

# CSNSW STATE-WIDE PROGRAMS: External Facilitators

## Deed of Agreement Terms and Conditions

This Deed of Agreement ('Agreement') sets out the terms and conditions which the External Facilitator will provide the Services.

### A. The External Facilitator must do the following:

#### 1. Services

- (a) The External Facilitator must ensure that they provide the Services to Corrective Services NSW ('CSNSW') in accordance with:
  - (i) the Work Order;
  - (ii) all Departmental policies and procedures as notified from time to time;
  - (iii) any direction or guideline issued by the Commissioner or from CSNSW including any direction of CSNSW to submit to testing (random or otherwise) for alcohol and/or drugs; and
  - (iv) all applicable laws and regulations including without limitation to the Crimes (Administration of Sentences) Act 1999, the Crimes(Administration of sentences) Regulation 2014, the Crimes (Sentencing Procedure) Act 1999, the Privacy and Personal Information Protection Act 1998 and the Work Health and Safety Act 2011 and the Work Health and Safety Regulation 2011.
- (b) The External Facilitator must perform the Services:
  - (i) in accordance with the standards and level of care, skill, knowledge and judgment generally applicable to such Services;
  - (ii) except as otherwise expressly provided in this Agreement, entirely at the External Facilitator's own risk.
- (c) The External Facilitator agrees to abide by the following workplace standards:
  - (i) behave ethically, act with integrity, impartiality and compassion towards program participants and respect the dignity and human rights of all persons;
  - (ii) ensure that all dealings with staff and program participants are professional, transparent, accountable, courteous and fair and not prejudice the operation, security or reputation of Corrective Services NSW;
  - (iii) not have undisclosed personal, financial or family relationships with staff, program participants, inmates, inmates families and friends which could prejudice the discipline and security of correctional centres and/or those subject to Community Corrections supervision;

- (iv) not discriminate against, or harass, any person on the grounds of sex, marital status, pregnancy, age, race, ethnic or ethno-religious background, disability, homosexuality and transgender;
  - (v) not proselytise or attempt to convert program participants from their current religious/spiritual beliefs;
  - (vi) not engage in inappropriate coarse and obscene language, and/or sexual banter and innuendo, within the work environment;
  - (vii) assume responsibility for working safely to avoid risks and injury to themselves, staff and program participants and cooperate with staff to ensure that all work health and safety practices and policies are complied with;
  - (viii) ensure that all correspondence and records are truthful and accurate to the best of their knowledge;
  - (ix) ensure that any information gained in the course of their duties and functions must be treated with due care and confidentiality to protect the privacy and welfare of others and for the proper security of Corrective Services NSW operations;
  - (x) not offer any token, gift, payment, gratuity, benefit, reward, advice, goods or services (other than what is defined by their duties and functions as a program facilitator) to staff and program participants that has the potential to create a conflict of interest or the appearance of conflict of interest, and could constitute illegal or corrupt conduct;
  - (xi) immediately report in writing to the Manager or Officer in Charge any offer of token, gift, payment, gratuity, benefit, reward, advice, goods or services from any person which has been made to induce them to neglect their duties or functions, give preferential treatment, or act in any way other than in accordance with the proper discharge of their duties or functions;
  - (xii) not engage in any private activity (such as alcohol abuse, drug use or violent behaviour) that may adversely affect their ability to perform their duties or functions as a program facilitator;
  - (xiii) be mindful that conviction for a criminal offence may jeopardise their status as a program facilitator,
- (d) The External Facilitator accepts total responsibility for the security of any material and documentation provided by CSNSW to the External Facilitator.
- (e) The External Facilitator must at their own cost obtain and maintain any licences and/or other approvals required for the lawful provision of the Services.

## **2. Invoice**

The External Facilitator or their Sponsoring Organisation must submit a correctly rendered invoice to CSNSW that:

- (a) abides by the invoicing procedure as outlined in Annexure A (EQUIPS) or Annexure B (Sober Driver Program) or as amended by written advice from CSNSW.
- (b) includes the External Facilitator's and where applicable the Sponsoring Organisation's full trading name and ABN;
- (c) includes the relevant Purchase Order number;
- (d) refers to one Purchase Order only;
- (e) identifies if the External Facilitator is a small business;
- (f) is sent to Corrective Services NSW Centralised Accounts Payable GPO Box 7065 Sydney NSW 2001 or sent electronically as instructed in writing by CSNSW; and
- (g) is a valid tax invoice under GST law.

