



Australian Government

Tertiary Education Quality and Standards Agency

Deed of Standing Offer

between the

Commonwealth of Australia

as represented by the

Tertiary Education Quality and Standards Agency

and

[INSERT NAME OF SUPPLIER]

For the supply of expert advisory services

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Parties:

COMMONWEALTH OF AUSTRALIA ('Commonwealth', 'Us', 'We' or 'Our'), represented by and acting through the Tertiary Education Quality and Standards Agency, ABN 50 658 250 012 ('TEQSA', 'We', 'Us' or 'Our')

AND

[INSERT SUPPLIER NAME], ABN **[INSERT ABN]**, of **[INSERT ADDRESS]** ('You', or 'Your').

Purpose:

- (A) We have established a Multi-Use List known as the TEQSA Register of Experts to have a list of pre-qualified experts to perform Services for Us from time to time.
- (B) You applied to be included on the Register of Experts. On the basis of the statements and representations made by You in your application We included You on the Register of Experts.
- (C) You have agreed that on receipt of a Schedule from Us You will supply the Services to Us on the basis of a standing offer on the terms and conditions of this Deed.

Terms and Conditions:

1 Term of Deed

- 1.1 This Deed commences on the date on which the last party executes this Deed and continues until:
 - (a) the expiration of two years after the Date of this Deed unless extended in accordance with clause 1.2; or
 - (b) the date the Deed is terminated under this Deed.
- 1.2 We may, at Our absolute discretion, extend the term of this Deed for a further two (2) periods of one (1) year each on the same terms and conditions by giving written notice to You at any time before the date on which this Deed would otherwise expire.

2 Standing Offer

Obligation to provide services

- 2.1 By this Deed You make an irrevocable standing offer to supply the Services to Us on the terms and conditions set out in this Deed.

Ordering Services

- 2.2 We may issue a Schedule to You, substantially in the form set out in Appendix 1, from time to time. Each Schedule issued by Us and accepted by You in accordance with this Deed will create a separate Contract between You and Us in relation to the provision of the Services specified in the Schedule. The parties agree that the terms of each Schedule will be the Contract Terms and Conditions. A Contract for the provision of any Services is not created until We issue a Schedule in accordance with clause 2.4 and You accept the Schedule in accordance with clause 2.5.
- 2.3 You may only reject a Schedule for a Valid Reason, in which case no Contract will arise in relation to the Schedule. A Valid Reason for the purposes of this clause is:

- (a) where You would have a Conflict;
 - (b) where We have not made payment of fees, allowances or costs to You under an existing Contract with You in accordance with the terms of that Contract; or
 - (c) any other reason accepted in writing by Us.
- 2.4 The date on which We issue a Schedule to You is the date of effective notice pursuant to clause 5 of this Deed.
- 2.5 Where we issue a Schedule to You, You must, within 5 business days of the date on which we issue the Schedule in Accordance with clause 2.4, either:
- (a) accept the Schedule by completing the execution section and returning the executed Schedule to Us;
 - (b) reject the Schedule by sending us a notice with details of the Valid Reason in accordance with clause 2.3.
- 2.6 Where you accept a Schedule, the Contract created in accordance with clause 2.2 is taken to have commenced on the date on which you return the completed and executed Schedule to Us.
- 2.7 We:
- (a) are not obliged to place any Schedule with You or to request any volume of Services from You; and
 - (b) may at any time purchase or acquire services the same as, or similar to, the Services from any other person on such terms and conditions as We wish.

3 Termination

- 3.1 We may by notice, at any time and at Our absolute discretion, terminate or reduce the scope of this Deed immediately. No compensation is payable to You for termination or reduction in scope of this Deed.
- 3.2 If You fail to satisfy any of Your obligations under this Deed, then We may – if We consider that the failure is:
- (a) not capable of remedy – by notice, terminate this Deed immediately; or
 - (b) capable of remedy –by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate this Deed immediately by giving a second notice.
- 3.3 We may also by notice terminate this Deed immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if You:
- (a) are unable to pay all Your debts when they become due;
 - (b) if incorporated – have a liquidator, administrator or equivalent appointment under legislation other than the *Corporations Act 2001* appointed to You; or
 - (c) if an individual – become bankrupt or enter into an arrangement under Part IX or Part X of the *Bankruptcy Act 1966*.
- 3.4 Termination of this Deed, in a notice issued under clauses 3.1 or 3.2, will have the effect of terminating only those Contracts specified, or reducing the scope of those Contracts specified.

