



New South Wales Government

NSW Treasury

SCM0005

**Prequalification Scheme:
Performance and Management Services**

**Scheme Rules
(Base and Full Prequalification)**

January 2023

COPYRIGHT

© State of New South Wales, 2012.

All rights reserved. No part of this RFT may be produced by any process, electronic or otherwise, in any material form or transmitted to any other person or stored electronically in any form, without the prior written permission of the State of New South Wales, except as permitted under the Copyright Act 1968.

SCHEDULE OF DOCUMENT AMENDMENTS

Revision Number	Date	Update Description
0	September 2008	Document Original - first publication
1	August 2009	New work categories
2	November 2009	Departmental name change
3	July 2010	Revised Schedule 1 – Application Form and Schedule 2 - Standard Form of Agreement
4	February 2011	Revised Scheme Conditions and Guidelines for Agencies
5	August 2011	Revision to reflect new agency name
6	September 2011	Revision of evaluation criteria 8g) & 8h)
7	December 2011	Revision to reflect extension of Scheme to Feb 2015 and implement recommendations from the Audit Office review
8	March 2012	Revision to reflect that the assessment processes in the Scheme apply only to high risk or high value services
9	April 2012	New category added
10	July 2012	Online application introduced
11	February 2013	Amendments to conditions and links
12	March 2013	Capabilities Consolidated
13	August 2013	Updated Clause 3.3 of the Standard Form of Agreement
14	January 2014	Updated Clause 7 – Evaluation Criteria
15	June 2014	Revisions to reflect new agency name, legislative changes, scheme usage, dispute resolution and formatting. Signature block within Agreement Details template
16	April 2015	Update of Policies since archived or changed. No changes to terms and conditions or scheme rules
17	May 2015	Update to Terms and Conditions of Contract and Standard Form of Agreement terms and conditions Clause 11.1 to add option for noting of completion date of contracted services.
18	July 2015	Update of Department name change
19	January 2016	Scheme Rollover to 19 February 2017
20	April 2016	New format

21	July 2016	Re formatting, Removal of Legal Services from Scheme capabilities, introduction of possible Vendor Management System (VMS) use by agencies
22	December 2016	Clarity of EARL and Full Qualifications. Duplication of qualification clarification. Temporary closure of new EARL applications after 31 December 2016.
23	February 2017	Rollover of scheme for two years to 19 February 2019.
24	June 2018	Document name changed from Scheme Conditions to Scheme Rules. EARL Rules consolidated into a single Scheme Rules document. EARL Rules document withdrawn. Easy Access Registration List (EARL) renamed to Base level prequalification. Minor rewording and corrections.
25	January 2019	Agreement Details – base and full – names amended in scheme rules. Basic page formatting changes.
26	August 2019	Change of name – NSWP now part of NSW Treasury Cluster. Adjustment to thresholds re GST component of contract values – all GST exclusive for thresholds.
27	September 2019	Implementation of Audit Office Recommendations for Probity Services – change in application, evaluation and assessment requirements. Scheme Rules changes: <ul style="list-style-type: none"> • Definitions – addition of Specified Personnel • Clause 7 – New Probity engagement requirements 7.5 & 7.6. Adjustment to 7.10 • Clause 9.1 Adjustment – additional requirements for company profile detail for engagement type 6C • Clause 11 – e) additional professional associations • Clause 16 additional supplier reporting obligations for Specified Personnel and ABN. Standard Form of Agreement - Terms and Conditions - Full Prequalification: <ul style="list-style-type: none"> • Amendments to Clause 3.3 and 3.4 for Probity Services.
28	18 September 2019	Amendment to Scheme Rules clause 7.10 – removal of requirement not to be providing other services when providing probity services to an agency. Disclosure requirement remains in place. Amendment to Terms and Conditions – Removal of Clause 3.4 in line with changes to 7.10 above and Probity Suppliers engagement types restrictions as noted in Scheme Rules 7.6.
29	01 November 2019	Additional Engagement types added to Clause 7.6 of the Scheme Rules.
30	February 2020	Rollover of scheme for 12 months
31	November 2020	Definitions and hyperlinks have been updated. Amendments have been made to the Scheme Rules so that covered agencies who use the scheme for applicable procurements in the specified thresholds are able to comply with their obligations under the Procurement (Enforceable Procurement Provisions) Direction 2019 (EPP Direction). Amendments include:

		<ul style="list-style-type: none"> • Clause 2 – Scheme Usage • Clause 5 – Enforceable Procurement Provisions • Clause 6 – The Procurement List • Clause 9.3 – Applications for Prequalification • Clause 13.1 – Evaluation Criteria • Clause 36 – Termination
32	February 2021	Rollover of scheme for 12 months
33	November 2022	Inclusion of the recommended Infrastructure Advisory Standard Commercial Framework for engagement type 15 – Infrastructure services
34	January 2023	<p>Scheme rollover to 28 Feb 2024.</p> <p>Buy.nsw website domain change, including a document link in schedule 3</p> <p>Office address change in clauses 7.2, 23.3</p> <p>Email address update to PMS in clauses 7.2, 17.1, 19.2, 23.2, 23.3, 29.1 and scheme 1</p>

CONTACT DETAILS

NSW Procurement Service Centre
52 Martin Place, Sydney NSW 2000
Telephone: 1800 679 289
Email: NSWBuy@treasury.nsw.gov.au
Web: <https://info.buy.nsw.gov.au>

This document is available at: <https://info.buy.nsw.gov.au/schemes/performance-and-management-services-scheme>

Table of Contents

RULES OF PARTICIPATION IN THE PERFORMANCE AND MANAGEMENT SERVICES SCHEME (PMSS) 8

1	DEFINITIONS AND INTERPRETATIONS.....	8
2	SCHEME USAGE	9
3	CONFIDENTIALITY	9
4	PROCUREMENT POLICY FRAMEWORK	9
5	ENFORCEABLE PROCUREMENT PROVISIONS	10
6	STANDARD COMMERCIAL FRAMEWORKS	10
7	THE PROCUREMENT LIST	10
8	PURPOSE OF BASE LEVEL PREQUALIFICATION	12
9	RECOGNITION OF SUPPLIERS FROM OTHER JURISDICTIONS	13
10	APPLICATIONS FOR PREQUALIFICATION.....	13
11	PROCESS FOR APPLICATIONS.....	14
12	APPLICATION CONTENT.....	14
13	RATES AND CHARGES.....	16
14	EVALUATION CRITERIA	17
15	NOTIFICATION OF OUTCOME.....	18
16	DISCLAIMER	18
17	REQUEST FOR REVIEW OF THE DECISION.....	18
18	SUPPLIER OBLIGATIONS UNDER THE SCHEME	18
19	SUPPLIER REPORTING OBLIGATIONS	20
20	AGENCY OBLIGATIONS	21
21	AGENCY PERFORMANCE MONITORING OBLIGATIONS.....	21
22	PERFORMANCE REPORTING BEHAVIOUR.....	21
23	PERFORMANCE REPORTING PROCESS.....	22
24	PERFORMANCE MANAGEMENT	22
25	UPGRADING OF PREQUALIFICATION	23
26	DOWNGRADING OF PREQUALIFICATION	23
27	TEMPORARY SUSPENSION.....	23
28	REMOVAL FROM THE SCHEME	23
29	REQUEST FOR REVIEW OF TREASURY DECISION	24
30	PUBLICITY	24
31	APPLICANT’S ACKNOWLEDGMENT	24
32	PREQUALIFICATION NO GUARANTEE OF WORK	24
33	WORK OUTSIDE THE SCHEME	24
34	ASSIGNMENT OR NOVATION BY NSW TREASURY	25
35	ASSIGNMENT OR NOVATION BY THE SUPPLIER	25
36	REVIEW AND DEVELOPMENT OF THE SCHEME	25
37	TERMINATION	25

STANDARD FORM OF AGREEMENT - TERMS AND CONDITIONS – 26

FULL PREQUALIFICATION..... 26

	PREQUALIFICATION SCHEME: PERFORMANCE AND MANAGEMENT SERVICES.....	26
1	DEFINITIONS AND INTERPRETATION	26
2	ENGAGEMENT	28
3	CONFLICT OF INTEREST AND DISCLOSURE OF CURRENT ENGAGEMENTS BY NSW GOVERNMENT AGENCIES	28
4	SERVICE PROVIDER'S OBLIGATIONS.....	28
5	PRINCIPAL'S OBLIGATIONS	34
6	CLAIMS FOR PAYMENT	35
7	GOODS AND SERVICES TAX.....	35

8	VARIATIONS.....	35
9	INTELLECTUAL PROPERTY	36
10	INDEMNITY	37
11	TERMINATION.....	37
12	CONSEQUENCES OF TERMINATION	39
13	DISPUTE RESOLUTION.....	40
14	NOTICES.....	40
15	CONTRA PROFERENTEM.....	41
16	JURISDICTION	41
STANDARD FORM OF AGREEMENT – TERMS AND CONDITIONS – BASE PREQUALIFICATION		42
1.	DURATION OF AGREEMENT.....	42
2.	CONFLICT OF INTEREST.....	42
3.	SCOPE OF WORK AND SERVICE PROVIDER’S RESPONSIBILITIES.....	42
4.	CLIENT’S RESPONSIBILITIES	42
5.	TERMS OF PAYMENT	42
6.	CHANGES TO SERVICES	43
7.	GST	43
8.	TERMINATION	43
9.	INTELLECTUAL PROPERTY RIGHTS.....	44
10.	LIABILITY, INDEMNITY AND CLAIMS	44
11.	LAW.....	45
12.	DISCLOSURE	45
13.	INSURANCE	45
14.	SUBCONTRACTING AND ASSIGNMENT.....	45
15.	DISPUTE RESOLUTION	46
16.	NOTICES	46
17.	GENERAL	46
AGREEMENT DETAILS - FULL PREQUALIFICATION.....		48
AGREEMENT DETAILS - BASE PREQUALIFICATION.....		50
SCHEDULE 1 - APPLICATION FORM		52
SCHEDULE 2 - PERFORMANCE REPORT TEMPLATE		53
SCHEDULE 3 - REFEREE REPORT TEMPLATE.....		55

Rules of Participation in the Performance and Management Services Scheme (PMSS)

1 Definitions and Interpretations

Agency includes NSW Government sector agencies including departments, statutory authorities, statutory corporations and government business enterprises.

Agreement refers to this document.

Annual Procurement Plan means a document published on NSW eTendering through which a government agency provides a short summary of its procurement intentions for the coming year and information regarding significant procurements it plans to undertake.

Applicant means a person who has submitted an Application for admission to the Scheme.

Application means an online application submitted for admission to the Scheme in the form prescribed in Schedule 1.

Assessment Body means the entities appointed by NSW Treasury to determine the eligibility of Suppliers to be admitted to the Scheme.