### **3. Insurance**

The External Facilitator must hold and maintain each of the following insurances or provide evidence that they are similarly covered by their Sponsoring Organisation's insurances:

- (a) public liability insurance with an indemnity of at least \$10 million in respect of each claim for the period of the Agreement;
- (b) professional indemnity insurance of \$1 million for all claims during the period of the Agreement and for at least four years after the end of the Agreement; and
- (c) workers compensation insurance in accordance with applicable legislation.

The External Facilitator must provide a certificate of currency or clear evidence of adequate self insurance for each of the above insurances to the satisfaction of CSNSW.

### **4. Indemnity and Liability**

The External Facilitator releases and indemnifies CSNSW and its employees against any liability, loss, damage or cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense arising out of or in any way in connection with:

- (a) a default or any unlawful, malicious or negligent act or omission on the External Facilitators part, its officers, employees, agents or subcontractors; or
- (b) any action, claim, dispute, suit or proceeding brought by any third party in respect of any use, infringement or alleged infringement of that third party's intellectual property rights or moral rights;

subject to:

The External Facilitators liability will be reduced to the extent that any unlawful, malicious or negligent act or omission of CSNSW or their officers, employees or contractors contributed to the loss, damage, cost, compensation or expense.

## **5. Specified Personnel**

- (a) The External Facilitator must ensure that the Specified Personnel set out in the Work Order provide the Services and are not replaced without the prior written consent of CSNSW.

## **6. National Police Record check**

- (a) The External Facilitator must obtain and submit his/her National Police Certificate to CSNSW before commencing the Services under this Agreement.
- (b) A National Police Certificate must be no more than 12 months old. Consequently, each year, a new National Police Certificate is to be applied for by the External Facilitator and forwarded to CSNSW. All costs associated with this are to be met by the External Facilitator.
- (c) The External Facilitator agrees to notify the Regional Support Manager or Director State-Wide Programs CSNSW details of any matter of a criminal nature in relation to the External Facilitator including but not limited to details of any criminal convictions.
- (d) The External Facilitator must declare in writing to the Regional Support Manager or Director State-Wide Programs, all situations or circumstances that may give rise to a potential or actual conflict of interest with their duties or functions as a program facilitator, including the existence of an active Apprehended Violence Order (AVO).
- (e) In the event that the criminal records check is unsatisfactory or CSNSW becomes aware of any matter of a criminal nature not brought to the attention of CSNSW by the External Facilitator, CSNSW reserves the right to immediately cancel registration of the External Facilitator, with reason, without incurring any penalty, financial or otherwise.

## **7. Subcontracting and Assignment**

The External Facilitator must not assign or sub-contract any part of the Services without the prior written consent of CSNSW.

## **8. Privacy**

The External Facilitator must ensure it and its staff collect, use, access, retain and disclose personal information in connection with the Agreement in accordance with the requirements of the *Privacy and Personal Information Protection Act 1998 (NSW)*.

## **9. Access to Information**

To enable CSNSW to fulfil its obligations under the *Government Information (Public Access) Act 2009 (NSW)* ('GIPA Act'), the External Facilitator agrees to:

- (a) assist CSNSW to meet its obligations including providing reasonable access to records;

- (b) assist CSNSW to identify information which has been requested either informally or in a formal access application, or which is required or may be required to be released under the GIPA Act, within the timeframe requested or as otherwise agreed;
- (c) upon request by CSNSW, conduct reasonable searches for all records it holds within the scope of an access application under the GIPA Act;
- (d) provide access to and copies of all records located within the scope of an access application to CSNSW within the requested timeframe;
- (e) not alter or destroy any information or records that it holds that is subject to the *State Records Act 1998 (NSW)* and/or the GIPA Act; and
- (f) comply with the applicable obligations of the *State Records Act 1998 (NSW)* in relation to personal information.

