment Act 2013* (NSW), a NSW Government statutory authority, NSW statutory corporation and State owned corporation.

Agency Referral means a service request issued in the standard form (Form 1 in Schedule 4 of the Scheme Conditions) by an Agency.

Agreement means this document and any annexures and attachments to this agreement.

Commencement Date means the date of commencement of this Agreement as set out in item 3 of Annexure 1 (Agreement details) to this Agreement.

Confidential Information means any information and all other knowledge at any time disclosed (whether in writing or orally) to the Service Provider by the Principal, or acquired by the Service Provider in performing the Services, which:

- (a) is by its nature confidential; or
- (b) is designated, marked, or stipulated as confidential; or
- (c) the Service Provider knows, or ought to know, is confidential; and includes but is not limited to:
 - (i) the Principal’s Material;
 - (ii) any material which relates to the affairs of a third party;

- (iii) strategies, practices or procedures of the State of New South Wales or an information in the Service Provider's possession relating to a Government Agency;

but does not include information which:

- (iv) must be disclosed to perform the Services;
- (v) is or becomes public knowledge, other than by breach of this Agreement;
- (vi) is in the lawful possession of the Service Provider without restriction in relation to disclosure before the date of receipt of the information; or
- (vii) is required to be disclosed pursuant to law, government policy or legal process.

Consequential Loss means any:

- (a) special damages;
- (b) indirect, incidental or consequential loss; and
- (c) damages that could not have been reasonably supposed to have been in the contemplation of the Parties at the date of this Agreement.

Conflict of interest means the Service Provider or its Personnel:

- (a) engaging in any activity;
- (b) obtaining any interest, whether pecuniary or non-pecuniary; or
- (c) being involved in any actual or threatened litigation or investigation,

whether proven or alleged, which is likely to, has the potential to, or could be perceived to, present a conflict of interest in the Service Provider or its Personnel performing its obligations under this Agreement.

Contract Material means:

- (a) any Material created, written or otherwise brought into existence by or on behalf of the Service Provider in the course of performing this Agreement in which subsists newly created Intellectual Property rights ("New Contract Material"); and
- (b) any Material which exists at the date of this Agreement and which is incorporated in the New Contract Material ("Existing Contract Material").

End Date means the date (if any) specified in item 3 of Annexure 1 (Agreement details) to this Agreement or the date the Principal gives a notice to the Service Provider that it considers that the Services have been fully performed or that it does not require further performance of the Services by the Service Provider as set out in clause 13.1 ('Completion of Services').

Existing Contract Material has the meaning given to this term in the definition of "Contract Material".

Fee or Fees means the fee or fees specified in item 2 of Annexure 1 (Agreement Details) to this Agreement.

GST has the meaning given to this term in the GST Law.

GST Law means the *A New Tax System (Goods & Services Tax) Act 1999* (Cth), related legislation and any delegated legislation.

Health Information has the same meaning as in the *Health Records and Information Privacy Act 2002* (NSW).

Intellectual Property means all intellectual property rights and includes patent, know-how, copyright, Moral Rights, design, semi-conductor or circuit layout rights, registered and unregistered trademarks, registered designs, trade secrets, trade, business or company names, and any rights to registration of such rights, whether created before or after the Commencement Date, in Australia or elsewhere.

Material includes but is not limited to documents, information and data stored by any means.

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world, whether in existence before or after the Commencement Date.

New Contract Material means any Material created, written or otherwise brought into existence by the Service Provider in the course of performing this Agreement in which subsists newly created Intellectual Property rights but for the avoidance of doubt does not include the Service Provider's Material.

Party means the Principal or the Service Provider, and 'Parties' means the Principal and the Service Provider, as the case may be.

Personal Information means personal information as defined in the *Privacy and Personal Information Protection Act 1998* (NSW), being information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form), about an identified individual (that is, a natural person) whose identity is apparent or can reasonably be ascertained from the information or opinion.

Personnel of a Party means all the officers, employees, agents and contractors of that party, and in the case of the Service Provider, also includes any sub-contractors.

Principal's Material means any Material supplied by the Principal to the Service Provider by whatever means in relation to this Agreement.

Privacy Laws means the *Privacy and Personal Information Protection Act 1998* (NSW), *Health Records and Information Privacy Act 2002* (NSW) and *Privacy Act 1988* (Cth) and includes any directions, orders, regulations, any ancillary rules, codes of practice and principles made or issued under these Acts.

Scheme means the *Prequalification Scheme: Employment Related Medical Services*.

Scheme Conditions means the document setting out the terms and conditions of the *Prequalification Scheme: Employment Related Medical Services*.

Service Provider means a prequalified member of the Scheme who is a Party to this Agreement.

Service Provider's Material means any methodologies, tools, models, processes, knowledge or material otherwise brought into existence by the Service Provider after the date of this Agreement, otherwise than in the course of performing this Agreement.

Services mean the services to be performed by the Service Provider as set out in this Agreement and further detailed in Schedule 2 ('Description of service requirements') of the Scheme Conditions.

Standards means the Australian Standards, where applicable to the Services, and includes international standards in the absence of an applicable Australian Standard.

Supply has the meaning given to it in the GST Law.

- 1.2** Except where the context otherwise requires, a reference in this Agreement to:
- (a) the singular number includes a reference to a plural number and vice versa;
 - (b) a gender includes a reference to the other genders and each of them;
 - (c) any person or company, includes the legal personal representative, successor in title, and permitted assigns of such person or company as the circumstances may require;
 - (d) any body which ceases to exist or is reconstituted, renamed or replaced refers to that body as reconstituted, renamed or replaced;
 - (e) legislation (including subordinate legislation) is a reference to that legislation as amended, consolidated, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (f) a day means a calendar day, unless otherwise stated;
 - (g) a business day means any day which is not a Saturday, Sunday or gazetted as a public holiday in the State of New South Wales;
 - (h) money is a reference to Australian currency;
 - (i) a person or persons, will be taken to include any natural or legal persons.