3.5 Termination of this Deed, in a notice issued under clause 3.3, will have the effect of immediately terminating all Contracts under this Deed. No compensation will be payable to the Service Provider for termination under this clause 3.3.

4 Dispute resolution

4.1 Subject to this clause 4, the parties agree not to commence any legal proceedings in respect of any dispute arising under this Deed, until the procedure provided by this clause 4 has been used.

4.2 For any dispute:

- (a) Our Representative and Your Representative will try to settle the dispute by direct negotiation;
- (b) if unresolved, the party claiming that there is a dispute will give the representative of the other party a notice setting out the details of the dispute;
- (c) within five business days, each party will nominate a senior representative, not having prior direct involvement in the dispute;
- (d) the senior representatives will try to settle the dispute by direct negotiation; and
- (e) failing settlement within a further 10 business days, either party may commence legal proceedings.

4.3 Each party will each bear its own costs for dispute resolution.

4.4 Despite the existence of a dispute, You must (unless requested in writing by Us not to do so) continue Your performance under any Contract.

4.5 The procedure for dispute resolution does not apply to action relating to termination or to legal proceedings for urgent interlocutory relief.

5 Notices

5.1 A notice under this Deed or any Contract is only effective if it is in writing, and:

- (a) if given by You to Us – addressed to Our Representative or as otherwise notified by Us; or
- (b) if given by Us to You – addressed to Your Representative or as otherwise notified by You.

5.2 A notice is to be:

- (a) signed by the person giving the notice and delivered by hand; or
- (b) signed by the person giving the notice and sent by pre-paid post; or
- (c) transmitted electronically by the person giving the notice by email or fax.

5.3 Notices given under this Deed or any Contract are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if sent by email;
 - i. when the sender receives an automated message confirming delivery; or

- ii. four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, whichever happens first.
- 5.4 A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

6 General provisions

Conflict of Interest

- 6.1 You warrant that, to the best of Your knowledge after making diligent inquiry, at the Commencement Date no Conflict exists or is likely to arise in the performance of Your obligations under this Contract.
- 6.2 If, during the performance of the Services a Conflict arises, or appears likely to arise, You must:
- (a) notify Us immediately in writing;
 - (b) make full disclosure of all relevant information relating to the Conflict;
 - (c) propose steps to take for managing, resolving or otherwise dealing with the Conflict; and
 - (d) take any such steps as We reasonably require, which may include those proposed by You pursuant to paragraph (c), to resolve or otherwise deal with the Conflict.

Provision of services fairly and independently

- 6.3 You must not, and must ensure that Your Personnel do not, engage in any activity or obtain any interest during the course of this Contract that is likely to conflict with, or restrict, You providing the Services to Us fairly and independently.

Cooperation

- 6.4 The parties intend to conduct themselves for the purposes of the performance of this Deed and each Contract in the spirit of co-operation and good faith. For avoidance of doubt, the spirit of co-operation and good faith does not override or limit the provisions of this Deed or any Contract.
- 6.5 We will co-operate with You by:
- (a) making available, as reasonably requested by the Service Provider, information that is necessary for You to provide the Ordered Services, and
 - (b) setting priorities for the Ordered Services.
- 6.6 You must co-operate with any other service providers appointed by Us to ensure the efficient carrying on of Our operations and must provide such reasonable assistance to other service providers as We may reasonably request, and at no additional cost to Us.

Relationship of parties

- 6.7 You are not by virtue of this Deed or any Contract an officer, employee, partner or agent of Us, nor do You have any power or authority to bind or represent Us. You agree:
- (a) not to misrepresent Your relationship with Us; and
 - (b) not to engage in any misleading or deceptive conduct in relation to the Services.