## **B. CSNSW must do the following:**

### **1. Payment**

CSNSW will, subject to acceptance of the Services and satisfactory completion by the External Facilitator of the milestones set out in Annexure A or Annexure B, pay the invoiced amount within 30 days after receiving a correctly rendered invoice.

### **2. Provision of Information and Materials**

- (a) CSNSW will as soon as practicable after commencement of this Agreement make available to the External Facilitator all relevant information, documentation or data or any other material for the performance of the Services including program materials necessary for the delivery of the program, recording of attendance, program manuals, activity sheets and participant lists.
- (b) The External Facilitator accepts total responsibility for the secure guardianship of all materials and documentation provided by CSNSW to the External Facilitator. Upon completion of this Agreement or in the event of termination, the External Facilitator must within 14 days return to CSNSW any material provided by CSNSW and any contract material it has in its possession.

### **3. Provision of Training**

CSNSW will provide relevant training for group work facilitation at no cost to the External Facilitator (except no reimbursement will be made for travel and accommodation costs). This may include any or all of the following:

- (a) **Training in Group Work Facilitation**, (4 days).
- (b) **Creative Group Work Skills** training program, (6 days in 2 blocks of 3 days each).
- (c) **Working with domestic abuse offenders' course** (2 days) if intending to facilitate the EQUIPS Domestic Abuse Program.

- (d) **CSNSW program specific training:** some of the in-scope programs require successful completion of a face-to-face training program, as determined by CSNSW's State-wide Programs Team (2-3 days).
- (e) **CSNSW Induction and Security Training:** (1-day) custodial institutions and community locations provide a local induction to new External Facilitators who will be working in Correctional Centres.

## **C. General**

### **1. Fee**

- (a) The Fee payable for the delivery of the Services is set out in the Work Order and is fixed and exclusive of GST. The Fee includes travel expenses, insurance, packaging, freight delivery and costs associated with the Services.
- (b) The Fee for the Services will be based on CSNSW's rates set out in **Annexure A** for EQUIPS programs and **Annexure B** for the Sober Driver program

### **2. Variation**

No agreement or understanding varying or extending the Agreement, including the scope of the Services, the Fee, or the timing, is legally binding upon either party unless in writing and agreed by both parties.

### **3. Intellectual Property**

- (a) Any new material created by the External Facilitator whilst providing the Services must be original material which has not been previously published and the External Facilitator warrants that neither the new material nor any part of it infringes any third party's intellectual property rights.
- (b) The External Facilitator acknowledges that ownership of intellectual property in, or in relation to new contract material, vests upon its creation in CSNSW. The External Facilitator must, upon request by CSNSW, do all things necessary to vest ownership and title of intellectual property in CSNSW.
- (c) All existing contract materials remain the property of CSNSW and the External Facilitator must only use such material solely for the purpose of providing the Services under this Agreement, on CSNSW's terms and conditions.

### **4. Confidentiality**

The External Facilitator must not without the prior written consent of CSNSW disclose any information in connection with the Services or this Agreement to any person other than:

- (a) as necessary to perform the Services, or
- (b) with respect to any matter already within public knowledge.

### **5. Termination**

- (a) Termination by CSNSW other than for default by the External Facilitator

CSNSW may terminate the whole or any part of the Agreement, by written notice addressed to the External Facilitator and such termination will not expose CSNSW to any claim for damages or costs, fees and expenses except as expressly set out in Annexure A and B.

(b) Termination by CSNSW for default by the External Facilitator

If the External Facilitator:

- (i) becomes bankrupt, or insolvent, or enters into a scheme of arrangement with its creditors;
- (ii) fails to carry out the Services with due diligence and competence;
- (iii) without reasonable cause suspends the carrying out of the Services, or commits a substantial breach of this Agreement;
- (iv) fails to comply with the contractual obligations set out in this Agreement;
- (v) breaches CSNSW's Code of Conduct and Ethics, or is found to have engaged in unlawful misbehaviour of any kind. CSNSW may immediately terminate this Agreement by written notice to the External Facilitator.