- 1.3** In this Agreement, unless the contrary intention appears:
- (a) Where any time limit under this Agreement falls on a Saturday, Sunday or public holiday in the State of NSW, then the time limit will be deemed to have expired on the next business day; and
 - (b) Where a person is comprised of more than one person, each obligation of the person which is contained in this Agreement will bind those persons jointly and severally and will be enforceable against them jointly and severally.
 - (c) No rule of construction operates to the detriment of a Party only because that Party was responsible for the preparation of this Agreement or any part of it; and
 - (d) Where there is a reference to the doing of anything by the Principal by giving notice, consent, direction or waiver, this may be done by any duly appointed officer, which includes an authorised representative of the Principal.

2. Engagement

- 2.1** The Principal engages the Service Provider to provide the Services in accordance with this Agreement.
- 2.2** This Agreement commences on the Commencement Date specified in item 3 of Annexure 1 (Agreement details) to this Agreement, or, where no date has been specified, the date that the last party executed the Agreement.
- 2.3** Unless earlier terminated in accordance with its terms, the Agreement will continue until the End Date as provided in clause 13.1 ('Completion of Services').
- 2.4** The Principal may, in its sole discretion, extend the term of the Agreement by providing written notice to the Service Provider of no less than sixty (60) days.
- 2.5** The Service Provider must comply with the Scheme Conditions when carrying out its obligations under this Agreement.
- 2.6** In the event of any ambiguity, discrepancy or inconsistency in interpreting any term or terms of the Agreement and the Scheme Conditions, the order of priority in the interpretation of such term or terms will be in the following order:
- (a) Scheme Conditions; and
 - (b) this Agreement.

3. Conflict of Interest

- 3.1** The Service Provider warrants that, to the best of its knowledge and belief, at the Commencement Date, no conflict of interest exists or is likely to arise in the performance of the Services.
- 3.2** The Service Provider must notify the Principal in writing, immediately upon becoming aware of the existence, or possibility, of a conflict of interest.

- 3.3** On receipt of a notice under clause 3.2, the Principal may:
- (a) approve the Service Provider continuing to perform the Services, which approval may be subject to reasonable conditions to ensure appropriate management of the conflict; or
 - (b) where in the Principal's view the conflict of interest cannot be appropriately managed, it may exercise its rights of termination under this Agreement.

4. Provision of Service

4.1 *Professional standard of care*

- 4.1.1 The Service Provider must perform the Services in a diligent manner and to the standard of skill and care expected of a Service Provider qualified, competent and experienced in the provision of such Services.
- 4.1.2 The Service Provider acknowledges that the standard of delivery of the Services must be in accordance with Schedule 2 ('Description of service requirements') of the Scheme Conditions and in full satisfaction of Schedule 3 (Service levels and key performance reporting) of the Scheme Conditions.
- 4.1.3 The Service Provider must ensure that all Personnel utilised by it in connection with the Services are appropriately qualified, competent and experienced in the provision of such Services.
- 4.1.4 The Service Provider acknowledges and agrees that the Principal relies upon the skill and knowledge of the Service Provider in providing the Services. The Service Provider must ensure that all work, documents and other deliverables produced by it are reasonably suitable in all respects for the purposes required by this Agreement.

4.2 *Compliance with directions, law, Standards and policies*

- 4.2.1 The Service Provider must, in carrying out this Agreement, comply with:
 - (a) all reasonable directions from the Principal;
 - (b) all applicable laws, statutory requirements, privacy principles, codes of practice, and Australian and ISO standards;
 - (c) any other Standards agreed to by the Parties;
 - (d) any NSW Government policies, guidelines and codes of conduct notified by the Principal to the Service Provider during the term of the Agreement, including, but not limited to the following:
 - (i) buy.nsw Policy Framework;
 - (ii) National Safety and Quality Health Service Standards;
 - (iii) Medical Board of Australia Good Medical Practice: Code of Conduct for Doctors in Australia;
 - (iv) Australian Medical Association Code of Ethics;

(v) Fitness for Duty: Medical assessments for non-work related injuries and health conditions); and

(vi) Managing Sick Leave Policy C2020-10.

4.2.2 The Service Provider must demonstrate to the Principal, whenever requested, that it has complied with and is complying with its obligations under this clause 4.2.

4.2.3 The Service Provider must ensure that its Personnel who are deployed to perform the Services are aware of, and comply with, the Service Provider's obligations in this Agreement.

4.2.4 The Service Provider must liaise, co-operate and confer with the Principal or any other person nominated by the Principal in relation to its performance of the Services.

4.3 *Understanding the Principal's requirements*

The Service Provider must use all reasonable efforts to inform itself of the requirements of the Principal and, where necessary, consult with the Principal during the performance of the Services to clarify its understanding of those requirements.

4.4 *Discrepancies*

4.4.1 If the Service Provider considers that any information, documents and other particulars made available to it by any person on behalf of the Principal are inadequate or contain errors or ambiguities, the Service Provider must give written notice to the Principal detailing the errors or ambiguities as soon as practicable.

4.4.2 The Service Provider must use reasonable endeavours to ensure the rectification of any errors or ambiguities notified.

4.5 *Subcontracting and Assignment*

4.5.1 The Service Provider must not assign or subcontract any of its rights or obligations under the Agreement, except:

- (a) with the prior written consent of the Principal; and
- (b) on such conditions as the Principal considers fit.

