



**New South Wales Government**

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**Department of Premier and Cabinet  
Department of Services, Technology & Administration**

**Prequalification Scheme:**

**Performance and Management Services**

**Scheme Conditions**

**NOVEMBER, 2009**

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## SCHEDULE OF DOCUMENT AMENDMENTS

<b>Revision Number</b>	<b>1.1.1.1.1 Date</b>	<b>Update Description</b>
0.	September 2008	Document Original - first publication
1.	August 2009	New work categories
2.	November 2009	Departmental name change

## 2 DEFINITIONS

**Agency** includes NSW Government departments, statutory authorities, statutory corporations and government business enterprises.

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

**Application** means a written application for admission to the Scheme in the form prescribed in Schedule 1.

**Assessment Committee** means a minimum of three (3) senior officers of the Departments nominated by their Agency Chief Executives to determine the eligibility of Service Providers to be admitted to the Scheme.

**Departments** mean the NSW Department of Premier and Cabinet and the NSW Department of Services, Technology & Administration, unless otherwise specified.

**Performance Report** means a report submitted in accordance with clause 13 in the form prescribed by Schedule 3.

**Service Provider** means a person who has applied for, and been granted admission to, the Scheme by the Departments.

**Scheme** means the *Prequalification Scheme: Performance and Management Services* administered by the Assessment Committee.

## 3 CONFIDENTIALITY

- 3.1 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 Services Providers are deemed to have authorised any such action.

## 4 CODE OF PRACTICE FOR PROCUREMENT

- 4.1 Service Providers must adhere to the NSW Government *Code of Practice for Procurement* at all times.
- 4.2 Any breach of the NSW Government *Code of Practice for Procurement* may result in the termination of an engagement and/or removal from the Scheme.

## 5 APPLICATIONS FOR PREQUALIFICATION

- 5.1 Applications must be complete and in the form prescribed in Schedule 1.
- 5.2 Applications must be delivered in accordance with the delivery instructions set out in the form prescribed in Schedule 1.
- 5.3 Only those Applications which fully satisfy all requirements set out in these Scheme Conditions and the form prescribed in Schedule 1 will be considered by the Assessment Committee.

## **6 HOURLY RATES**

- 6.1 The range of hourly rates specified in an Application shall remain firm for an initial 24 month period. At that time, an application may be made by a Service Provider to the Departments to change the hourly rates specified in an Application.
- 6.2 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).
- 6.3 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.
- 6.4 The hourly rates specified in an Application will be taken into account by the Assessment Committee in accordance with clause 7.1(c). Agencies may take the hourly rates specified in an Application into account when selecting a Service Provider for work.
- 6.5 The fees to be charged for each individual engagement for which the Service Provider is selected shall be agreed between the Service Provider and the Agency.

## **7 PREQUALIFICATION PROCESS**

- 7.1 The Assessment Committee will determine the membership of the panel to be formed under the Scheme.
- 7.2 The panel to be formed under the Scheme will be composed of Service Providers who are deemed to be qualified following the assessment of an Application submitted in the form prescribed in Schedule 1 and in accordance with these Standard Conditions.
- 7.3 Applications may be made at any time during the life of the Scheme. Applications will be assessed periodically at the discretion of the Assessment Committee.

## **8 EVALUATION CRITERIA**

- 8.1 Applications will be assessed according to the following evaluation criteria:
  - (a) demonstrated expertise in the work types and specialties applied for;
  - (b) demonstrated expertise in nominated policy area experience;
  - (c) demonstrated capability, including technical, management, human resources and commercial rates and prices, insurances and resources;
  - (d) demonstrated experience, satisfactory previous performance and applicant referee reports;
  - (e) demonstrated capability and experience in the following general areas:
    - well developed project leadership, planning and management skills;

- demonstrated ability to provide high level strategic advice to government including CEOs and senior Departmental officers.
  - good understanding of contemporary approaches to public sector administration and reform; and
  - highly developed oral and written communication, consultation, negotiation and presentation skills to influence and gain agreement from diverse stakeholders; and
- (f) evidence of registration with other NSW Government procurement panels or prequalification schemes.
- (g) Audit & Assurance Services **ONLY**: demonstrated application of and compliance with professional standards from appropriate recognized professional bodies such as Institute of Chartered Accountants (Australia) (ICA); CPA Australia (CPA-A), Institute of Internal Auditors (IIA); Information Systems Audit & Control Association (ISACA).
- (h) Investigation Services **ONLY**: 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)

## **9 INTERVIEW WITH ASSESSMENT COMMITTEE**

- 9.1 Where further clarification is required, an Applicant may be provided with the opportunity to attend an interview with the Assessment Committee.