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

- a) is by its nature confidential;
- b) is designated, or marked, or stipulated as confidential;
- c) the Supplier knows or reasonably should know is confidential; and includes but is in no way limited to:
 - (i) the Contract Material;
 - (ii) the Agency's Material;
 - (iii) any material which relates to the affairs of a third party;

but does not include information which:

- a) must be disclosed to perform the Services;
- b) is or becomes public knowledge other than by breach of this Agreement;
- c) is in the lawful possession of the Supplier without restriction in relation to disclosure before the date of receipt of the information from the Agency or a third party; or
- d) is required to be disclosed pursuant to law or any legal process.

Engagement Types (and sub-engagement types) means the range of services provided under the Scheme, as listed at <https://info.buy.nsw.gov.au/schemes/performance-and-management-services-scheme>

Enforceable Procurement Provisions (EPP Direction) means the *Procurement (Enforceable Procurement Provisions) Direction 2019* under the *Public Works and Procurement Act 1912 (NSW)*, also referred to as *PBD 2019-05*.

Performance Report means a report submitted in accordance with clause 19.

Procurement List is defined in the EPP Direction to mean "a list of suitable suppliers (including suppliers selected using a prequalification scheme) intended to be used more than once for

procurements by or for one or more government agencies, but does not include a procurement panel". In the context of the Scheme, it means the list of approved Full Prequalification suppliers insofar as the list may be used in relation to a procurement of goods and services by a covered agency where the estimated value of the procurement is or exceeds the applicable threshold set out in the EPP Direction.

Supplier / Service Provider means an organisation who has applied for, and been granted admission to, the Scheme by the Assessment Body.

Scheme means the *Prequalification Scheme: Performance and Management Services* administered by the NSW Treasury, NSW Procurement.

Specified Personnel means the key personnel of the Supplier who are required to undertake the provision of the Deliverables or part of the work constituting the Deliverables.

Treasury means the NSW Treasury, unless otherwise specified

2 Scheme Usage

2.1 The following organisations are entitled to use the Scheme:

- (a) NSW Government Agencies and state-owned corporations
- (b) Local or federal government entities; and
- (c) Not for profit organisations, as approved by Treasury in its absolute discretion.

2.2 The Procurement List is open continuously and for an indefinite period. It is updated from time to time as necessary.

3 Confidentiality

3.1 Confidential information submitted with an Application will be treated as confidential by NSW Government agencies unless otherwise required by law.

3.2 Information submitted with an Application may be subject to investigation, reference checking, searches, interview, enquiries, and confirmation and Applicants and Suppliers are deemed to have authorised any such action.

3.3 Information provided by a Supplier in a Report of Engagements may be shared between NSW Government entities.

4 Procurement Policy Framework

4.1 Suppliers must adhere to the NSW Government **Procurement Policy Framework for NSW Government Agencies** ('Procurement Policy') at all times.

4.2 Any breach of the NSW Government **Procurement Policy Framework for NSW Government Agencies** ('Procurement Policy') may result in the termination of an engagement and/or removal from the Scheme.

5 Enforceable Procurement Provisions

5.1 The EPP Direction applies to the procurement of goods and services by a covered agency where the estimated value of the procurement is or exceeds the applicable threshold set out in the EPP Direction as amended from time to time:

5.1.1 \$9,584,000 (excluding GST) for the procurement of construction services, and

5.1.2 \$680,000 (excluding GST) for the procurement of goods or any other services.

5.2 Amendments have been made to the scheme rules so that covered agencies who use the scheme are able to comply with their obligations under the EPP Direction by using an approved Full prequalified supplier for the procurement of services in cases where the estimated value of the procurement is or exceeds the specified threshold.

5.3 For covered agencies to comply with the EPP Direction, covered agencies should follow the Buyer's Guide published at <https://info.buy.nsw.gov.au/schemes/performance-and-management-services-scheme>, under the section 'How to Buy' and in the eQuote guide published in eTendering

6 Standard Commercial Frameworks

6.1 The following standard commercial frameworks apply to the Scheme:

- The mandated Standard Commercial Framework (SCF), applicable to engagement types 1 – 12 only; and
- The recommended Infrastructure Advisory Standard Commercial Framework (IA SCF), which is recommended for use by Agencies as guidance only, and applicable to engagement type 15 only.

6.2 These frameworks drive consistency in commercial outcomes, such as capped resource rates and expenses, for NSW Government Agencies.

6.3 Applicants seeking prequalification to engagement types 1 – 12 will be asked through the application process (refer to Section 5) as to their compliance with the mandated SCF (where applicable) as:

- Compliance with the SCF by Scheme suppliers enables NSW Government Agencies to procure up to \$250,000 (excl. GST) worth of services through a single sourcing approach.

6.4 Further Information on the standard commercial frameworks is available on the Performance and Management Services Scheme webpage on buy.nsw.gov.au.

7 The Procurement List

7.1 Under Part 6 of the EPP Direction, a covered agency may use a procurement list established by another government agency. The Procurement List for the Scheme is established in accordance with the criteria set out in the EPP Direction that apply to procurement lists. On that basis, a covered agency can comply with the EPP Direction by using a prequalified supplier from the Procurement List where the estimated value of the procurement is or exceeds the applicable

threshold set out in the EPP Direction. An agency using the Procurement List **must** select suppliers using the selection criteria established in clause 6.2 (j).

7.2 The publication of these rules constitutes an invitation to suppliers to make an application to be included on the Procurement List. The following information is accordingly provided:

(a) a description of the goods and services for which the Procurement List may be used

- The services for which the Procurement List may be used are those specified in the PMS Scheme – Engagement Types.

(b) the conditions for participation that suppliers must satisfy for inclusion on the Procurement List

- The conditions for participation that suppliers must satisfy for inclusion on the Procurement List are those specified in clause 13.1 of the Scheme Rules – with particular reference to Full Prequalification.

(c) the name and address of the government agency and other information necessary to contact the government agency and to obtain all relevant documents relating to the Procurement List

- For information relating to the Procurement List, contact:

NSW Treasury

Prequalification Scheme: Performance and Management Services - NSW Procurement

52 Martin Place, Sydney NSW 2000

e-mail: PMS@treasury.nsw.gov.au

(d) the methods that the government agency will use to verify that a supplier satisfies the conditions for participation

- The methods used to verify that a supplier satisfies the conditions for participation are those specified in clauses 10 - 12 of the Scheme Rules.

(e) the period that the Procurement List will operate (unless the period is indefinite) and the means for its renewal or termination

- The Procurement List is open for an indefinite period and is updated from time to time as necessary.

(f) if the period of the Procurement List is indefinite, an indication of the method by which notice will be given of the termination of use of the Procurement List.

- The Procurement List will be terminated when the Scheme is terminated at the sole discretion of Treasury. Suppliers will be given a notice of termination for the Procurement List.

(g) an indication that the Procurement List may be used for a procurement to which the EPP Direction applies

- The Procurement List may be used by a covered agency for a procurement to which the EPP Direction applies.

(h) the deadline for making an application to be included on the Procurement List, if applicable

- There is no deadline for making an application to be included on the Procurement List.

(i) a statement that only suppliers, or a limited number of suppliers, included on the Procurement List may receive invitations from a government agency to make submissions relating to procurements for which the list was established

- Only suppliers, or a limited number of suppliers (at a minimum three (3) suppliers), included on the Procurement List may receive invitations from a government agency to make submissions relating to procurements for which the list was established.

(j) if the statement referred to in paragraph (i) states that only a limited number of suppliers included on the Procurement List may receive invitations from a government agency to make submissions relating to procurements, a statement of:

(i) the justification for that limitation,

- Each PMS Engagement Type has a large number of suppliers who meet the conditions for participation and it is inefficient to invite all eligible suppliers to make a submission and;

(ii) the criteria for selecting those limited number of suppliers.

- Suppliers who have demonstrated capability to meet specific evaluation criteria that an agency will use for the procurement.
- Suppliers who have registered an interest with the agency for a particular procurement listed in the agency's Annual Procurement Plan.
- Where the above criteria do not yield a shortlist of at least three (3) suppliers, generate a random selection from all suppliers on the Procurement List.

- 8.1** The purpose of Base level prequalification is to enable access to suppliers who do not currently have the references and work experience to apply for Full Prequalification under the Performance and Management Scheme by:
- streamlining the registration process to enable the provision of low risk service engagements limited in value up to \$50,000 excl. GST (and in certain limited circumstances through flow-on engagements up to \$75,000 excl. GST)
 - enabling opportunity of access to government work and experience for Small to Medium Enterprises (SMEs).
 - encouraging agencies to provide opportunity to new Small to Medium Enterprises, with the noted restrictions, enabling supplier development.

9 Recognition of Suppliers from Other Jurisdictions

- 9.1** Suppliers already in consultancy panels, multi-use lists or any form of contract arrangements in other jurisdictions can be prequalified on the Scheme, subject to the conditions that the Supplier:
- (a) remains registered in the arrangement at the original jurisdiction.
 - (b) submits an application using the online application form.
 - (c) signs an agreement to provide services for NSW Agencies in accordance with the Scheme Rules.

10 Applications for Prequalification

- 10.1** All applications must be submitted online via the “Supplier Application Form” link on the NSW Procurement website at: <https://info.buy.nsw.gov.au/schemes/performance-and-management-services-scheme>
- 10.2** Applicants must have a current Australian Business Number (ABN) and/or an Australian Company Number (ACN) and be registered for the Goods and Services Tax (GST).
- 10.3** Applications for registration to supply through the Scheme will be determined without discrimination due to degree of foreign affiliation or ownership, location, or the origin of the services, except where the provision of services concerned would be a procurement that is specified in Schedule 2 of the EPP Direction (exempt procurements) or would be part of a procurement that is a measure or preference specified in Schedule 3 of the EPP Direction (exempt measures and preferences).
- 10.4** Applicants should only apply for engagement types that are the key services offered by their organisation and can be demonstrated as stand-alone services. Do not lodge an application for all engagement types.
- 10.5** Applicants are to provide relevant qualifications or licences etc, if applicable to the engagement types.
- 10.6** Engagement type 6c Probity Services is restricted to Full Prequalification Service Providers with Specified Personnel for Probity Services. Employment screening checks are required for all Specified Personnel using NSW Government contract C0011.
- 10.7** Suppliers approved for Engagement Type 6c Probity Services are limited to providing services in the following assurance-related engagement types:
- 1g Governance
 - 5b Accounting standards
 - 5g Forensic advisory
 - 6a Internal/external audit

- 6b Risk management
- 6c Probity services
- 7a Goods and Services Tax
- 7b Other Tax services
- 9a Procurement/Sourcing
- 9b Category Management
- 9c Procurement Accreditation
- 14a Crisis Management
- 14c Fraud and corruption investigation
- 15b Risk
- 15c Major Project Procurement/Delivery and Project Management

10.8 Only those Applications which fully satisfy all requirements set out in these Scheme Rules and the online Supplier application form will be considered by the Assessment Body.