4.5.2 If the Service Provider does not hold a professional indemnity insurance policy specifically covering those Services which it intends to subcontract, the Service Provider must demonstrate that the proposed subcontractors hold and maintain professional indemnity insurance in relation to those Services they are to deliver for the term or period required by clause 4.16 ('Insurances') or by any Agency Agreement under which the Services are to be delivered, whichever is the longer.

4.5.3 Where consent to subcontract is granted by the Principal under this clause 4.5, the Service Provider:

- (a) is not relieved of its liabilities or obligations under this Agreement;

- (b) will be liable for the acts, defaults and neglect of any subcontractor (or any employee or agent of the subcontractor) as fully as if it were the acts, defaults or neglect of the Service Provider; and
 - (c) will be responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and that the work performed by the subcontractor meets the requirement of the Agreement.
- 4.5.4 The Service Provider must ensure that each subcontractor is aware of and bound by all the terms and conditions of this Agreement relevant to the subcontractor's part in the performance of the Services.
- 4.5.5 If requested by the Principal, the Service Provider must procure a written undertaking from any subcontractor that the subcontractor is aware of and agrees to be bound by all the terms and conditions of this Agreement relevant to the subcontractor's part in the performance of the Services.
- 4.5.6 Prior to any subcontractor commencing work in respect of the Services, the Service Provider will provide to the Principal a written assignment from the subcontractor to the Principal of any Intellectual Property created as a result of the subcontractor performing that work.
- 4.5.7 Nothing in this Agreement creates any contractual relationship between the Principal and any subcontractor.

4.6 *Program*

If requested by the Principal, the Service Provider must:

- (a) provide a program for the performance and completion of the Services to the Principal within the agreed timeframe;
- (b) submit a revised program as soon as practicable after any circumstance renders such revision necessary or after any request by the Principal to do so;
- (c) perform the Services expeditiously and in accordance with the most recent program approved by the Principal; and
- (d) report on progress against the program monthly or at such other interval as is advised in writing by the Principal.

4.7 *Reports and deliverables*

The Service Provider must provide reports and deliverables:

- (a) in the format and within the timeframes specified in item 3 of Annexure 1 (Agreement Details) to this Agreement; and
- (b) in accordance with clause 23 ('Reporting') and Schedules 2, 3 and 7 of the Scheme Conditions.

4.8 *Change in the scope or timing of the Services*

4.8.1 As soon as practicable after becoming aware of any matter which is likely to change or has changed the scope or timing of the Services, the Service Provider must give written notice to the Principal, detailing the circumstances and likely implications of the change.

4.8.2 The Service Provider agrees to comply with any direction of the Principal in relation to any notified change in scope or timing of the Services.

4.9 *Principal's Materials*

The Service Provider must protect and keep safe and secure all of the Principal's Materials provided to the Service Provider.

4.10 *Records*

4.10.1 The Service Provider must keep the following true and particular records:

- (a) record of medical assessments and results;
- (b) financial records, proper accounts and time sheets in accordance with accounting principles generally applied in commercial practice; and
- (c) records of all payments made under this Agreement, including all supporting materials used to generate and substantiate payments.

4.10.2 The Service Provider must retain medical and financial records in a safe and secure manner for a period of seven (7) years after the expiry or termination of this Agreement.

4.10.3 The Service provider must do everything necessary or reasonable requested by the Principal to enable the Principal to comply with applicable laws, including the *State Records Act 1998* (NSW).

4.10.4 The Service Provider must, within a reasonable time of any request by the Principal, give the Principal access to, or verified copies of, any information which may be reasonably required to enable any claim by the Service Provider for payment to be substantiated and verified by the Principal.

4.11 *Confidentiality*

4.11.1 The Service Provider:

- (a) must not disclose any Confidential Information to any person without the prior written consent of the Principal; and
- (b) must take reasonable steps to ensure that the Confidential Information in its possession is kept confidential and protected against unauthorised use and access.

- 4.11.2 The Service Provider agrees to use any Confidential Information solely for the purpose of providing Services under this Agreement, and for no other purpose.
- 4.11.3 Notwithstanding clause 4.11.1, the Service Provider may disclose Confidential Information to its officers, employees, agents and permitted sub-contractors (“permitted recipient”) where such disclosure is essential to carrying out their duties in accordance with this Agreement.
- 4.11.4 Before disclosing any Confidential Information to a permitted recipient, the Service Provider will ensure that the permitted recipient is aware of the confidentiality requirements of this Agreement and is advised that he, she or it is strictly forbidden from disclosing the Confidential Information or from using the Confidential Information other than as permitted by this Agreement.
- 4.11.5 The Principal may, at its sole discretion and at any time, require the Service Provider to arrange for a permitted recipient to execute a deed (in such form as may be required by the Principal) relating to the non-disclosure and use of the Confidential Information and the Service Provider will promptly arrange for such deed to be executed and provided to the Principal.
- 4.11.6 The Confidential Information must not be copied or reproduced by the Service Provider and/or the permitted recipient without the express prior written permission of the Principal, except for such copies as may be reasonably required to accomplish the purpose for which the Confidential Information was provided pursuant to this Agreement.