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(c) Termination by the External Facilitator

If CSNSW:

- (i) fails to pay the External Facilitator in accordance with this Agreement, or
- (ii) commits a substantial breach of this Agreement,

the External Facilitator may terminate this Agreement by written notice to CSNSW.

(d) External Facilitator's Continuing Liability

Termination by CSNSW will not release the External Facilitator from liability in respect of any breach of, or non-performance of, any obligation of the External Facilitator pursuant to this Agreement.

(e) Termination without Prejudice

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

## 6. Dispute Resolution

- (a) In the event of a dispute or grievance arising, the External Facilitator and CSNSW (Co-ordinating CSNSW Staff) will in the first instance attempt to resolve the issues by discussion. In the absence of resolution, the matter will be referred for negotiation between the External Facilitator and CSNSW (Regional Services Manager).

- (b) If the dispute or grievance cannot be resolved by discussion or negotiation, then before a party has recourse to litigation, the party must submit the dispute to mediation. If the External Facilitator and CSNSW do not agree upon a mediator, either party may request the Secretary of the Australian Commercial Disputes Centre to nominate a mediator.
- (c) Each party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute or grievance.

## **7. Relationship**

Neither party is an employee, agent or partner of the other for any purpose. The External Facilitator is an independent contractor and nothing in this Agreement creates any relationship of a partnership, agency or employment between the parties.

## **8. Applicable Law**

The laws of New South Wales apply to the Agreement.

## **9. Notices**

Any notice or communication under the Agreement will be effective if it is in writing, from one party and delivered to the other party by way of on-line system or postal address, or email address or facsimile number set out in the Work Order.

## **10. Survival**

Clauses A.3 (Insurance), A.4 (Indemnity and Liability), C.3 (Intellectual Property) and C.4 (Confidential Information) survive termination or expiry of the Agreement.

## **11. Entire Agreement**

The Agreement represents the parties' entire agreement in relation to the subject matter of the Agreement and excludes any prior representations, communications, contracts, statements and understandings, whether oral or in writing which are superseded and of no effect.



## **Annexure A – EQUIPS Services & Fee Structure**

### **EQUIPS – SERVICES TO BE PROVIDED**

The External Facilitator will conduct an EQUIPS program (the Program') in accordance with the CSNSW Offender Program Facilitation Standards as provided by CSNSW to the External Facilitator.

CSNSW will supply the venue, together with audio visual equipment and whiteboard as required. The Program is conducted at a Community Corrections Office, a Correctional Centre or an alternative venue in the immediate area.

CSNSW will undertake the assessment of participants and contact them to attend the Program. The External Facilitator will be responsible for engaging the participants and maintaining accurate records of attendance and engagement.

CSNSW reserves the right to cancel the Program if:

- Prior to the commencement of the Program there are 10 or less participants
- Following commencement of the Program, the number of participants falls below 6.

If a Program is cancelled by CSNSW under clause C.5(a) after the commencement of the Program, the External Facilitator will be paid up to the scheduled completion of the module being delivered at the time of cancellation. If the Program is cancelled by CSNSW prior to the commencement of the Program, the External Facilitator will not be paid any amount.

If the External Facilitator discontinues the performance of Services under a Work Order after commencement of the Services, the External Facilitator may submit to CSNSW a statement of the amount of the Fee on a pro rata basis claimed to be payable for any Services properly performed.

### **FEE STRUCTURE**

The fee structure comprises of a total of 80 hours x \$80 an hour per Program. The total payment for delivery of an EQUIPS program is \$6400, exclusive of GST.

The 80 hours comprises of 40 hours of face-to-face program delivery and 40 hours of preparation, debrief, administration, quality assurance and travel time/expenses.

The entire Program consists of 20 consecutive weekly face to face sessions of 2 hours per session. The Program is divided into 5 modules of 4 sessions each.

Note: No additional expenses will be paid to cover travel or accommodation expenses of External Facilitators who agree to deliver programs in regional areas or in areas away from their usual place of residence.