## **10 NOTIFICATION OF ASSESSMENT OUTCOME**

- 10.1 The Assessment Committee may accept an Application (with or without limitation) or reject the Application.
- 10.2 The NSW Department of Services, Technology & Administration will notify all Applicants of the outcome of their Application in writing.

## **11 REQUEST FOR REVIEW OF THE DEPARTMENTS' DECISION**

- 11.1 Should an Applicant believe that there are substantive grounds for the Departments to reconsider their decision not to admit the Applicant to the Scheme, the Applicant may request a review of the decision in writing, providing full details of the reasons for the request, to:

NSW Department of Services, Technology & Administration  
 Prequalification Scheme: Performance and Management Services  
 Accreditation, Certification & Business Information Unit  
 Policy Support Services  
 Level 10  
 McKell Building  
 2-24 Rawson Place  
 SYDNEY NSW 2000

11.2 The NSW Department of Services, Technology & Administration will inform the Applicant in writing of the outcome of the review after consultation with the NSW Department of Premier and Cabinet.

## **12 SPECIAL REQUIREMENTS**

Membership of the panel to be formed under the Scheme is subject to the following conditions:

12.1 For each individual engagement for which the Service Provider is selected, the Service Provider shall enter into an agreement in the form prescribed by Schedule 2, including a statement of the fees to be charged for each individual engagement.

12.2 The Service Provider may be required to meet with the Departments at no charge on a few occasions each year, but not more than quarterly, to discuss relevant matters and provide a report on relevant issues.

## **13 CHANGES TO SERVICE PROVIDER STATUS**

Service Providers must immediately inform the NSW Department of Services, Technology & Administration of any significant change in their financial capacity, capability, ownership status, contact details or address by writing with full details to:

NSW Department of Services, Technology & Administration  
Prequalification Scheme: Performance and Management Services  
Accreditation, Certification & Business Information Unit  
Policy Support Services  
Level 10  
McKell Building  
2-24 Rawson Place  
SYDNEY NSW 2000

## **14 MONITORING PERFORMANCE**

14.1 An Agency must submit a Performance Report in the form prescribed by Schedule 3 to the NSW Department of Services, Technology & Administration where:

(a) the performance of, and the services provided by, the Service Provider are considered by the Agency to be unsatisfactory; or

(b) where the total value of the relevant engagement is \$150,000 or more.

14.2 A Performance Report may be submitted:

(a) at the completion or termination of the relevant engagement; or

(b) when a critical aspect of performance is unsatisfactory.

## **15 PERFORMANCE REPORTING BEHAVIOUR**

15.1 Service Provider performance monitoring and reporting shall be conducted in accordance with the following principles:

(a) the mutual objective of the parties to a contract 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 Service Provider 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 Service Provider should take account of individual behavior when necessary to highlight performance problems for resolution; and
- (j) a proactive approach to initiating and encouraging dialogue by either party to discuss performance and performance reporting matters, including making arrangements for formal performance reporting consultation meetings.

## **16 PERFORMANCE REPORTING PROCESS**

16.1 The Agency will be responsible for the preparation of Performance Reports.

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

- (a) provide a copy of the Performance Report to the Service Provider; and
- (b) forward the original to the General Manager, Policy Support Services, NSW Department of Services, Technology & Administration for entry into the Department's Contractor and Consultant Management System (CCMS).

16.3 If the Service Provider disagrees with the Performance Report, the Agency and the Service Provider must attempt to resolve the disagreement in the first instance. Following an unsuccessful attempt to resolve a disagreement, the Service Provider may refer the Performance Report, with written reasons for the disagreement, to the General Manager, Policy Support Services, NSW Department of Services, Technology & Administration.