4.12 *Privacy and disclosure of Personal Information*

Where the Service Provider has access to Personal Information in order to fulfil its obligations under this Agreement, it must:

- (a) comply, and ensure that its Personnel comply, with the Privacy Laws applicable to public sector agencies;
- (b) where the Service Provider is responsible for holding the Personal Information, ensure that Personal Information is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;
- (c) not use Personal Information other than for the purposes of the Agreement, unless:
 - (i) required or authorised by law; or
 - (ii) authorised in writing by the individual to whom the Personal Information relates and the use is only to the extent authorised;
- (d) not disclose Personal Information without the prior written agreement of the Principal or the prior written agreement of the individual to whom the Personal Information relates, unless required or authorised by law;

- (e) ensure that only authorised Personnel have access to Personal Information;
- (f) immediately notify the Principal and the individual to whom the Personal Information relates (where relevant) if:
 - (i) the individual to whom the Personal Information relates authorises the Service Provider to use his/her Personal Information for other purposes;
 - (ii) the individual to whom the Personal Information relates consents to the Service Provider's disclosing of his/her Personal Information; and/or
 - (iii) it becomes aware that a disclosure of Personal Information is, or may be required or authorised by law;
- (g) make its Personnel aware of the Service Provider's obligations under this clause including, when requested by the Principal, requiring those Personnel to promptly sign a suitable privacy deed relating to Personal Information. The Service Provider will promptly arrange for such deed to be executed and provided to the Principal;
- (h) comply with such other privacy and security measures as the Principal reasonably advises the Service Provider in writing from time to time; and
- (i) immediately notify the Principal upon becoming aware of any breach of this clause 4.12.

4.13 *Party representatives*

The Service Provider representative specified in item 6 of Annexure 1 (Agreement Details) to this Agreement or such other person as is nominated by the Service Provider and approved by the Principal and the Principal representative specified in item 7 of Annexure 1 (Agreement Details) to this Agreement:

- (a) are the agents of the Service Provider and the Principal respectively, for the purposes of doing anything under this Agreement; and
- (b) in the case of the Service Provider representative, has the authority to make and give, or accept, on the Service Provider's behalf, any approvals, acceptances, directions, notice and other decisions that the Service Provider may make and give, or accept, under this Agreement.

4.14 *Advice or assistance from others*

The Service Provider may obtain advice or assistance from others, including independent legal counsel, in connection with the Services, but such advice and assistance will be at the Service Provider's cost.

4.15 *Access to Service Provider's premises*

The Service Provider must, at all reasonable times and upon reasonable notice, permit the Principal access to the Service Provider's premises in order for the Principal to inspect, discuss and assess the Contract Material and any other

material obtained by the Service Provider from any person in connection with the Services.

4.16 *Insurances*

- 4.16.1 Without limiting the Service Provider's obligations under this Agreement, the Service Provider must, at its own expense, hold, maintain (and must ensure that any subcontractors are beneficiaries under or otherwise hold and maintain) the following insurances:
- (a) Public Liability Insurance (incorporating product liability insurance) as specified in the Scheme Conditions, if not otherwise specified in Annexure 1 (Agreement Details) of this Agreement;
 - (b) Professional Indemnity Insurance in respect to each claim as specified in clause 5 of the Scheme Conditions, if not otherwise specified in Annexure 1 (Agreement details) of this Agreement;
 - (c) Workers' Compensation Insurance in accordance with applicable legislation; and
 - (d) such other insurances as are specified in item 9 of Annexure 1 (Agreement Details) of this Agreement.
- 4.16.2 The insurances referred to in this clause must be effective from the Commencement Date and maintained for the term of the Agreement. Unless the Principal otherwise agrees in writing, any professional indemnity insurance must be maintained for a period of six (6) years following the expiration or earlier termination of this Agreement.
- 4.16.3 All policies of insurance must be effected with an insurer rated 'A' or better by AM Best or an equivalent rating organisation.
- 4.16.4 The level of cover required in the Scheme Conditions is the minimum requirement which the Service Provider is expected to maintain when prequalified under the Scheme.
- 4.16.5 Where the Principal considers that additional insurance may be necessary to cover liabilities that may arise during the performance of Services, the Principal must consult with the Service Provider as to type of insurance and level of coverage.
- 4.16.6 Upon request from the Principal, the Service Provider must provide satisfactory evidence of any insurance.
- 4.16.7 The Service Provider must notify the Principal within two (2) business days of any event which affects or may affect the Service Provider's compliance with this clause (Insurances), including any cancellation of a policy or reduction of limit of coverage below that required by this Agreement.

4.17 *Service Provider warranties (General)*

4.17.1 The Service Provider warrants that:

- (a) the Services do not infringe the Intellectual Property rights of a third party;
- (b) the Services conform to any legally applicable Standards;
- (c) it has capacity to enter into this Agreement and perform the obligations imposed on the Service Provider;
- (d) all information provided by it in relation to this Agreement is true and complete in all material respects as at the Commencement Date and is not, by the omission of information or otherwise, misleading;
- (e) no litigation, arbitration, claim, dispute or administrative proceeding is current or pending or, to the Service Provider's knowledge, threatened against the Provider which has not been disclosed to the PSC either prior to the Commencement Date or during its currency under this Agreement and which is material to the performance of the Services;
- (f) the Service Provider has obtained and relied on independent legal, financial and other advice as to all matters specified in this Agreement; and
- (g) the Service Provider has not entered into any arrangement, whether a trust arrangement or otherwise, that impedes or is likely to impede the performance of the Agreement by the Service Provider.

4.17.2 The Service Provider acknowledges that all representations and warranties given by the Provider will survive the execution of this Agreement and the termination of this Agreement.

4.18 *Third Party Warranties*

4.18.1 Where the Service Provider supplies Services that have been procured from, or contracted to, third parties, the Service Provider agrees to assign to the Principal, to the extent permitted by law, the benefits of any warranties given by the third parties.

4.18.2 The Parties agree that the assignment of any third party warranties is in addition to the warranties offered directly by the Service Provider under this Agreement and do not relieve the Service Provider from the obligation to comply with the Service Provider's own warranties.