The fee structure is set out in the table below:

<b>Cost element</b>	<b>Program Sessions</b>	<b>Hours per session</b>	<b>Hourly rate</b>	<b>Total</b>
<b>Face-to-face program delivery time</b>	20	2	\$80	\$3200
<b>Preparation, debrief, quality assurance process, travel time/expenses</b>		2	\$80	\$3200
<b>Total (exclusive of GST)</b>				<b>\$6400</b>

### **INVOICING PROCEDURE**

The External Facilitator can elect to invoice CSNSW following completion of the entire EQUIPS program or invoice at the completion of each module. Each module contains 4 x 2 hours sessions plus 8 hours of administrative and quality assurance time. Therefore each invoice would be for 16 hours of work at \$80 an hour. i.e. the invoice would be for \$1280 per module delivered (5 x modules in each program).

If CSNSW cancels the Program after commencement of the Program, CSNSW will pay in full for each module delivered following confirmation of service whether or not the Program gets cancelled prior to completion of the module.

For a module to be considered complete all paperwork including attendance records, case notes and offender self-management plans must be submitted and all on-line administrative processes completed before an invoice will be paid.

An invoice submitted by a Sponsoring Organisation should identify the relevant External Facilitator.

## **Annexure B – Sober Driver Program Services & Fee Structure**

### **Sober Driver Program – SERVICES TO BE PROVIDED**

The External Facilitator will conduct a Sober Driver Program ('Program') in accordance with the CSNSW Offender Program Facilitation Standards as provided by CSNSW to the External Facilitator.

CSNSW will supply the venue, together with audio visual equipment and whiteboard as required. The Program is conducted at a Community Corrections Office, a Correctional Centre or an alternative venue in the immediate area.

CSNSW will undertake the assessment of participants and contact them to attend the Program. The External Facilitator will be responsible for engaging the participants and maintaining accurate records of attendance and engagement.

CSNSW reserves the right to cancel the Program if:

- \* Prior to the commencement of the Program there are 8 or less participants
- \* Following commencement of the Program, the number of participants falls below 6.

If a Program is cancelled by CSNSW under clause C.5(a) after the commencement of the Program, the External Facilitator will be paid up to the scheduled completion of the block or session being delivered at the time of cancellation. If the Program is cancelled by CSNSW prior to the commencement of the Program, the External Facilitator will not be paid any amount.

If the External Facilitator discontinues the performance of Services under a Work Order after commencement of the Services, the External Facilitator may submit to CSNSW a statement of the amount of the Fee on a pro rata basis claimed to be payable for any Services properly performed.

### **FEE STRUCTURE**

The fee structure comprises of a total of 27 hours x \$80 an hour per program. The total payment for delivery of Sober Driver Program is \$2160, exclusive of GST.

The 27 hours includes 18 hours of face-to-face program delivery and 9 hours of preparation, debrief, administration, quality assurance and travel time/expenses.

Note: In some circumstances, additional hours of pay may be approved to cover expenses related to tasks that may enhance program delivery, account for programs delivered over 9 weeks or address unforeseen circumstances.

The usual fee structure is set out in the table below:

<b>Cost element</b>	<b>Program blocks</b>	<b>Hours per block</b>	<b>Hourly rate</b>	<b>Total</b>
<b>Face-to-face program delivery time</b>	3 (3 x 3 sessions)	6	\$80	\$1440
<b>Preparation, debrief, quality assurance process, travel time/expenses</b>		3	\$80	\$720
<b>Total (exclusive of GST)</b>				<b>\$2160</b>

### **INVOICING PROCEDURE**

The External Facilitator can elect to invoice CSNSW following completion of the entire Sober Driver Program or invoice at the completion of each block of 3 sessions. Each block consists of 6 hours of program delivery plus 3 hours of administrative and quality assurance time. Therefore each invoice would be for 9 hours of work at \$80 an hour. i.e. the invoice would be for \$720 per block delivered (3 x blocks in each program).

If CSNSW cancels the Program after commencement of the Program, CSNSW will pay in full for each module delivered following confirmation of service whether or not the Program gets cancelled prior to completion of the module.

For a module to be considered complete all paperwork including attendance records, case notes and offender self-management plans must be submitted and all on-line administrative processes completed before an invoice will be paid.

An invoice submitted by a Sponsoring Organisation should identify the relevant External Facilitator.