10.9 Applicants agree that, if prequalified under the Scheme, the terms and conditions of any engagement made under the Scheme will be those of the Standard Form of Agreement – Terms and Conditions attached to these Scheme Rules applicable to the level of registration of the supplier and agree that it is not necessary to sign the Standard Form of Agreement – Terms and Conditions for each or any engagement; instead, parties will complete the Standard form of Agreement details in respect of each engagement.

10.10 The details of scope of work, fees and other requirements for the engagement will be set out within Standard Form of Agreement - agreement details between the parties. Where the parties want to sign a document, the parties may sign the Agreement details.

10.11 Applicants providing probity services acknowledge the Standard Form Agreement – Terms and Conditions attached to these Scheme Rules will contain a provision which requires full disclosure of current and recent engagements for NSW Government agencies.

11 Process for Applications

11.1 Applications include new applications, or applications by existing Scheme members for additional engagement types and/or the removal of limitations. Applications will be assessed periodically at the discretion of the Assessment Body.

11.2 Applications for registration or additional engagement types may be made at any time during the life of the Scheme.

11.3 Suppliers already approved for Full prequalification cannot apply to register for Base level pre-qualification.

11.4 The Assessment Body will assess an application and advise the applicant of the outcome. The Assessment Body may investigate an application as per Clause 3.2.

12 Application Content

12.1 All Applicants need to ensure that the “Company Profile” provides at a minimum the following information:

- Detail of all Specified Personnel, their experience and qualifications;
- A clear and concise description of the key services offered by the organisation.
- For applications for Engagement Type 6c Probity Services, the Company Profile must nominate Specified Personnel and demonstrate how each person has skills and

experience in performing all probity activities listed below from Section 3 of the Standards Australia Handbook “Assuring probity in decision-making”:

- Confidentiality
- Conflicts of interest
- Probity plans
- Review of documentation
- Working papers
- Probity reports
- Roles in briefings, evaluation committee meetings, contract negotiations, tenderer debriefings

12.2 All Applicants need to ensure that the “Organisational Experience” document provides the following information:

- At least three (3) consultancy engagements undertaken and completed in the last 3 years.
- Experience within or outside of Australia is relevant, however resources must be available for work within NSW.
- If your organisation is new and has limited organisational experience you may include details of the experience of the principal consultants within your organisation.
- The engagement details must describe the actual services provided by your organisation, if engaged as part of a larger program of works.
- Ensure you nominate the actual engagement type applicable to the services provided (this should be key services only do not list all engagement types).
- Value must only be the value of your organisations engagement. Do not provide the full value of a program of works that you have played a part in – your engagement value only is to be provided.

12.3 Referee Reports for **Full Prequalification** Applicants:

- Should detail work completed or ongoing in the last 3 years from the date of the application. Consideration may be given to work outside the 3 year period, were it is considered appropriate.
- Must clearly detail the engagement;
- Must clearly detail the actual work completed within the engagement type detail of the referee report template. Comments of “work completed” or repetition of the engagement type description/s are not acceptable.
- Must show detail for all engagement types applied for. (Recommended that applicants only apply for engagements they can support from referee reports)
- Applicants for engagement type 14 only, must provide rates in the format requested in the scheme application form, where directed. See also Clause 10 of Scheme Rules for further details on rates.

13 Rates and Charges

13.1 The range of rates provided in an Application shall remain firm for an initial 24-month period from date of approval. At that time, an application may be made by a Supplier to update the daily rates specified in an Application.

13.2 Applicants must provide daily rates GST exclusive.

13.3 Daily rates are based on a minimum of 8 working hours per day.

13.4 The rates shall include all costs of the Applicant excluding subsistence and travel costs outside the Sydney Metropolitan Area and/or from Interstate and including employee related costs, data processing, the provision of personal computers, any other tools or equipment required in the provision of Services, and travel costs within the Sydney metropolitan area (except if the Service Provider is from Interstate).

13.5 Subsistence and travel expenses outside the Sydney metropolitan area and/or where the Service Provider is from Interstate are to be charged at actual cost, or at the rates specified under the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006*, whichever

is the lesser. These expenses are to be agreed upon with the Agency prior to the engagement and supported by receipts/invoices.

- 13.6** The daily rates specified in an Application will be taken into account by the Assessment Body. Agencies may take the daily rates specified in an Application into account when selecting a Service Provider for work.
- 13.7** The fees to be charged for each individual engagement for which the Supplier is selected shall be agreed between the Supplier and the Agency. The Agency may negotiate rates with the Supplier.
- 13.8** Suppliers agree to provide quotes to Agencies for work if requested and to ensure any quote provided is GST inclusive.

14 Evaluation Criteria

- 14.1** Applications for Full Prequalification will be assessed according to the following evaluation criteria. These are the minimum criteria that suppliers must demonstrate compliance with in order to be included in a Procurement List for EPP covered procurements. The conditions for participation are limited to conditions which ensure that a supplier has the legal and financial capacity, and the commercial and technical abilities, to fulfil the requirements of the procurements covered by the Scheme.
- (a) demonstrated capability and experience in the engagement types applied for.
 - (b) demonstrated capability and experience in the following general areas:
 - (i) well-developed project leadership, planning and management skills;
 - (ii) demonstrated ability to provide high level strategic advice;
 - (iii) good understanding of contemporary approaches to public sector administration and reform.
 - (c) **For Full Prequalification ONLY:** clearly demonstrated experience, satisfactory previous performance and applicant referee reports (all reports to be for work within the last 3 years) that include referee detailed comments in relation to all the applicants applied for capabilities.
 - (d) demonstrated capability, including management, human resources and current commercial rates and prices, current insurances and other resources.
 - (e) **For Engagement Types 5 Finance, 6 Audit, Quality Assurance and Risk, and 7 Taxation:** where applicable demonstrated application of and compliance with professional standards from appropriate recognised professional bodies such as Institute of Chartered Accountants Australia (ICAA); CPA Australia (CPAA); Institute of Public Accountants (IPA)_Institute of Internal Auditors (IIA); Information Systems Audit & Control Association (ISACA), Chartered Institute of Procurement and Supply (CIPS).
 - (f) **Engagement Type 6C Probity Services** are limited to Specified Personnel subject to satisfactory employment screening checks performed by NSW Procurement using NSW Government contract C0011 Employment Checks.
 - (g) For Investigation Services **ONLY:** where applicable, applicants must hold appropriate master licenses or individual licenses for investigative activity such as Commercial Agent or Private Inquiry Agent (CAPI); license from NSW Police Force or equivalent.
 - (h) For **Engagement Type 11C Actuarial Services:** demonstrate ability to determine, assess and plan for financial impact of risks. Economic and financial evaluation of contractual relationships. Use of mathematical and statistical models for evaluating risks and forecasting. Assessing and planning for the impact and management of financial and insurance risks. Actuarial systems and processes.

14.2 Applications for Base level prequalification will be assessed according to the same criteria as Full prequalification except:

- (a) the supplier must be a small to medium enterprise (being an Australian or New Zealand firm with fewer than 200 full-time equivalent employees);
- (b) referee reports are not mandatory.

15 Notification of Outcome

15.1 Assessment outcomes will be recorded in the NSW Procurement eTenders system with applicants notified of the outcome via email as per the contact details provided by the supplier.

16 Disclaimer

16.1 Treasury and the Assessment Body reserve the discretion to:

- (a) accept an Application with or without limitations and/or conditions;
- (b) reject an Application on the basis that it does not meet Scheme requirements;
- (c) suspend a Service Provider's admission to the Scheme; and
- (d) revoke a Service Provider's admission to the Scheme.

16.2 Treasury will not be held liable for any costs or damages incurred by the Supplier in the exercise of such discretion.

17 Request for Review of the Decision

17.1 Should an Applicant believe there are substantive grounds for Treasury to reconsider their decision not to admit the Applicant to the Scheme; the Applicant may request a review of the decision via a formal email (with a valid email signature) describing the challenge to the decision, which can be sent to PMS@treasury.nsw.gov.au.

17.2 In accordance with section 176A of the Public Works and Procurement Act, a Supplier may make a written complaint to the Secretary of Treasury if it alleges the assessment of their application contravenes the EPP Direction.

18 Supplier Obligations Under the Scheme

18.1 Prequalification under the Scheme is subject to the following conditions:

- (a) For each individual engagement for which the Supplier is selected, the Supplier shall, enter into an agreement comprised of the Standard Form of Agreement – Terms and Conditions. The parties will complete the Agreement Details for each individual engagement, including fees to be charged for each individual engagement.
- (b) Applicants agree that, when registered under the Scheme, the terms and conditions of any engagement made under the Scheme will be those of the Standard Form of Agreement – terms and conditions attached to these Scheme Rules applicable to the level of registration of the supplier and agree that it is not necessary to sign the Standard Form of Agreement – terms and conditions for each or any engagement, instead parties will complete a form of Agreement Details in respect to each engagement.
- (c) The Supplier may be required to meet with Treasury at no charge on a few occasions each year, to discuss relevant matters.

- (d) The Supplier must keep their profile updated on the NSW Procurement eTenders system. Any changes must be actioned as soon as possible. Inaction by a supplier to maintain profile details may result in suspension of prequalification and applicant may be required to reapply.
- (e) The Supplier agrees not to seek any amendment to the Standard Form Agreement - terms and conditions.
- (f) The details of scope of work, fees and other requirements for the engagement will be set out in the Agreement Details between the parties.

18.2 A Supplier registered as Base level is only available to be engaged by an Agency for low risk engagements of up to a value of \$50,000 (excluding GST).

18.3 Listing on the Base level will only be for a period of up to 3 years. Base level Suppliers engagement activity will be reviewed to determine whether they should remain on Base or be required to apply for Full prequalification. Consideration will also be given as to whether the supplier should remain on the scheme.

18.4 In undertaking engagements under the Scheme for an Agency, the Supplier agrees:

- (a) To ensure the keeping of proper accounts, records (including information stored by computer or other devices) and time sheets in accordance with accounting principles generally applied in commercial practice and maintain the same for a period of seven (7) years following the end of the engagement;
- (b) To effect and maintain workers compensation and, if requested by the Agency, public liability insurances and professional indemnity insurance;
- (c) To ensure the confidentiality of documents and information provided by or on behalf of the Agency;
- (d) To ensure the return of all confidential information, documents and copies in hard and electronic format upon expiry or termination of the engagement;

18.5 If the Supplier is a small business (being an Australian or New Zealand based firm that has an annual turnover of under \$2 million in the latest financial year) it will inform the Agency of its status. Treasury Circular NSW TC11-12 (<https://www.treasury.nsw.gov.au/documents-resources/documents-library>) provides for payment within 30 days to a small business; Agencies agree to pay Service Providers within 28 days of a correct invoice being received.