4.19 *The Principal's representations and warranties*

The Principal represents and warrants that

- (a) each authorisation required in relation to:
 - (i) the execution, delivery or observance and performance by the PSC and the DFSI of;
 - (ii) the validity and enforceability of; and
 - (iii) the transactions contemplated by.

this Agreement has been obtained or effected and is in full force and effect; and

- (b) this Agreement is valid, binding and enforceable in accordance with its terms.

4.20 *Mistakes in information*

The Service Provider must pay for any additional costs incurred by the Principal for errors or omissions in material or any other information supplied by the Service Provider, even though that material or information may have been approved by the Principal.

4.21 *Service Provider's relationship with the Principal*

The Service Provider must not act outside the scope of the authority conferred on it by this Agreement and must not purport to bind the Principal in any way or hold itself out as having any authority to do so, except as specifically authorised pursuant to this Agreement.

5. Principal's obligations

5.1 *Provide information*

The Principal will, as soon as practicable, make available to the Service Provider all relevant material and particulars within the Principal's possession or control, give all necessary instructions and answer any queries made by the Service Provider relating to the Principal's requirements in connection with this Agreement.

5.2 *Principal's Personnel*

The Principal may make available Personnel to work with the Service Provider. The Principal will use reasonable efforts to ensure that Personnel made available to work with the Service Provider has the requisite competencies, skills, and experience to perform the tasks.

5.3 *Payment*

5.3.1 In consideration of the provision of the Services in accordance with this Agreement, the Principal will pay the Service Provider the Fees set out in item 2 and 3 of Annexure 1 (Agreement Details) to this Agreement.

5.3.2 Payment of any part of the Fees does not constitute an acceptance by the Principal of the Services and does not amount to a waiver of any right or claim which the Principal may have at any time against the Service Provider.

5.3.3 If the Service Provider has obtained the Principal's prior written approval to incur or pay any costs, expenses, fees or charges, the Principal will reimburse the Service Provider for those costs, expenses, fees or charges.

5.3.4 Subject to clause 5.3.5 the Principal will make payment within twenty-eight (28) days following the rendering of a tax invoice by the Service

Provider. If the Principal has, within a reasonable period of time after receiving a tax invoice, requested access to information under clause 4.16 ('Insurances') of this Agreement, the time for payment will be extended by the number of days elapsing between the date of the Principal's request for access and the date when access is granted.

- 5.3.5 The payment of the Fees (or any part of it) under this Agreement is conditional on the Service Provider:
- (a) satisfying every obligation under this Agreement to the Principal's satisfaction (acting reasonably);
 - (b) providing adequate proof of insurance as required under this Agreement; and
 - (c) achieving the service levels set out in Schedule 3 (Service levels and key performance reporting) of the Scheme Conditions.

6. Claims for payment

The Service Provider must render to the Principal a tax invoice after the completion of Services under the Agreement. Any payment claim will be for the Services performed and for approved reimbursable expenses (if any) incurred.

7. Suspension of payment

- 7.1 At any time during the term of the Agreement, the Principal may, by written notice, suspend any or all payments under this Agreement, if the Service Provider:
- (a) has failed, or in the Principal's reasonable opinion, is likely to fail, to deliver the Services in accordance with this Agreement;
 - (b) has breached, or is suspected to have breached any law material to the Services or its obligations under this Agreement; or
 - (c) refuses or neglects to carry out directions or requirements of the Principal in regard to any matter connected with this Agreement.

8. Goods and Services Tax

- 8.1 To the extent that a party to this Agreement ('GST Service Provider') is or becomes liable to pay GST in connection with any Supply made under this Agreement and the amount of any such GST is not included in the amount payable under this Agreement the:
- (a) GST Service Provider may add to the price of the Supply an amount equal to the GST payable on the Supply ("GST Amount"); and
 - (b) other party will pay the GST Service Provider the price for the Supply in accordance with this Agreement plus the GST Amount.

- 8.2** If, for any reason, the GST Service Provider's GST liability in respect of a particular Supply is different from the amount of GST paid by the other party:
- (a) the GST Service Provider must immediately repay to the other party the amount of any excess paid by the other party above the GST Service Provider's GST liability; or
 - (b) the other party must pay the deficiency in the amount previously paid by the other party to the GST Service Provider for that Supply, as appropriate.
- 8.3** Each party warrants that at the time any Supply is made under this agreement on which GST is imposed, that party is or will be registered under the GST Law.
- 8.4** Any invoice rendered by a party to this agreement in connection with a Supply under this Agreement which seeks to recover an amount of GST payable by that party must conform to the requirements for a tax invoice (as that term is defined in the GST Law).

9. Variations

9.1 *Instruction*

The Principal may, on the recommendation of the Service Provider or otherwise, instruct the Service Provider in writing to vary the Services and the Service Provider must comply with any such instruction.

9.2 *Consequences of variation or proposed variation*

- (a) Before instructing a variation, the Principal may request the Service Provider to provide a written estimate of the time and cost impact of the proposed variation which must be provided within a reasonable time nominated by the Principal.
- (b) If a variation is instructed and no request has been made by the Principal, the Service Provider must, as soon as practicable, provide the Principal with a written estimate of the time and cost impact of the variation prior to carrying out the variation.
- (c) Any variation is to be attached as an annexure to this Agreement.

9.3 *Price for variation*

- (a) The Service Provider acknowledges that a variation to Services under this clause 9 may result in a change in cost to the Service Provider and that the Fee may be varied to take into account this increase or decrease in cost.
- (b) If applicable, the Parties will agree upon the amount of any increase or decrease in cost, upon provision by the Service Provider of appropriate documentation or such further information as may reasonably be requested by the Principal.