Waiver

- 6.8 A failure or delay by a party to exercise any right or remedy it holds under this Deed or any Contract at law does not operate as a waiver of that right.
- 6.9 A single or partial exercise by a party of any right or remedy it holds under this Deed or any Contract or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

Variation, assignment and survival of terms

- 6.10 The terms of this Deed may not be varied unless both parties agree to that variation in writing.
- 6.11 You cannot assign Your obligations, and agree not to assign Your rights, under this Deed or any Contract without Our prior written approval.
- 6.12 Unless the contrary intention appears, the expiry or earlier termination of this Deed or any Contract will not affect the continued operation of any provision which expressly or by implication from its nature is intended to continue.

7 Special contract terms and conditions

Intellectual Property

- 7.1 Clause 26 of the General Purchase Order Conditions is replaced by the following clause:
- (a) You grant Us a non-exclusive, irrevocable, perpetual, worldwide, fee free licence (including a right to sublicense) to use, modify, adapt and publish the Services and any Material and any adaptation of the Services or any Material for any purpose other than commercial exploitation, to the extent that Material embodies any of Your Intellectual Property Rights.
 - (b) You warrant that You own all Intellectual Property Rights necessary to grant this licence, provide the Services and Material to Us and to allow Us to use the Services for their usual purpose and in the manner contemplated by the Contract.
 - (c) You warrant that the provision of the Services in accordance with the Contract will not infringe any third party's Intellectual Property Rights.

Applicable Law

- 7.2 The Laws of the State of Victoria apply to the Contract.

Gifts and Hospitality

- 7.3 You must not improperly use Your position to gain a benefit, gift or hospitality.

Reasonable assistance

- 7.4 You agree to provide all reasonable assistance and cooperation as requested in writing by Us in relation to the conduct of any actions or proceedings on matters relevant to the Services, including, but not limited to, the attendance at any court or tribunal hearing, the giving of evidence at such a hearing, and the execution and delivery of additional documents. This clause survives the termination or expiry of the Contract.

Subcontracting

- 7.5 You may not subcontract any aspect of the provision of the Services without Our written agreement. In the event that You are not able to provide the Ordered Services You must notify Us in writing. Where you provide such a notice We may terminate the Contract or reduce the scope or quantity of the Services by notifying You in writing.

Australian Business Number (ABN)

- 7.6 Where You have an ABN, You must provide it in the tax invoice for the Services under this contract. GST will be added to the identified daily rate. If You are not required to have an ABN the Contract Price will not include GST.

Pay as you go (PAYG)

- 7.7 Where You do not have an ABN You must either:
- (a) complete the Australian Tax Office “Statement by a Supplier” form explaining why You do not require an ABN and submit the form with an invoice that meets the requirements contained in the Commonwealth General Purchase Order Conditions; or
 - (b) submit an invoice that meets the requirements contained in the Commonwealth General Purchase Order Conditions without a completed “Statement by a Supplier” form, in which case We will withhold 46.5% of the amount invoiced.

Travel

- 7.8 You must not make travel arrangements in relation to the Ordered Services without written approval from the Contract Manager. Any approval from the Contract Manager may be subject to conditions. Where the Contract Manager approves travel in accordance with this clause, the Contract Manager will arrange air travel, hire cars and accommodation related to the Services provided under this contract on the following basis:
- (a) Where the Contract Manager approves air travel in relation to the Services provided under this contract the Contract Manager will arrange economy class for domestic air travel with a flight time of four hours or less and business class travel where a domestic flight time is more than four hours or on international flights.
 - (b) The Contract Manager will only approve accommodation where You, or Your Personnel performing the Services, will be absent from the home city for longer than one day.