18.6 Vendor Management System

18.6.1 Agencies may implement a Vendor Management System (VMS) in relation to the engagement of Consultants. It is anticipated that the VMS selected will be accessed via the internet by both Agency and the supplier. All suppliers on this Scheme agree to work with the VMS at no additional cost to the Agency. All suppliers agree to accept recipient created tax invoices (RCTI)

18.7 Managed Service Provider

18.7.1 Agencies may implement a panel of Managed Service Providers (MSP) arrangement. All suppliers agree to work with the MSP where requested by the Agency Representative at no additional cost to the Agency.

18.7.2 If the supplier is successfully engaged as a MSP by an Agency, the supplier must agree to transition any and all work engagements from that agency prior to commencing as the MSP for that Agency.

18.8 Qualification

18.8.1 Base level suppliers agree that once having achieved any full prequalification, that the Base is suspended. The suspension will be across all Base engagement types held at that time.

Where an applicant is not successful for Full Prequalification when applied, the Base level will remain in place.

19 Supplier Reporting Obligations

19.1 Suppliers must immediately update their supplier profile for any contact details, Specified Personnel, address or ABN changes via profile update on eTenders.

19.2 Suppliers must immediately inform Treasury of any significant change in their financial capacity, capability, ownership status by writing with full details to:

NSW Treasury
Prequalification Scheme: Performance and Management Services
52 Martin Place, Sydney NSW 2000

or within a formal email to be addressed to PMS@treasury.nsw.gov.au and sent with full email signature describing the changes and any associated issues.

19.3 Suppliers must ensure that all insurances required by law are maintained and that all relevant insurances as required by the buyer for any engagement offer are evidenced prior to execution of the engagement.

19.4 Selected suppliers will be required to submit a Report of Engagements to Treasury every month (for engagement types 1-12) or every quarter (for engagement type 15). Suppliers will generally be notified if they are required to submit Report of Engagements in respect of a given year by December each year. Data must be provided within the Report of Engagements template, available via the website.

- Services relating to engagement types 1-12:

<https://info.buy.nsw.gov.au/schemes/performance-and-management-services-scheme>

- Services relating to engagement type 15:

<https://info.buy.nsw.gov.au/resources/infrastructure-advisory-services>

19.5 Information contained within the Report of Engagements may be shared between NSW Government entities.

19.6 Suppliers agree to produce any additional reports or provide additional information requested by Treasury related to an engagement undertaken under the Scheme, as required.

20 Agency Obligations

- 20.1** Agencies must consider the work required to determine level of risk and to ensure a proper estimate is arrived at before any supplier is engaged.
- 20.2** Agencies should ensure due diligence in selecting from either pre-qualification that the applicant has the necessary levels of capability, resources and specialty to cover the specific engagement.
- 20.3** Agencies must consider the engagement risks and ensure insurance types and levels are determined and evidenced before any supplier is engaged.
- 20.4** In certain limited circumstances, engagements of a Supplier with Base level prequalification may exceed \$50,000 (excluding GST) because a flow-on engagement becomes necessary. The total value of the first and related flow-on engagements is not to exceed \$75,000 (excluding GST).
- 20.5** If the flow-on engagement exceeds the amount above, the Agency is obliged to approach a different Supplier for a quote for further work.

21 Agency Performance Monitoring Obligations

- 21.1** Monitoring performance and ensuring compliance with the Scheme is the responsibility of the Agency.
- 21.2** An Agency must submit a Performance Report in the form prescribed by Schedule 2 – Performance Report template to Treasury where:
- (a) the performance of, and the services provided by, the Supplier are considered by the Agency to be unsatisfactory; or
 - (b) where the total value of the relevant engagement is more than \$150,000 (excluding GST). This includes any role on engagements that as a total is more than \$150,000;
- 21.3** A Performance Report is to be submitted:
- (a) at the completion or termination of the relevant engagement;
 - (b) when a critical aspect of performance is unsatisfactory.

22 Performance Reporting Behaviour

- 22.1** Supplier performance monitoring and reporting shall be conducted in accordance with the following principles:
- (a) the mutual objective of contracting parties to achieve continuous performance improvement;
 - (b) the utilisation of performance reporting as a tool to facilitate the identification and resolution of project issues;
 - (c) open, proactive and objective performance monitoring and periodic formal reporting by the representatives of both parties to an engagement;
 - (d) performance reporting becoming the responsibility of both parties;
 - (e) performance being on the agenda at regular formal contract meetings;
 - (f) performance issues being promptly addressed by the parties concerned;
 - (g) performance issues being discussed openly with the Supplier to ensure that concerns (such as dissatisfaction with performance) do not come as a surprise when subsequently documented in the relevant Performance Report;
 - (h) objective statements or documents consistent with and supporting the performance rating should be used to provide the basis for the ratings recorded in a performance report; and
 - (i) the assessment of the performance of the Supplier should take account of individual behaviour when necessary to highlight performance problems for resolution; and

- (j) a proactive approach to initiating and encouraging communication by either party to discuss performance and performance reporting matters, including making arrangements for formal performance reporting consultation meetings.

23 Performance Reporting Process

23.1 The Agency will be responsible for the submission of Performance Reports.

23.2 When a Performance Report is prepared, the Agency shall:

- (a) provide a copy of the Performance Report to the Supplier; and
- (b) forward the original to PMS@treasury.nsw.gov.au

23.3 If the Supplier disagrees with the Performance Report, the Agency and the Supplier must attempt to resolve the disagreement in the first instance. Following an unsuccessful attempt to resolve a disagreement, the Supplier may refer the Performance Report, with written reasons for the disagreement, to the Treasury contact officer:

Prequalification Scheme: Performance and Management Services

52 Martin Place, Sydney NSW 2000

Alternatively, the Performance Report may be referred by the supplier contact person registered on the eTenders system via electronic mail to PMS@treasury.nsw.gov.au.

23.4 The Treasury contact officer will:

- (a) arrange a meeting between Supplier and the Agency to discuss and consider the Performance Report and reasons;
- (b) determine the disagreement in consultation with Treasury;
- (c) if necessary, amend the Performance Report;
- (d) notify the Supplier of its decision; and
- (e) where the Performance Report is amended, enter the amended Performance Report information into Treasury's databases.

24 Performance Management

24.1 Monitoring and ensuring compliance in respect of each engagement under the Scheme is the responsibility of the agency and agency head.

24.2 Treasury will manage the performance of Service Providers by:

- (a) applying sanctions, such as temporary suspension from the Scheme, where performance is deemed unsatisfactory;
- (b) revoking a Service Provider's admission to the Scheme, following due consideration of the circumstances, where performance is determined to be unsatisfactory; and
- (c) providing the opportunity for a Supplier to request a review of the decisions referred in Clauses 21.2.2a and 21.2.2b above.

25 Upgrading of Prequalification

- 25.1** Treasury may upgrade a Supplier's status under the Scheme to include additional engagement types where the Supplier has submitted an application for such an upgrade, including documentation and other material in support of its request.

26 Downgrading of Prequalification

- 26.1** Treasury may downgrade a Supplier's status under the Scheme if Treasury considers that a Supplier has:
- (a) not complied with the Scheme Rules; or
 - (b) demonstrated unsatisfactory tendering performance, for example, by declining tendering opportunities without providing valid reasons, accepting a tendering opportunity but not lodging a tender, lodging late tenders or lodging uncompetitive tenders; or
 - (c) experienced an adverse change in capacity; or
 - (d) experienced an adverse change in business status.
- 26.2** Before the status of a Supplier is downgraded under clause 23.1, Treasury will advise the Supplier of the matters prompting the downgrade and will give the Supplier the opportunity to provide reasons as to why the downgrade should not occur.

27 Temporary Suspension

- 27.1** Treasury may suspend a Supplier from the Scheme for up to three (3) months if Treasury considers that the Supplier has:
- (a) not complied with the Scheme Rules; or
 - (b) demonstrated unsatisfactory performance.
- 27.2** Treasury will advise the Supplier of the reasons for the suspension and of any actions by the Supplier required to lift the suspension. A Supplier that has been suspended from the Scheme must inform Treasury if and when the actions required to lift the suspension have been undertaken.
- 27.3** Treasury will regularly review the status of Suppliers who have been suspended under Clause 24. If the action taken by the Supplier is considered by Treasury to be insufficient, the suspension period may be extended and the Supplier will be notified accordingly. Treasury may revoke the suspension if it is satisfied that the Supplier has taken appropriate action to address the reasons for the suspension.

28 Removal from the Scheme

- 28.1** Treasury may revoke a Supplier's admission to the Scheme if Treasury considers that a Supplier has:
- (a) breached the Scheme Rules; or
 - (b) has appointed a receiver or administrator or becomes solvent; or
 - (c) been the subject of substantiated reports of unsatisfactory performance for other NSW Government agencies; or
 - (d) been determined by the Assessment Body as not suitable for future work;
 - (e) has frequently declined provision of service opportunities without providing valid reasons; or
 - (f) experienced an adverse change in capacity or capability; or

- (g) experienced an adverse change in business status; or
- (h) failed to promptly and adequately address the reasons for a temporary suspension from the Scheme under clause 24; or
- (i) been convicted of a breach of its obligations under work health and safety legislation or environmental protection legislation; or
- (j) otherwise failed to meet the standards required of the Scheme in terms of its project outcomes, business management systems, client satisfaction and ethical business practices.
- (k) Provided false and/or misleading information in making application to the scheme.

28.2 Before a Supplier's admission to the Scheme is revoked, Treasury will advise the Supplier of the matters prompting the proposed action and will give the Supplier the opportunity to provide reasons as to why the revocation should not occur.

29 Request for Review of Treasury Decision

29.1 Where a Supplier considers that there are substantive grounds for Treasury to reconsider its decisions under clauses 25, 26 and 27, the Supplier may request a review of the decision by writing, providing full details of the reasons for the request for review to:

Contact Officer
Prequalification Scheme: Performance and Management Services
NSW Treasury,
52 Martin Place, Sydney NSW 2000
Or via formal email to PMS@treasury.nsw.gov.au

29.2 Treasury will inform the Supplier of the outcome of the review.

30 Publicity

30.1 Suppliers must not advertise, promote or publicise in any form their admission to the Scheme without the written consent of Treasury.

31 Applicant's Acknowledgment

31.1 In applying for registration, the Applicant agrees to accept the Scheme Rules as they are varied from time to time.

32 Prequalification no Guarantee of Work

32.1 The receipt of prequalification by a Supplier does not guarantee:

- (a) Continuity of the prequalification scheme
- (b) continuity of the prequalification during the duration of the Scheme;
- (c) receipt of opportunities to tender; or
- (d) that engagements or work of any kind or quantity will be offered.