9.4 *Failure to agree*

If the Parties cannot agree the amount of any increase or decrease in cost, or the Service Provider does not agree to the proposed variation to the Services, the provisions of clause 15 ('Dispute resolution') apply.

10. Service delivery

10.1 *Extension of time*

10.1.1 Where there is likely to be a delay in the Service Provider performing an obligation under this Agreement because of a circumstance beyond the control of the Service Provider (other than a circumstance arising out of any act or omission on the part of the Service Provider), the Service Provider will:

- (a) within seven (7) days of becoming aware of the possibility of such a delay, notify the Principal in writing of the circumstances giving rise to the delay, and the extent or likely extent of the delay and strategies proposed to manage and minimise the consequences of the delay; and
- (b) request a reasonable extension of time.

10.1.2 The Principal may consent to a request for extension of time under this clause, provided that:

- (a) the Service Provider uses its best endeavours to minimise the delay and recover lost time; and
- (b) where appropriate, the Service Provider provides the Principal with a plan setting out the steps the Service Provider proposes to take to minimise the impact of the delay in Services.

10.1.3 The Service Provider will not be entitled to any increase in Fees or damages, costs or expenses in connection with the delay unless the delay occurred solely because of the Principal's failure to perform its obligations in accordance with this Agreement. Where the delay is solely caused by the Principal's failure to perform its obligations, the Principal will reimburse the Service Provider its unavoidable reasonable costs directly incurred as a result of such delay.

10.2 *Rejection of Services*

10.2.1 The Principal may reject Services which are not in accordance with this Agreement.

10.2.2 Upon rejection of any Services, the Principal will notify the Service Provider and may direct that the rejected Services be discontinued or rectified at the Service Provider's risk and expense, and within such reasonable time as the Principal may direct.

10.2.3 If the Service Provider fails to rectify the rejected Services within the reasonable time directed, the Principal may have the rejected Services re-performed at the Service Provider's risk and expense.

10.2.4 Where the Service Provider fails to perform the Services within the timeframe provided in this Agreement or such other time as is agreed by the Principal, or where Services are rejected and the Service Provider fails to rectify the rejected Services in conformity with the Agreement, the Principal may:

- (a) purchase from another Service Provider substitute Services of the kind and quality ordered; or
- (b) where it is not possible or practicable to purchase from another Service Provider substitute Services of the kind or quality ordered, the Principal may purchase Services of a superior kind and quality to the Services under this Agreement.

10.2.5 In both cases listed in clause 10.2.4, any reasonable extra cost or expense incurred over and above the Service Provider's Fee will be a debt due and owing from the Service Provider to the Principal.

11. Intellectual Property

11.1 *New Contract Material*

Copyright (including future copyright) in all New Contract Material, vests in the Principal or is otherwise hereby assigned by the Service Provider to the Principal. Title to, and Intellectual Property rights in, all New Contract Material (other than copyright) must, on creation, vest or otherwise be assigned or transferred to the Principal, without the need for further assurance.

11.2 *Existing Contract Materials*

This Agreement does not affect the Intellectual Property rights in Existing Contract Material, but the Service Provider hereby grants, and ensures that relevant third parties grant to the Principal, without additional cost, a non-exclusive, irrevocable, transferable licence:

- (a) to use, reproduce, communicate to the public and adapt for its own purposes; and
- (b) where so specified in this Agreement, to perform any other act with respect to copyright and to manufacture, sell, hire or otherwise exploit, all those Intellectual Property rights, but only as part of the Contract Material and any developments of that material.

11.3 *Perfection of rights*

The Service Provider must execute all documents and do all acts and things required, at its cost (unless otherwise agreed), for the purposes of giving effect to the provisions of this Agreement dealing with Intellectual Property rights.

11.4 *Moral Rights*

The Service Provider must hold, or obtain, consents from all authors of Contract Material for its use and adaptation by the Service Provider or the Principal,

without restriction and without any requirement to attribute the Contract Material to its authors.

11.5 *Limitations on the use by the Service Provider of the Contract Material*

The Service Provider must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Agreement and in accordance with this Agreement unless it has obtained the prior written approval of the Principal to do otherwise. Any such approval may be given on any terms or conditions the Principal considers appropriate.

12. Indemnity

12.1 The Service Provider will be liable in respect of, and agrees to indemnify, and shall keep indemnified, the Principal and the Principal's Personnel ("those indemnified") against any liability, claim, injury, damage, loss or expense (including legal costs on a solicitor and client basis) (together "liability or loss") arising from or in connection with:

- (a) any unlawful, negligent, reckless or deliberately wrongful act or omission of the Service Provider or the Service Provider's Personnel in the performance of this Agreement;
- (b) any breach of this Agreement or the confidentiality deed required by this Agreement; and
- (c) any unlawful, negligent, reckless or deliberately wrongful act or omission of the Service Provider or the Service Provider's Personnel resulting in personal injury to, or the death of, any person or in the loss of, or damage to any property.

12.2 The Service Provider's liability in respect of, and indemnity given in clause 12.1 shall be reduced proportionally to the extent that any unlawful, negligent, reckless or deliberately wrongful act or omission of those indemnified caused or contributed to the liability or loss.

12.3 The indemnity contained in this clause is a continuing obligation of the Service Provider separate and independent of any other responsibility of the Service Provider and will continue beyond the expiration, termination or completion of this Agreement.

12.4 The Principal may, in its absolute discretion, agree to cap the Service Provider's liability under this clause to a monetary amount. Any cap on liability must be specified in Item 9 of Annexure 1 (Agreement Details) to this Agreement.