Travel costs incurred by You

- 7.9 Where reasonable costs associated with approved travel are incurred by You or Your Personnel in relation to the Ordered Services We will pay You those reasonable costs in the Contract Price subject to the following conditions:
- (a) The daily cap for accommodation, meal and incidental costs specified for Tier 2 in the determination of the Remuneration Tribunal on Official Travel by Office Holders, that applies at 9:00AM (local Canberra time) on the date on which the costs are incurred, available at <http://www.remtribunal.gov.au/determinations-and-statements/determinations/current-principal-determinations>.
 - (b) If You have an ABN You must submit an invoice that meets the requirements contained in the Commonwealth General Purchase Order Conditions.
 - (c) If You do not have an ABN You must submit a completed reimbursement claim in the form provided to the Supplier by the Contract Manager when travel is approved.
 - (d) You must provide documentary evidence that the costs for which payment is sought have been incurred in accordance with the Contract.
 - (e) Payment of costs associated with approved travel will occur within 7 days of making a valid claim for payment.

Restriction on representations

7.10 In addition to clause 20 of the General Purchase Order Conditions You must not represent Yourself, and must ensure that Your officers, employees, agents or subcontractors do not represent themselves, as being endorsed, accredited, an assessor or an auditor of TEQSA. You may refer to Yourself as a member of the TEQSA Register of Experts.

8 Applicable law

8.1 This Deed is to be construed in accordance with, and any matter related to it is to be governed by, the law of Victoria, and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of Victoria.

9 Interpretation

9.1 In this Deed, unless the context indicates otherwise:

- (a) **Business Day** (in a place) means a weekday other than a public holiday in the place specified or, if no place is specified, in the State of Victoria.
- (b) **Conflict** means any existing circumstances:
 - i. which constitute an actual conflict;
 - ii. which constitute a known risk of conflict; or
 - iii. which may be perceived by others to constitute a conflictbetween Our interests and the interests of You or Your Personnel (or between Your duties or the duties of Your Personnel to Us and Your duties to another person) in relation to the performance of the Services.
- (c) **Contract** means a contract for particular Services formed between Us and You by Us issuing a Schedule to You under this Deed.
- (d) **Contract Manager** means, in relation to a Contract, the person specified by name or position in the relevant Schedule relating to that Contract.
- (e) **Contract Terms and Conditions** means:
 - i. any terms specified in a Schedule;
 - ii. the Special Contract Terms and Conditions in Clause 7 of the Deed; and
 - iii. the Commonwealth General Purchase Order Conditions available at <https://www.tenders.gov.au/?event=public.document.list> in the form they appeared at 9:00 am (local Canberra time) on the date on which the relevant contract commences in accordance with clause 2.6 of this Deed;
- (f) **Ordered Services**, in relation to a Contract, means the Services specified in the relevant Schedule relating to that Contract..
- (g) **Our Representative** means:
[Insert name, position, postal address, email address, fixed line and mobile telephone number of TEQSA representative]
- (h) **Personnel**, in relation to You, means any natural person who is Your officer, employee or agent or an officer, employee or agent of Your subcontractor; and
- (i) **Schedule** means a schedule issued by Us requesting the provision of specific Services by the Service Provider, in accordance with clause 2.2.
- (j) **Services** means expert advisory services in relation to Our regulation and quality

assessment functions.

(k) **Your Representative** means:

[Insert name, position, postal address, email address, fixed line and mobile telephone number of Supplier's representative]

9.2 In this Deed, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and words in the plural include the singular;
- (c) clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (d) words importing a person includes a partnership and a body whether corporate or otherwise;
- (e) a reference to dollars is a reference to Australian dollars;
- (f) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- (g) if any 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;
- (h) the Schedules and any attachments form part of this Deed;
- (i) if any conflict arises between the terms and conditions specified through a Schedule and the terms of a Contract or the terms of this Deed, the following order of priority will apply:
 - i. the terms specified through the Schedule;
 - ii. the Special Contract Terms and Conditions as set out in Clause 7 of this Deed;
 - iii. the terms and conditions of this Deed; then
 - iv. the Commonwealth General Purchase Order Conditions as specified in clause 9.1(e)(iii) above;
- (j) a reference to a Schedule (or an attachment) is a reference to a Schedule (or an attachment) to this Deed, including as amended or replaced from time to time by agreement in writing between the parties; and
- (k) terms defined in the Contract Terms and Conditions have the same meaning in this Deed.