33 Work outside the Scheme

1.2 In the event that the Supplier wishes to undertake engagements under the *Prequalification Scheme – Performance and Management Services or other Prequalification Schemes*, the Supplier must apply for prequalification in accordance with the relevant scheme rules. The

Supplier acknowledges it is aware that registration on the PMS Scheme of itself does not entitle prequalification to any other Prequalification Scheme administered by Treasury.

34 Assignment or novation by NSW Treasury

- 34.1** Treasury may assign any of its rights under this Scheme, may assign or novate its rights and obligations under this scheme without consent of the Supplier to any Department, Government agency or any other body created by or under legislation of the State of New South Wales for the purpose of administering the functions or discharging the role of Treasury.

35 Assignment or novation by the Supplier

- 35.1** The supplier must not assign its rights under this Scheme or purport to novate its rights and obligations under this scheme without prior approval of Treasury.
- 35.2** Suppliers, if under contract with an agency, must inform the agency of any changes of name or ABN.

36 Review and Development of the Scheme

- 36.1** The PMS Scheme will be monitored by Treasury to assess whether the objectives and intent of the Scheme are being met. Modifications may be made at Treasury discretion during the life of the Scheme.

37 Termination

- 37.1** The Scheme may be terminated with 90 days' notice at the sole discretion of Treasury by posting a Scheme Notice of Termination on the NSW Government eTendering website at <https://tenders.nsw.gov.au>.
- 37.2** The Procurement List will be terminated when the Scheme is terminated at the sole discretion of Treasury. Listed suppliers will be given a notice of termination upon termination of the Scheme.

STANDARD FORM OF AGREEMENT - Terms and Conditions – Full Prequalification

PREQUALIFICATION SCHEME: PERFORMANCE AND MANAGEMENT SERVICES

OPERATIVE CLAUSES

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context requires:

'Agreement' refers to this document (Scheme Rules) and any annexures and schedules.

'Agreement Details' means the document setting out the details of the agreement between the parties.

'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;
- b) is designated, or marked, or stipulated as confidential;
- c) the Service Provider knows or ought to know is confidential; and includes but is in no way limited to;
 - i. the Contract Material;
 - ii. the Principal's Material;
 - iii. any material which relates to the affairs of a third party;but does not include information which:
 - a) must be disclosed to perform the Services;
 - b) is or becomes public knowledge other than by breach of this Agreement;
 - c) is in the lawful possession of the Service Provider without restriction in relation to disclosure before the date of receipt of the information from the Principal or a third party; or
 - d) is required to be disclosed pursuant to law, regulation, legal process or a regulatory authority.

'Contract Material' means the New Contract Material and the Existing Contract Material.

'Existing contract material' means

- a) any Material which exists at the date of this Agreement; and
 - b) any Service Provider's Material,
- which is incorporated with the New Contract Material.

'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.

'Fee' means the fee or fees described in the Agreement Details.

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

'GST Law' means *A New Tax System (Goods & Services Tax) Act 1999*, related legislation and any delegated legislation made pursuant to such legislation.

'Intellectual Property' means all the rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets, and all other rights of intellectual property.

'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, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing at the commencement date of this Agreement or which may come into existence on or after the commencement date.

'Personal Information' means information or an opinion (including information or an opinion forming part of a database) whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

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

'Service Provider's Material' means any methodologies, tools, models, processes, knowledge of business principles, and analytical concepts, that have been created, written or otherwise brought into existence by the Service Provider after the date of this Agreement, otherwise than in the course of performing this Agreement.

'Service Provider' includes the officers, employees, agents and subcontractors of the Service Provider.

'Service Provider's Proposal' means the document submitted by the Service Provider to the Principal for the purposes of this Agreement which applies to the services work to be completed and fees for executing the Services, a copy of which is annexed to the Agreement Details.

'Services' means the services set out in the Agreement Details and any incidental or related services requested in writing by the Principal.

'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 shall mean and include the legal personal representative, successor in title, and permitted assigns of such person or company as the circumstances may require;
- d) any organisations, associations, societies, groups or bodies shall, in the event of them ceasing to exist or being reconstituted, renamed or replaced or if the powers or functions of any of them are transferred to any other entity, body or group, refer respectively to any such entity, body or group, established or constituted in lieu thereof or succeeding to similar powers or functions;
- e) statutes, regulations, ordinances or by-laws shall be deemed for all purposes to be extended to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time; and
- f) a business day means any day which is not a Saturday, Sunday or public holiday in the State of New South Wales
- g) money currency or dollars is taken to mean Australian dollars

- 1.3** Where any covenant, condition, agreement, warranty or other provision of this Agreement expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.

2 ENGAGEMENT

- 2.1** The Principal engages the Service Provider to provide the Services in accordance with this Agreement. The Service Provider shall commence the Services on the date set out in the Agreement Details or on such date as may be agreed in writing between the parties.

3 CONFLICT OF INTEREST AND DISCLOSURE OF CURRENT ENGAGEMENTS BY NSW GOVERNMENT AGENCIES

- 3.1** The Service Provider undertakes that at the date of this Agreement, no conflict of interest exists or is likely to arise in the performance of the Services. The Service Provider must notify the Principal, in writing, immediately upon becoming aware of the existence, or possibility, of a conflict of interest.

- 3.2** On receipt of a notice under clause 3.1 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 reasonable view the conflict of interest cannot be appropriately managed, exercise its rights of termination under this Agreement.

- 3.3** The Service Provider warrants that it has given full disclosure to the Principal of all current and recent engagements with Government agencies to provide Probity Services and undertakes to inform the Principal of any new engagement with a Government agency for Probity Services during the Term of this Agreement.

4 SERVICE PROVIDER'S OBLIGATIONS

4.1 Professional Standard of Care

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 services of the nature of those set out in the Agreement Details.

4.2 Knowledge of Requirements of the Principal

The Service Provider must use all reasonable efforts to inform itself of the detailed requirements of the Principal and must regularly consult with the Principal during the performance of the Services.

4.3 Personnel

- a) 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 services of the nature of the Services.
- b) The Service Provider must use only the persons named in the Service Provider's Proposal, or alternates agreed to in writing by the Principal (which agreement may be given or withheld in the Principal's absolute discretion), to provide the Services.
- c) The Service Provider's responsibility for the performance of the Services and for the standard of performance by its personnel is not altered in any way by this clause 4.3 or by anything done in accordance with this clause 4.3

4.4 Discrepancies in Information

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. Rectification of errors or ambiguities shall be the responsibility of the person supplying the information or documents, but the Principal shall use reasonable endeavours to procure such rectification.

4.5 Program

The Service Provider must, if required by the Principal as set out in the Agreement Details:

- a) within 7 days of the date of this Agreement submit, for the approval of the Principal, a program for the performance and completion of the Services;
- 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 requested in writing by the Principal.

4.6 Reports and Deliverables

The Service Provider must provide the reports and deliverables, containing the information, in the format and on the dates as may be specified in the Agreement Details.

4.7 Change in the scope or timing of the Services

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

4.8 Principal's Materials

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

4.9 Service Provider's Relationship with the Principal

The Service Provider must liaise, co-operate and confer with the Principal or any other person nominated by 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.

4.10 Confidentiality

- a) The Service Provider:
 - i) must not disclose any Confidential Information to any person without the prior written consent of the Principal; and
 - ii) must take reasonable steps to ensure that the Confidential Information in its possession is kept confidential and protected against unauthorised use and access.
- b) The Service Provider agrees to use the Confidential Information solely for the purposes of the Services and for no other purpose.
- c) Notwithstanding clause 4.10 (a), 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 or in accordance with this Agreement.
- d) Before disclosing the 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. 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.
- e) 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.

4.11 Privacy and Disclosure of Personal Information

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

- a) 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;
- b) 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 but only to the extent authorised;
- c) 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;
- d) ensure that only authorised personnel have access to Personal Information;
- e) immediately notify the Principal if:
 - i) the individual to whom the Personal Information relates authorises the Service Provider's 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;
- f) make its officers, employees, agents and sub-contractors aware of the Service Provider's obligations under this clause including, when requested by the Principal, requiring those officers, employees, agents and sub-contractors 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;
- g) comply with such other privacy and security measures as the Principal reasonably advises the Service Provider in writing from time to time; and
- h) immediately notify the Principal upon becoming aware of any breach of clause 4.11.

4.12 Compliance with Law & Government Guidelines

The Service Provider must, to the extent the same are relevant to this Agreement and/or the performance of the Services, comply with all laws, regulation, privacy principles, Australian and/or ISO standards and

any NSW Government policies, guidelines and code of conduct communicated by the Principal to the Service Provider during the continuance of the Agreement.

4.13 Service Provider's Representative

The person named in the Agreement Details as having conduct of this engagement on behalf of the Service Provider, or such other person as nominated by the Service Provider and approved by the Principal, will be responsible to the Principal for all aspects of the Services and has the legal power to bind the Service Provider in respect of any matters arising in connection with the Services.

4.14 Advice or assistance from others, including Legal Counsel

The Service Provider may obtain advice or assistance from others, including legal counsel, in connection with the Services, but such advice and assistance will be at the Service Provider's cost unless the Service Provider has obtained the prior written consent of the Principal to obtain it.

4.15 Subcontracting and Assignment

- a) The Service Provider must not assign or subcontract any part of the Services without the prior written approval of the Principal, which approval may be given or withheld in the Principal's absolute discretion. The Principal may, in giving its approval, impose such conditions as it sees fit.
- b) An approval given by the Principal permitting the Service Provider to assign or subcontract any portion of the Services does not relieve the Service Provider from any of its obligations and liabilities pursuant to this Agreement.
- c) Prior to any sub-contractor or any employee or agent of the subcontractor commencing work in respect of the Services, the Service Provider will obtain from that person, and provide to the Principal, a written assignment from the person to the Principal of the Intellectual Property created as a result of the person performing that work.
- d) The Principal will have no contractual relationship with and undertakes no obligations to any person to whom any part of the Services are subcontracted.

4.16 Fitness for Purpose

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.

4.17 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.