13. Termination

13.1 *Completion of Services*

13.1.1 This Agreement will terminate:

- (a) on the date (if any) specified in Item 3 of Annexure 1 (Agreement Details) to this Agreement; or
- (b) if the Principal gives written notice to the Service Provider that the Principal considers that the Services have been fully

performed or that the Principal does not require further performance of the Services by the Service Provider, on the date specified in the notice.

13.1.2 The date specified in a notice under clause 13.1.1 (b) must be not less than thirty (30) days after the Principal gives the notice to the Service provider.

13.2 *Termination for insolvency or default*

13.2.1 If the Service Provider:

- (c) becomes bankrupt, or insolvent, or enters into a scheme or arrangement with its creditors, or is placed into liquidation or provisional liquidation, or placed under official management or receivership;
- (d) commits a substantial breach of this Agreement;
- (e) fails to carry out the Services with due diligence and competence and in accordance with the requirements of Schedule 2 (Service Requirements) of the Scheme Conditions;
- (f) without reasonable cause, suspends the carrying out of the Services; or
- (g) in the opinion of the Principal has a conflict of interest in performing the Services, which cannot be appropriately managed; then

the Principal may:

- (h) in the case of the circumstance specified in clause 13.2.1(c), immediately terminate this Agreement by notice to the Service Provider; or
- (i) in the case of any other circumstance specified in clause 13.2.1 give notice to the Service Provider specifying the circumstance and requiring the Service Provider to remedy it.

13.2.2. If the Service Provider fails to remedy the circumstance within a period specified by the Principal under clause 13.2.1(i) and the Service Provider has not satisfied the Principal on being required to show cause that termination is not warranted, the Principal may terminate this Agreement by a further notice to the Service Provider.

13.3 *Termination by the Service Provider*

13.3.1 If the Principal:

- (a) fails to pay the fees to the Service Provider in accordance with this Agreement; or
- (b) commits a substantial breach of this Agreement,

then the Service Provider may give notice to the Principal specifying the failure or breach and requiring the Principal to remedy the failure or breach.

13.3.2 If the Principal fails to remedy the breach within a period of not less than 14 days, the Service Provider may at any time thereafter, terminate this Agreement by giving written notice of termination to the Principal.

13.4 *Effect of termination*

13.4.1 Termination of this Agreement by either Party is without prejudice to any accrued rights or remedies of either party.

13.4.2 The Service Provider acknowledges that, following termination, the Principal may enter into a contract with any person to complete provision of the Services.

14. Consequences of termination

14.1 *Adjustment of the Fee on termination*

14.1.1 Upon termination of this Agreement, the Principal will pay the Service Provider for the Services performed up to the date of termination but in the case of termination under clause 13.2 ('Termination for insolvency or default'), such payment will be adjusted to account for any loss or damage suffered, or reasonably likely to be suffered, by the Principal as a consequence of breach of this Agreement by the Service Provider.

14.1.2 The Principal may offset any money due against any money payable by the Service Provider to the Principal and recover any short-fall from the Service Provider as a debt due and payable.

14.1.3 The Principal will not in any circumstance be liable for any Consequential Loss or loss of profits suffered by the Service Provider as a result of the termination of this Agreement under this Agreement.

14.2 The Service Provider must, unless otherwise approved by the Principal in writing, deliver to the Principal, within seven (7) days of termination or expiry of this Agreement:

- (a) all Confidential Information of the Principal;
- (b) all Contract Material and Principal's Material; and
- (c) all copies of such materials referred to at this clause 14.2(a) and (b) above.

The Service Provider is permitted to retain a bona fide copy of the Contract Material for its records, subject to the confidentiality and privacy requirements contained in this Agreement.

14.3 *Further Services after termination*

If the Principal requests the Service Provider to provide further services or undertake any additional work of a minor, incidental or ancillary nature in connection with the Services after termination and the Service Provider agrees to perform the work, then notwithstanding such termination, all such work or services will be deemed to be part of the Services.

- 14.4** Clauses in this Agreement dealing with access to records (clause 4.10) confidentiality (clause 4.11), Intellectual Property (clause 11), insurance (clause 4.16), consequences of termination (clause 14), dispute resolution (clause 15), and any other provision of this Agreement of any similar nature and significance must survive termination, expiry or repudiation of this Agreement.

15. Dispute resolution

15.1 *Negotiation*

The Service Provider and the Principal will endeavour, in good faith, to resolve any dispute expeditiously and efficiently by way of negotiation between the Parties.

15.2 *Expert determination*

15.2.1 If a dispute between the Service Provider and the Principal:

- (a) is agreed by both parties to involve a claim or claims not exceeding \$100,000 in the aggregate for either party; and
- (b) is not resolved by negotiation,

then before either party has recourse to litigation, the parties must cooperate to submit the dispute to determination by an independent expert ('Expert') agreed between the parties.

15.2.2 If the Service Provider and the Principal do not agree upon an Expert, either party may request the Australian Commercial Disputes Centre to nominate an Expert and the dispute must be referred to such nominee.

15.2.3 The Expert must have experience and expertise to the subject matter of the dispute, and must be appointed on terms which include the following:

- (a) the Expert may meet with the parties jointly but must not meet or communicate with either party separately;
- (b) during any meeting with both parties, the Expert may ask questions of the parties which must be answered orally or in writing as requested by the Expert;
- (c) the determination of the Expert must be made as an expert and not as an arbitrator; and
- (d) as soon as practicable, and, unless otherwise agreed by the parties and the Expert, within sixty (60) days of the acceptance by the Expert of the appointment, the Expert must give the parties a determination in writing as to the respective rights and entitlements of the parties, including the amount, if any, due from one party to the other.