Appendix 1 Form of Schedule

Schedule

[insert reference]

regarding

[insert description of Ordered Services]

under the Deed of Standing Offer

between

the Tertiary Education Quality and Standards Agency (Us)

and

[insert Supplier's name] (You)

A. Reference to Deed of Standing Offer

- A.1 This Schedule is placed pursuant and subject to the terms and conditions of the Deed of Standing Offer between Us and You.
- A.2 In accordance with clause 2.6 of the Deed of Standing Offer, the Contract created by this Schedule commences on the date on which you return the completed and executed Schedule to Us.

B. Ordered Services

- B.1 We require You to provide [insert description of the Ordered Services, including the application about which the Services are sought].
- B.2 You must provide the Services, using the template that the Contract Manager provides to You, by emailing the completed template to the Contract Manager by [date].

C. Contract Price

- C.1 The Contract Price is [insert amount] (including GST, unless You follow the procedure in Clause 7.7 of the Deed) and any reasonable travel costs incurred and claimed by You in accordance with Clause 7.9 of the Deed.
- C.2 The Contract Price (excluding reasonable travel costs) is payable Us in one instalment, following provision of the Ordered Services. Payment of reasonable travel costs incurred and claimed by You in accordance with Clause 7.9 of the Deed will occur within 7 days of making a valid claim for payment.

D. Specified Personnel

D.1 The Specified Personnel are:

Name	Position	Role
[Insert name]	[Insert position]	[Insert role]

E. Confidentiality and security Requirements

E.1 The parties agree that each document related to a specific regulatory process to which We give You direct electronic access through the TEQSA regulatory database (i.e. the External Experts Portal) and any other document specifically identified by us as confidential or which is by its nature confidential, constitutes confidential information.

E.2 [Specify any security requirements, otherwise specify “Not applicable”].

F. Contract Managers

Our Contract Manager:

Name/position title: The person occupying the position of [insert position title], currently [insert name].

Postal Address: [insert postal address including postcode]

Telephone: [insert telephone area code and telephone number]

Mobile: [insert mobile number]

Email Address: [insert email address]

Your Contract Manager:

Name/position title: The person occupying the position of [insert position title], currently [insert name].

Postal Address: [insert postal address including postcode]

Telephone: [insert telephone area code and telephone number]

Mobile: [insert mobile number]

Email Address: [insert email address]

ISSUED for and on behalf of the Tertiary Education Quality and Standards Agency by:	ACCEPTED for and on behalf of [Supplier Name] by:
..... (Signature) (Signature)
[Signatory name]	[Signatory name]
[Position]	[Position]
Date:	Date:

Deed Execution

EXECUTED AS A DEED

EXECUTED for and on behalf of)
THE COMMONWEALTH OF AUSTRALIA)
by **[DELEGATE NAME]**)
[DELEGATE POSITION])
of the Tertiary Education Quality)
and Standards Agency)

.....

ON: *[insert date]*

In the Presence of:

.....

[FULL NAME AND POSITION OF WITNESS]

Executed by **[insert company name of Supplier]** ACN: **[insert Supplier's ACN]**
in accordance with Section 127 of the
Corporations Act 2001

Signature of director



Signature of director/company secretary
(Please delete as applicable)



Name of director (*print*)

Name of director/company secretary (*print*)

ON: *[insert date]*

ON: *[insert date]*

For a sole director company [delete if not relevant]

Executed by [insert company name of Supplier] ACN: [insert Supplier's ACN] in accordance with Section 127 of the Corporations Act 2001

Name of director/company secretary (*print*)



Signature of director/company secretary who state they are the sole director/company secretary of [insert company name of supplier] (*Please delete as applicable*)

ON: [insert date]

For a individual or sole trader [delete if not relevant]

Executed by [insert name of Supplier] in the presence of

Signature of witness



Signature of Supplier

Name of witness (*print*)

Name of Supplier (*print*)

ON: [insert date]

For a partnership [delete if not relevant]

Executed by [insert name of Supplier] ABN: [insert Suppliers ABN] in the presence of

Signature of witness

Signature of individual partner

Name of witness (*print*)

Name of individual partner (*print*)

ON: [insert date]