4.18 Insurances

- a) The Service Provider shall, and shall ensure that any sub-contractors will, arrange and maintain with a reputable insurance company for the term of the contract:
 - i. a public liability policy of insurance to the value of at least \$10 million in respect of each claim;
 - ii. workers' compensation insurance as required by all relevant laws of Australia relating to workers' compensation; and
 - iii. if applicable, a professional indemnity insurance policy:
 - A. if the Service Provider is a member of an approved scheme under the Professional Standards Act (1994), insurance to the value of the amount prescribed under that scheme; or
 - B. if the Service Provider is not a member of an approved scheme under the Professional Standards Act, insurance to the value of at least \$10 million in respect of each claim.
- b) Professional indemnity insurance may be required in some circumstances. Engaging agencies will establish the risk standing for a particular engagement and specify the professional indemnity insurance requirements accordingly.
- c) Where the Principal considers that additional insurance may be necessary to cover liabilities that may arise during the performance of Services, the Principal and the Service Provider shall consult about these matters, including, in particular, about the level of cover required.
- d) The Service Provider shall, on request from time to time by the Principal, produce to the Principal, satisfactory evidence of insurance.
- e) The insurances referred to in this clause shall be effective from the start date of this Agreement and shall be maintained for the period of the Agreement provided however, where applicable, professional indemnity insurance shall, unless the Principal otherwise agrees in writing, be continued to be maintained for a period of one year following the expiration or earlier termination of this Agreement.

4.19 Records

a) Keeping of Records

The Service Provider must, during the period of this Agreement, keep proper accounts, records (including information stored by computer and other devices) and time sheets in accordance with accounting

principles generally applied in commercial practice in respect of its time charge billing, its reimbursable expenditure and fees and reimbursements payable to others properly engaged pursuant to this Agreement and maintain the same for a period of 7 years.

b) Access

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 to payment to be substantiated and verified by the Principal.

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 Representative

The person named in the Agreement Details as Principal's Representative, or any alternate person the Principal nominates in writing, will act as the Principal's Representative and will have authority to act on behalf of the Principal for all purposes in connection with this Agreement.

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 specified in the Agreement Details.
- 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 action 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 a payment within 28 days following the rendering of a tax invoice by the Service Provider, but if the Principal has, within a reasonable period of time after receiving a tax invoice, requested access to information under clause 4.19 (b), 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 Principal will not be obliged to make any payment to the Service Provider under this Agreement until the Service Provider has submitted proof of insurance in accordance with clause 4.18.

6 CLAIMS FOR PAYMENT

- 6.1** The Service Provider may render to the Principal a tax invoice during each month of the term of this Agreement. Any payment claim will be for the Services performed (and for approved reimbursable expenses, if any, incurred) during the previous month.

7 GOODS AND SERVICES TAX

- 7.1** To the extent that a party to this Agreement (“GST Supplier”) 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:

- a) the GST Supplier may add to the price of the Supply an amount equal to the GST payable on the Supply (“GST Amount”); and
- b) the other party will pay the GST Supplier the price for the Supply in accordance with this Agreement plus the GST Amount.

- 7.2** If, for any reason, the GST Supplier's GST liability in respect of a particular Supply is different from the amount of GST paid by the other party:

- a) the GST Supplier must immediately repay to the other party the amount of any excess paid by the other party above the GST Supplier's GST liability; or
- b) the other party must pay the deficiency in the amount previously paid by the other party to the GST Supplier for that Supply, as appropriate.

- 7.3** 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.

- 7.4** 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).

8 VARIATIONS

8.1 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.

8.2 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 effects of the proposed variation. A written estimate so requested must be provided by the Service Provider within a reasonable time nominated by the Principal.
- b) If a variation is instructed and no request has been made by the Principal under clause 8.2(a), the Service Provider must, as soon as practicable after the variation is instructed, provide the Principal with a written estimate of the time and cost effects of the variation.

9 INTELLECTUAL PROPERTY

9.1 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) shall, on creation, vest or otherwise be assigned or transferred to the Principal, without the need for further assurance.

9.2 Existing Contract Material

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 nonexclusive, 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.

9.3 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.

9.4 Moral Rights

The Service Provider must hold, or obtain, consents from all authors of Contract Material to 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.

9.5 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 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.

10 INDEMNITY

10.1 The Service Provider agrees to indemnify and keep indemnified the Principal and its officers, employees and agents ("those indemnified") against any liability or loss (including reasonable legal costs and expenses), incurred or suffered by any of those indemnified where such liability or loss is incurred by reason of or in connection with:

- a) any infringement or alleged infringement of any Intellectual Property rights (including Moral Rights) arising out of the supply or use of the Services or any Contract Material provided under this Agreement; and/or
- b) any unlawful, wrongful, willful or negligent act or omission of the Service Provider or its personnel in connection with this Agreement.

10.2 The Service Provider's liability to indemnify those indemnified under this Agreement shall be reduced proportionally to the extent that any unlawful, wrongful, willful or negligent act or omission of those indemnified caused or contributed to the liability or loss.

10.3 The indemnity contained in this clause 10 is a continuing obligation of the Service Provider separate and independent of any other responsibility of the Service Provider and will continue beyond the period of this Agreement.

10.4 The Principal may, in its absolute discretion, agree to cap the Service Provider's liability under clause 10 of this Agreement to a monetary amount. Any cap on liability must be specified in the Agreement Details.

11 TERMINATION

11.1 Completion of the Services

This Agreement will terminate on the Completion date in Item 3 of the Standard Form of Agreement, when the services are fully performed or in accordance with any agreed variation of service times. In addition, the parties agree it is open to the Principal to give 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.

11.2 Termination by the Principal for insolvency or default by the Service Provider

- a) If the Service Provider:

- i) 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;
 - ii) fails to carry out the Services with due diligence and competence;
 - iii) without reasonable cause suspends the carrying out of the Services;
 - iv) commits a substantial breach of this Agreement; or
 - v) in the opinion of the Principal has a conflict of interest in performing the Services; then
- b) the Principal may, without prejudice to its right to terminate this Agreement under clause 11.1:
- i) in the case of the circumstance specified in clause 11.2 (a) (i), forthwith terminate this Agreement by notice to the Service Provider; or
 - ii) in the case of any other circumstance specified in clause 11.2(a) give notice to the Service Provider specifying the circumstance and requiring the Service Provider to remedy it; and
 - iii) if the Service Provider fails to remedy the circumstance within a period specified by the Principal under clause 11.2 (b) (ii), terminate this Agreement by a further notice to the Service Provider.

11.3 Termination by the Service Provider

- a) If the Principal:
 - i) fails to pay the Service Provider in accordance with this Agreement; or
 - ii) 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.

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

11.4 Effect of Termination

Termination of this Agreement by either party is without prejudice to any accrued rights or remedies of either party. The Principal may following termination enter into a contract with any person to complete provision of the Services.

11.5 Adjustment of the Fee on Termination

Upon termination of this Agreement, the Principal will pay the Service Provider for the Services performed by the Service Provider up to the date of termination but in the case of termination under clause 11.2, such payment shall take into account any adjustments and deductions for 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. 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.

11.6 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 pursuant to clause 11.1, and the Service Provider agrees to perform the work, then notwithstanding such termination, all such work or services shall be deemed to be part of the Services and subject to the terms of this Agreement.

12 CONSEQUENCES OF TERMINATION

12.1 Without limiting the Principal's rights in relation to this Agreement, if the Principal pre-paid any amounts to the Service Provider for Services to be performed which at the date of termination have not been performed and this Agreement is terminated for any reason:

- a) the Service Provider must refund to the Principal such prepaid amounts, within seven (7) days of termination of this Agreement; and
- b) the Principal may recover in an appropriate court the balance of any prepaid amount not refunded as a debt due and payable by the Service Provider to the Principal.

12.2 The Service Provider must, except to the extent approved by the Principal in writing, deliver to the Principal, within 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 (a) and (b) above.

12.3 The provision dealing with the return of Materials upon termination or expiry of this Agreement does not prevent the Service Provider from keeping a bona fide copy of the Contract Material for its records, subject to the confidentiality and privacy requirements contained in this Agreement.

12.4 The Service Provider must for a minimum period of seven (7) years following the expiration or termination of this Agreement, keep the operational records and project data relating to the provision of the Services securely and in a form and manner as to facilitate access and inspection under this Agreement.

12.5 Clauses in this Agreement dealing with access to records, licences and consents, confidentiality, intellectual property, insurance, consequences of termination, dispute resolution, and any other provision of this

Agreement which by its nature should survive termination shall survive termination, expiry or repudiation of this Agreement.

13 DISPUTE RESOLUTION

13.1 For any dispute arising under this Agreement:

- a) both parties will try in good faith to settle the dispute by negotiation;
- b) if unresolved, the party claiming that there is a dispute will give the other party a notice setting out the details of the dispute;
- c) within five (5) consecutive Business Days, each party may (if applicable) nominate a senior representative not having prior direct involvement in the dispute. The senior representatives will try in good faith to settle the dispute by negotiation.
- d) failing settlement within a further 10 Business Days;
 - i) where the Service Provider is a small business (being an Australian or New Zealand-based firm that has an annual turnover of under \$2 million in the latest financial year) the parties will be required to commence alternative dispute resolution through the office of the NSW Small Business Commissioner. The dispute should not be subject to proceedings before a court until the Small Business Commissioner has certified in writing that the parties' participation in the dispute resolution process has not resolved the dispute. The Commissioner's certificate will be structured to inform the Court whether the parties participated in the dispute process, if a party did not participate or if the matter was only partly resolved through the process;
 - ii) where the Service Provider is not a small business, and failing settlement within a further 10 Business Days, the parties agree to appoint a mediator from the Australian Commercial Disputes Centre (ACDC) to conduct a mediation to resolve the dispute. The parties agree that the dispute will not be subject to proceedings before a court until the mediator appointed by the parties has certified in writing that the parties' participation in the dispute resolution process has not resolved the dispute. The mediator's certificate will be structured to inform the Court whether the parties participated in the dispute process, if a party did not participate or if the matter was only partly resolved through the process

13.2 The parties will each bear their own costs for dispute resolution. Despite the existence of a dispute, the Service Provider will (unless requested in writing by the Client not to do so) continue performance under the Agreement.

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

14 NOTICES

14.1 Any notice given under this Agreement:

- i) must be in writing addressed to the intended recipient at the address shown for the parties in the Agreement Details or the address last notified by the intended recipient to the sender;
- ii) must be signed by an authorised officer of the sender;
- iii) will be taken to have been delivered:
 - A. in the case of delivery in person - when delivered to the recipient's address for service and a signature received as evidence of delivery;
 - B. in the case of delivery by post - within three business days of posting;
 - C. 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
 - D. in the case of delivery by email, on receipt of confirmation by the sender that the recipient has received the email.

14.2 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.

15 **CONTRA PROFERENTEM**

15.1 In the interpretation of this Agreement, no rules of construction shall apply to the disadvantage of one party on the basis that that party put forward the Agreement or any part of it.

16 **JURISDICTION**

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

Standard Form of Agreement – Terms and Conditions – Base Prequalification

This Agreement sets out the terms and conditions which the Service Provider will provide the Services set out in the Agreement Details to the Client named in the Agreement Details.

1. Duration of Agreement

- 1.1 This Agreement commences when the Service Provider is expressly appointed and continues until expiry or termination.