15.3 *Submissions*

Within twenty-eight (28) days of acceptance by the Expert of the appointment, any party making a claim will submit their claim in writing to the Expert and within a further fourteen (14) days, the other party will submit its response to the claim. All such submissions must include all evidence which the parties wish the Expert to take into account. A copy of all submissions and any documents sent to the Expert must be sent to the other party at the same time.

15.4 *Effect of determination*

The determination of the Expert is final and binding on the Parties except where:

- (a) the Expert's determination relating to a dispute is that one Party must pay to the other an amount in excess of \$100,000 (or carry out work without charge to the value of more than \$100,000); and
- (b) either Party gives notice to the other party of its dissatisfaction with that determination within 28 days of the determination being given, in which case the Parties irrevocably submit to the jurisdiction of the Courts of New South Wales.

15.5 *Costs*

The Principal and the Service Provider will each bear their own costs of the determination and will each bear half the Expert's fee and any associated expenses of the Expert.

15.6 *Continuing performance*

Each party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

16. Notices

16.1 Any notice given under this Agreement:

- (a) must be in writing addressed to the intended recipient in the Agreement Details or the address last notified by the intended recipient to the sender;
- (b) must be signed by an authorised officer of the sender; and
- (c) will be taken to have been delivered:
 - (i) in the case of delivery in person - when delivered to the recipient's address for service and a signature is received as evidence of delivery;
 - (ii) in the case of delivery by post - within three business days of posting;
 - (iii) in the case of delivery by facsimile – at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient; and
 - (iv) in the case of delivery by email, on receipt of confirmation by the sender that the recipient has received the email.

- 16.2** If delivery or receipt of a notice occurs on a day on which business is not generally carried on in the place to which the communication is sent, or occurs later than 4.00pm (local time) on any day, it will be taken to have occurred at the commencement of business on the next business day in that place.

17. Jurisdiction

This Agreement will be governed by and construed in accordance with the laws of the State of New South Wales.

18. General

- 18.1** A right may only be waived in writing, signed by the Party giving the waiver, and:
- (a) no other conduct of a Party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
 - (b) a waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again; and
 - (c) the exercise of a right does not prevent any further exercise of that right or of any other right.
- 18.2** The Agreement constitutes the entire agreement between the Parties. Any prior arrangements, agreements, representations or undertakings are superseded.
- 18.3** This Agreement may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.
- 18.4** If any part of this Agreement is prohibited, void, illegal or unenforceable, then that part is severed from this Agreement, but without affecting the continued operation of the remainder of the Agreement.
- 18.5** Subject to any express provision in this Agreement to the contrary, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.
- 18.6** Each Party must promptly execute all documents and do all things that any other Party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by.

Annexure 1 : Standard Form of Agreement – Agreement Details

Agreement Details

Prequalification Scheme: Employment Related Medical Services.

GUIDE

The full legal business name of the company or companies should be used.

A business (trading) name is not a legal entity and must not, by itself, be used as the name for the Service Provider.

The name(s) of the owner(s) of the business name should be inserted as follows:

“[insert name of first owner] of [insert address of first owner], [insert name of second owner] of [insert address of second owner] and [insert name of third owner] and [insert address of third owner] trading under the business name “[insert business name]”

Parties to the engagement may sign the Agreement Details at the end of this document.

Principal	<i>insert Department /Agency/business enterprise (if business enterprise is not an Agency)} acting for and on behalf of the Crown in right of the State of New South Wales] or [insert name of statutory authority, statutory corporation or business enterprise (if business enterprise is a separate legal entity)] of [insert address] ABN [insert ABN number]</i>
Service Provider	<i>insert name of Service Provider [of [insert address] ABN [insert ABN]</i>
Service Provider's Proposal	Attached: <input type="text"/> Yes / No Dated:
Item 1:	Services (Ref: Schedule 2 of the Scheme Conditions – identify Tier 1 and any Tier 2 services which apply)
Item 2:	Fees (Ref: clause 6 of the Scheme Conditions)
Item 3:	Term (a) Commencement Date: (clause 2.2 of this Agreement) (b) End Date: (clause 13.1 of this Agreement)

Item 4:	Reports and deliverables (Ref: clauses 23 and 4 of the Scheme Conditions)
Item 5:	Service Provider Representative (clause 4.13 of this Agreement)
Item 6:	Principal Representative (clause 4.13 of this Agreement)
Item 7:	<p>Notices (clause 16 of this Agreement)</p> <p>Principal's name:</p> <p>Address:</p> <p>Email:</p> <p>Attention:</p>
	<p>Service Provider's name:</p> <p>Address:</p> <p>Email:</p> <p>Attention:</p>
Item 8	<p>Insurance conditions identified by the Principal (clause 4.16 of this Agreement)</p> <p>Indemnity conditions identified by the Principal (clause 12 of this Agreement)</p> <p>Cap on liability:</p>

Agreement Details Acceptance:

Organisation Name (Principal):	
Name:	Date:
Phone:	SIGNED by the signatory for and on behalf of the Crown in right of the State of New South Wales but not so as to incur any personal liability.
Email:	

	<p>Signature of authorised signatory:</p> <p>Name of authorised signatory (print):</p>
<p>Organisation Name (Service Provider):</p>	
<p>Name:</p>	<p>Date:</p>
<p>Phone:</p>	<p>Signature of authorised signatory:</p> <p>Name of authorised signatory (print):</p> <p>Signature of additional authorised signatory/witness <i>(delete as appropriate)</i></p> <p>Name of additional authorised signatory/witness (print)</p>
<p>Email:</p>	