2. Conflict of Interest

- 2.1 The Service Provider warrants that no conflict of interest exists or is likely to arise in the performance of the Services. The Service Provider agrees to notify the Client immediately upon becoming aware of the existence, or possibility, of a conflict of interest, whereby the Client may then either approve the continuation of the Services, subject to conditions to manage the conflict; or, exercise its rights of termination where, in its discretion, it is of the view the conflict cannot be resolved.

3. Scope of Work and Service Provider's Responsibilities

- 3.1 The Service Provider will provide the Services to the Client under this Agreement 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 services of the nature of the Services.
- 3.2 The Service Provider must, in performing the Services, comply with all relevant laws, regulations, privacy principles, codes of practice, Australian and/or ISO standards and any NSW Government policies, guidelines and codes of conduct.

4. Client's Responsibilities

- 4.1 To be able to perform the Services, the Service Provider needs the Client's co-operation. The Service Provider will rely on the Client to give the Service Provider all information and instructions needed by the Service Provider:
- (a) to perform the Services as soon as reasonably practicable; and
 - (b) ensure the accuracy of all information given to the Service Provider and needed by the Service Provider to perform the Services.

5. Terms of Payment

- 5.1 The Client must pay the Service Provider the amount set out in the Base Agreement Details within 28 days after receiving a correctly rendered invoice from the Service Provider.
- 5.2 Payment of any part of the amount due to be paid to the Service Provider as set out in the Pricing and Payment Schedule of the Base Agreement Details does not constitute an acceptance by the Client of the Services and does not amount to a waiver of any right or action which the Client may have at any time against the Service Provider.
- 5.3 If the Service Provider has obtained the Client's prior written approval to incur or pay any costs, expenses, fees or charges, the Client will reimburse the Service Provider for those costs, expenses, fees or charges on presentation of invoices/receipts at actual cost.

6. Changes to Services

- 6.1 The Client may, by written notice, on the recommendation of the Service Provider or otherwise, request a change to the Services.
- 6.2 If the change to the Services requires the Service Provider to provide additional services:
- (a) the Service Provider may agree in writing to perform the additional services; and
 - (b) the fee for the additional services is as agreed in writing by the Service Provider and the Client.
- 6.3 Before instructing a change to the Services, the Client may request the Service Provider to provide a written estimate, within a reasonable time nominated by the Client, of the time and cost impact of the proposed variation.
- 6.4 If the change to the Services involves a reduction in the Services:
- (a) the Service Provider must take all reasonable steps to minimise its loss resulting from the reduction in the Services requested by the Client; and
 - (b) subject to clause 5.3, the Client is liable for all reasonable costs actually incurred by the Service Provider as a consequence of the reduction in Services and the Client will reimburse such costs on presentation of invoices/receipts within 30 days after receiving the invoices/receipts from the Service Provider.

7. GST

- 7.1 Words or expressions used in this clause that are defined in A New Tax System (Goods and Services Tax) Act 1999 (Cwlth) or if not so defined, then that are defined in the Trade Practices Act 1974 (Cwlth), have the same meaning in this clause.
- 7.2 The Service Provider must give the Client a tax invoice for a supply that complies with all laws and rulings or determinations made by the Australian Taxation Office.

8. Termination

- 8.1 Unless otherwise then as stated at clause 8.3 or 8.4, this Agreement will terminate upon the Completion Date as noted in the Base Agreement Details or upon the Client giving 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.
- 8.2 Either party may terminate this Agreement by giving the other party twenty-one (21) days written notice.
- 8.3 A party may terminate this Agreement by written notice with immediate effect if the other party breaches a term of this Agreement and fails to remedy the breach within:
- (a) 21 days after receiving written notice to remedy the breach;
 - (b) the other party cannot pay its debts as they become due or stops carrying on business; or
 - (c) a step is taken to appoint a receiver, receiver and manager, official manager, trustee in bankruptcy, provisional liquidator, liquidator, administrator, or other like person for the whole or part of the Service Provider's assets, operations or business.
- 8.4 The Client may specifically terminate this Agreement by written notice (unless remedied within 21 days after written notice has been received by the Service Provider) if the Service Provider:
- (a) fails to carry out the Services with due diligence and competence;
 - (b) without reasonable cause suspends the carrying out of the Services;
 - (c) in the opinion of the Client has a conflict of interest in performing the Services.

- 8.5 If the Client gives notice under clause 8.2, the Client must pay the Service Provider for all Services provided by Service Provider up to the date of termination.
- 8.6 Clauses in this Agreement dealing with licences and consents, confidentiality, intellectual property, insurance, consequences of termination, and any other provision of this Agreement shall survive termination, expiry or repudiation of this Agreement.

9. Intellectual Property Rights

- 9.1 Subject to clause 9.2, all proprietary rights in any documents, data, computer programs, reports or other material prepared by the Service Provider that form part of the Services and were prepared specifically and solely for the Client (“the New Contract Material”) vest in the Client.
- 9.2 Any pre-existing intellectual property rights (including copyright and know-how) in documents, data, computer programs, reports or other material prepared by the Service Provider that form part of the Services (the Existing Contract Material”) remain the property of the Service Provider.
- 9.3 While this Agreement does not affect the Intellectual Property rights set out in clause 9.2, the Service Provider hereby grants, and will ensure that relevant third parties grant to the Client and the Crown in the right of New South Wales, 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 Existing Contract Material and any developments of that material.
- 9.4 Regarding moral rights, the Service Provider must hold, or obtain, consents from all authors of the Existing and New Contract Material to its use and adaption by the Service Provider or the Client, without restriction and without any requirement to attribute the Existing or New Contract Material to its authors.
- 9.5 The Service Provider must ensure that the New Contract Material is used, copied, supplied or reproduced only for the purposes of this Agreement unless it has obtained the prior written approval of the Client to do otherwise. Any such approval may be given on any terms or conditions the Clients considers appropriate.

10. Liability, Indemnity and Claims

- 10.1 The Service Provider acknowledges and agrees that the Client 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 suitable in all respects for the purposes required by this Agreement and the Services are provided by persons who are appropriately qualified, competent and experienced in the provision of the type of services that the Client has engaged the Service Provider to provide.
- 10.2 Subject to sub clause 10.3, if the Service Provider causes any loss or damage to the Client, its officers, employees or agents, the Service Provider is only liable to the extent that its conduct causes or contributes to the loss or damage. If the Client causes or contributes to the loss or damage, the Service Provider’s liability will be reduced to the extent (which may be nil) to which the Client caused or contributed to it.
- 10.3 Notwithstanding anything to the contrary in this Agreement the Service Provider, its employees, officers or agents will only be liable as the law may require and then only up to the amount set out in the Base – Agreement Details.
- 10.4 The Services are performed solely for the benefit of the Client and the Crown in the right of New South Wales and are not intended to be relied on by a third party.

11. Law

11.1 This Agreement shall be subject to and interpreted in accordance with the laws of New South Wales.

12. Disclosure

12.1 Any confidential information disclosed by the Client to the Service Provider must not be used or disclosed by the Service Provider without the Client's consent, unless the use or disclosure is reasonably required:

- (a) for performing the Services; or
- (b) to meet a legal obligation to disclose the confidential information.

12.2 This obligation will continue for so long as the information provided by the Client to the Service Provider remains confidential.

13. Insurance

13.1 The Service Provider shall, and shall ensure that any sub-contractors will, arrange and maintain with a reputable insurance company for the term of this Agreement:

- (a) public liability insurance in the amount of \$5 million in respect of each claim for the period of the Agreement and workers compensation insurance as required by all relevant laws of Australia relating to workers compensation; and
- (b) a professional indemnity insurance policy if specified by the Client. With respect to the value of the professional indemnity insurance policy:
 - (i) if the Service Provider is a member of an approved scheme under the Professional Standards Act 1994 (NSW), insurance to the value of the amount prescribed under that scheme; or
 - (ii) if the Service Provider is not a member of an approved scheme under the Professional Standards Act 1994 (NSW), insurance to the value specified in the Base Agreement Details will apply.
 - (iii) No engagement under Base will require professional indemnity insurance in excess of \$10 million in respect of each claim.
 - (iv) Where a value is not specified by the Client, the professional indemnity insurance will be \$2 million in respect of each claim.

13.2 The Client may request additional insurance if the nature of the Services requires it and will inform the Service Provider prior to engagement.

13.3 The Service Provider shall, on request from time to time by the Client, produce to the Client satisfactory evidence of insurance.

13.4 The insurances referred to in this clause shall be effective from the start date of this Agreement and shall be maintained for the period of this Agreement however, professional indemnity insurance shall, unless the Client otherwise agrees in writing, be continued to be maintained for a period of one (1) year following the expiry or earlier termination of this Agreement.

14. Subcontracting and Assignment

14.1 The Service Provider must not assign or subcontract any part of this Agreement without the prior written consent of the Client, which consent may be given or withheld in the Client's absolute discretion. The Client may, in giving its consent, impose such conditions as it sees fit.

15. Dispute Resolution

- 15.1 For any dispute arising under this Agreement:
- (a) both parties will try in good faith to settle the dispute by negotiation;
 - (b) if unresolved, the party claiming that there is a dispute will give the other party a notice setting out the details of the dispute;
 - (c) within five (5) consecutive Business Days, each party may (if applicable) nominate a senior representative not having prior direct involvement in the dispute;
 - (d) the senior representatives will try in good faith to settle the dispute by negotiation; and
 - (e) failing settlement within a further 10 Business Days, where the Service Provider is a small business (being an Australian or New Zealand-based firm that has an annual turnover of under \$2 million in the latest financial year) the parties will be required to commence alternative dispute resolution through the office of the NSW Small Business Commissioner. The dispute should not be subject to proceedings before a court until the Small Business Commissioner has certified in writing that the parties' participation in the dispute resolution process has not resolved the dispute. The Commissioner's certificate will be structured to inform the Court whether the parties participated in the dispute process, if a party did not participate or if the matter was only partly resolved through the process;
 - (f) where the Service Provider is not a small business, and failing settlement within a further 10 Business Days, the parties agree to appoint a mediator from the Australian Commercial Disputes Centre (ACDC) to conduct a mediation to resolve the dispute. The parties agree that the dispute will not be subject to proceedings before a court until the mediator appointed by the parties has certified in writing that the parties' participation in the dispute resolution process has not resolved the dispute. The mediator's certificate will be structured to inform the Court whether the parties participated in the dispute process, if a party did not participate or if the matter was only partly resolved through the process
- 15.2 The parties will each bear their own costs for dispute resolution. Despite the existence of a dispute, the Service Provider will (unless requested in writing by the Client not to do so) continue performance under the Agreement.
- 15.3 The procedure for dispute resolution does not apply to action relating to termination or to legal proceedings for urgent interlocutory relief.

16. Notices

- 16.1 Any notice given under this Agreement:
- (a) must be in writing addressed to the intended recipient at the address shown for the parties in the Base Agreement Details or the address last notified by the intended recipient to the Sender; and
 - (b) must be signed by the authorised officer. Any change to the authorised officer must be notified to the other party in writing.
- 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 4:00 pm (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. General

- 17.1 In this Agreement, the singular includes the plural and vice versa.
- 17.2 This Agreement:

- (a) can be amended or varied only by written agreement of the parties; and
- (b) represents the sole agreement between the parties about the Services and replaces all previous agreements.

17.3 If the parties communicate via email, the following subclauses apply:

- (a) a message is read when opened by the recipient; and
- (b) an offer in a message from the sender is accepted by the recipient only if the message accepting the offer is read by the sender.

Agreement Details - Full Prequalification

Prequalification Scheme: Performance and Management Services.

GUIDE NOTE:

Where the service provider is a company, the full legal entity name of the company should be used.

Where the service provider is an unincorporated partnership, the partnership name can be used. The Rules of Court in each Australian jurisdiction now state that a partnership can be sued in the firm's name.

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]"

Where the service provider is a 'consortium' of legal entities, the names of each separate legal entity should be used. Parties to the engagement may sign the Agreement Details at the base of this document.

Principal	<i>{insert department /agency/business enterprise (if business enterprise is not a legal entity)} 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 []</i>	
Service Provider	<i>insert name of Service Provider [of [insert address] ABN []</i>	
Service Provider's Proposal	Attached: <i>Yes / No</i> Dated:	
Item 1:	Services (clause 1.1)	
Item 2:	Fees (clause 5.3)	
Item 3:	Commencement Date: (clause 2)	
	Completion Date: (clause 11)	
Item 4:	Program (clause 4.5(a)) Program for performance and completion of the Services is <i>[required] / [not required]</i> .	
Item 5:	Reports & Deliverables (clause 4.6)	
Item 6:	Service Provider's Representative (clause 4.13)	
Item 7:	Principal's Representative (clause 5.2)	

Item 8:	Notices (clause 14)	
	Principal's Name:	
	Address:	
	Facsimile No:	
	Email:	
	Attention:	
	Service Provider's Name:	
	Address:	
	Facsimile No:	
	Email:	
	Attention:	
Item 9	Insurance Conditions identified by the Principal (clause 4.18)	
	Indemnity Conditions identified by the Principal (clause 10)	
	Cap on liability:	

Agreement Details – Full Prequalification - Acceptance:

Organisation Name (Principal):		
Contact Name:		Date:
Phone:		Signature:
Email:		
Organisation Name (Service Provider):		
Contact Name:		Date:
Phone:		Signature:
Email:		

SERVICE PROVIDER'S PROPOSAL

DATED: _____

Attach a copy of the Supplier's Proposal as Annexure "A"

Agreement Details - Base Prequalification
Prequalification Scheme: Performance and Management Services.

Client Agency and authorised officer:		Date:	
Engagement Title:			
Engagement Period:	Commencement Date:		
	Completion Date:		
Service Provider and authorised officer:	<i>Name, address and ABN</i>		
Services:			
Training:			
Assumptions and Constraints:			
Team Responsibilities:			
Pricing and Payment Schedule:	The Rates are as follows:		
		Personnel	Rate (Including GST)
Total fee for conducting this engagement will be:	\$ <i>(insert)</i> (Incl. GST).		
Milestones / Outcomes			

Service Provider acknowledgement	Services are provided in accordance with the Standard Form of Agreement – Terms and Conditions - Base Prequalification	
Indemnity cap value, Clause 10.3	<input type="checkbox"/> Uncapped OR <input type="checkbox"/> Specified Value \$ [Default is uncapped]	
Professional Indemnity Insurance	<input type="checkbox"/> The Service Provider is required to maintain professional indemnity insurance with a minimum value of \$ per claim <i>[Specified amount not to exceed \$10 million under Base].</i> Guide note: if no value is specified, the Service Provider must effect professional indemnity insurance in the amount of \$2 million per claim. OR <input type="checkbox"/> Not Required	
Agreement Details - Base Prequalification - Acceptance		
Organisation Name (Principal):		
Contact Name:		Date:
Phone:		Signature:
Email:		
Organisation Name (Service Provider):		
Contact Name:		Date:
Phone:		Signature:
Email:		

SCHEDULE 1 - Application Form

All applications must be submitted online via the “Supplier Application Form” link on the NSW Procurement website at:

<https://info.buy.nsw.gov.au/schemes/performance-and-management-services-scheme>

A summary of the Application Form can be viewed via the above link and applications can be submitted by clicking “Start Application”.

Applications submitted by email will not be accepted.

Enquiries should be directed to PMS@treasury.nsw.gov.au

SCHEDULE 2 - Performance Report Template

Prequalified Supplier Performance Report

PREQUALIFICATION SCHEME: PERFORMANCE AND MANAGEMENT SERVICES

Under the Scheme Rules, all engaging agencies are required to submit a Supplier Performance Report for each engagement where the consultancy services fall into the following types:

- total value of the relevant engagement is more than \$150,000 (excluding GST); or
- the performance of, and the services provided by, the Supplier are considered by the agency to be unsatisfactory.

The reports are due at the completion date of the engagement or whenever a critical aspect of performance is unsatisfactory. For further guidance on the requirement, agencies can refer to the Guidelines for Agencies.

PROJECT DETAILS

Supplier's Organisation Name:			
Supplier's Contact Person:		Phone:	
RFT No.:			
Engagement / Project No.:			
Engagement / Project Name:			
Engagement Description:			
Date Engagement Commenced:			
Date Engagement Completed:			
Total Fee for this engagement (excluding GST):	\$		

ASSESSMENT

As the client who paid for this service, how well did the SUPPLIER meet your expectations?	N/A	Unsatisfactory	Marginal	Acceptable	Good	Superior
1. Time Management e.g. meeting milestones, resourcing, planning, reporting						
2. Management & suitability of personnel e.g. skills, experience, sufficient number, appropriate seniority used						
3. Standard of Service e.g. meeting brief, budget, value for money, no rework, supervision, no over servicing or under servicing						
4. Quality Outcomes e.g. accuracy, usability and effectiveness of results						
5. Cost actual cost did not exceed cost estimate without prior agreement						
6. Communications appropriate level of reporting						
7. Information Technology IT used where appropriate to increase efficiency and reduce costs						
8. Cooperative Relationships e.g. Cooperative approach, commitment, resolving issues						
9. Recommendation for Future Work Would you recommend the Service Provider for similar type of work?		Yes ▶		No ▶		

Additional Comments on the Supplier's performance

< comments may be extended on next page >

2.4: SIGNATURE (by Referee) e.g. General Manager, Director, Senior Project Manager

***Please Note:** Referee Reports must be signed and dated or will not be considered.

Name:		Signature:	
Title:			
Date:			
Tel No:		Mobile No:	
E-mail:			

Delivery Instructions: The Applicant Referee Report is to be forwarded by the Referee to the Applicant. The Applicant is to include all Applicant Referee Reports in their application to form a single and complete submission.

Schedule 3 - Referee Report Template

Referee Report - Performance and Management Services Scheme.

Referee reports are used to assess whether the Applicant has demonstrated experience in the Engagement Types they have applied for within their application to join the Scheme.

Section 1: To be completed by the Applicant.

1.0 – Complete the following “Applied for Engagement Types Table”.

“Applied for Engagement Types” are the Engagement Types that the applicant has applied for during the application process to join the Scheme and that are relevant to the referee.

Descriptions of Engagement Types are available on the buy.nsw website, [please click here](#).

Applied for Engagement Types Table.

ID: (e.g. 1a)	Engagement Type Title: (e.g. Strategy Development and Planning)
	Add further rows as required

Section 2: To be completed by the Referee (2.0 to 2.4).

*** Please Note:**

- Referee Reports must be signed and dated or will not be considered.
- Engagements should have been completed in the last three years, ongoing engagements will be considered on a case by case basis.
- The Referee Report comments should relate to the engagement types that the applicant has applied for and that are specified within the Applied for Engagement Types Table above.
- The Referee Report can relate to the Referee’s experience with the Applicant or with its principal consultants and may include more than one engagement. Where the Applicant was employed as a public servant in the last 24 months, relevant work-related Referees can be provided to satisfy this requirement.
- The NSW Treasury may contact the Referee to verify or clarify aspects of this Report.

2.0: REFEREE DETAILS: Please type in the following:

Referee’s Organisation Name:	
Address:	
ABN:	

2.1: ENGAGEMENT DETAILS

*** Please Note:** The Applicant is the Supplier which undertook the engagement.

Applicant’s Organisation Name:	
Engagement / Project Name:	
Engagement Description:	<i>(Briefly outline the nature of the engagement and the applicant’s role)</i>
Date Engagement Commenced:	
Date Engagement Completed:	
Total Fee for this engagement (excluding GST):	\$

2.2: REFEREE COMMENTS

Referee comments are necessary to determine whether the applicant has demonstrated experience in the Engagement Type they have applied for. Applicants specify the type they have applied for within the **Applied for Engagement Types Table on page 1**. (Descriptions of Engagement Types are available via the link on page 1).

Applicant's Applied for Engagement Type ID: (e.g. 1a)	Referee Comments: Please comment on the Applicant's role in relation to the engagement types the Applicant has applied for. <i>(comments may be extended as required. Details needs to cover the role and responsibilities of the applicant within the engagement as specified in 2.1 in line to the applied engagement type/s).</i>
	Add further rows as required

2.3: GENERAL CRITERIA

* **Please Note:** General Criteria 1-8 are for the performance of the role in relation to the engagement noted in section 2.1.

As the Referee who paid for this service, how well did the Applicant meet your expectations?	N/A	Unsatisfactory	Marginal	Acceptable	Good	Superior
Time Management: 1. e.g. meeting milestones, resourcing, planning, reporting						
Management & suitability of personnel: 2. e.g. skills, experience, sufficient number, appropriate seniority used						
Standard of Service: 3. e.g. meeting brief, budget, value for money, no rework, supervision, no over or under servicing						
Quality Outcomes: 4. e.g. accuracy, usability and effectiveness of results						
Cost: 5. Actual cost did not exceed cost estimate without prior agreement						
Communications: 6. Clear communication/appropriate level of reporting						
Information Technology: IT used where appropriate to increase efficiency and reduce costs						
Cooperative Relationships: 8. e.g. cooperative approach, commitment, resolving issues						

2.4: SIGNATURE (by Referee) e.g. General Manager, Director, Senior Project Manager

***Please Note:** Referee Reports must be signed and dated or will not be considered.

Name:		Signature:	
Title:		Date:	
Email			
Tel No:		Mobile No:	

Delivery Instructions: The Applicant Referee Report is to be forwarded by the Referee to the Applicant. The Applicant is to include all Applicant Referee Reports in their application to form a single and complete submission.