16.4 The General Manager, Policy Support Services, NSW Department of Services, Technology & Administration will:

- (a) arrange a meeting between Service Provider and the Agency to discuss and consider the Performance Report and reasons;
- (b) decide on the disagreement in consultation with the NSW Department of Premier & Cabinet;

- (c) if necessary, amend the Performance Report;
- (d) notify the Service Provider of its decision; and
- (e) where the Performance Report is amended, enter the amended Performance Report information into the Department's CCMS database.

## **17 PERFORMANCE MANAGEMENT**

17.1 The Departments will manage the performance of Service Providers by:

- (a) monitoring performance on tendering, financial capability, NSW Government Code of Practice for Procurement compliance, contract performance and project outputs and outcomes;
- (b) applying sanctions, such as temporary suspension from the Scheme, where performance is deemed unsatisfactory;
- (c) revoking a Service Provider's admission to the Scheme, following due consideration of the circumstances, where performance is deemed unsatisfactory; and
- (d) providing the opportunity for a Service Provider to request a review of the decisions referred in paragraphs (b) and (c) above.

## **18 UPGRADING OF PREQUALIFICATION**

18.1 The Departments may upgrade a Service Provider's status under the Scheme to include additional work categories where:

- (a) the Service Provider considers that it is eligible for such an upgrade; and
- (b) the Service Provider has submitted a written application for such an upgrade, including documentation and other material in support of its request.

## **19 DOWNGRADING OF PREQUALIFICATION**

19.1 The Departments may downgrade a Service Provider's status under the Scheme if the Departments consider that a Service Provider has:

- (a) not complied with the Scheme Conditions; 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.

19.2 Before the status of a Service Provider is downgraded under clause 18.1, the Departments will advise the Service Provider of the matters prompting the downgrade and will give the Service Provider the opportunity to provide reasons as to why the downgrade should not occur.

## **20 TEMPORARY SUSPENSION**

- 20.1 The Departments may suspend a Service Provider from the Scheme for up to three (3) months if the Departments consider that the Service Provider has:
- (a) not complied with the Scheme Conditions; or
  - (b) demonstrated unsatisfactory performance.
- 20.2 The Departments will advise the Service Provider of the reasons for the suspension and of any actions by the Service Provider required to lift the suspension. A Service Provider that has been suspended from the Scheme must inform the Departments if and when the actions required to lift the suspension have been undertaken.
- 20.3 The Departments will regularly review the status of Service Providers who have been suspended under clause 19.1. If the action taken by the Service Provider is considered by the Departments to be insufficient, the suspension period may be extended and the Service Provider will be notified accordingly. The Department may revoke the suspension if it is satisfied that the Service Provider has taken appropriate action to address the reasons for the suspension.

## **21 REMOVAL FROM THE SCHEME**

- 21.1 The Department may revoke a Service Provider's admission to the Scheme if the Departments consider that a Service Provider has:
- (a) breached the Scheme Conditions; or
  - (b) failed to meet applicable financial requirements; or
  - (c) been the subject of substantiated reports of unsatisfactory performance for other NSW Government agencies; or
  - (d) been determined by the Assessment Committee as not suitable for future work; or
  - (e) provided unsatisfactory tendering performance with tenders under the Scheme; 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 19; or
  - (i) been convicted of a breach of its obligations under NSW occupational 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.
- 21.2 Before a Service Provider's admission to the Scheme is revoked under clause 20.1, the Departments will advise the Service Provider of the matters prompting

the proposed action and will give the Service Provider the opportunity to provide reasons as to why the revocation should not occur.

## **22 REQUEST FOR REVIEW OF THE DEPARTMENT'S DECISION**

22.1 Where a Service Provider considers that there are substantive grounds for the Departments to reconsider its decisions under clauses 18, 19 and 20, the Service Provider may request a review of the decision by writing, providing full details of the reasons for the request for review to:

General Manager  
Policy Support Services  
NSW Department of Services, Technology & Administration  
Level 10 McKell Building  
2-24 Rawson Place,  
SYDNEY NSW 2000

22.2 The Departments will inform the Service Provider of the outcome of the review.

## **23 PUBLICITY**

23.1 Service Providers must not advertise, promote or publicise in any form their admission to the Scheme without the written consent of the NSW Department of Premier and Cabinet.

## **24 APPLICANT'S ACKNOWLEDGMENT**

24.1 In applying for membership, the Applicant agrees that it accepts the Scheme Conditions.

## **25 DISCLAIMER**

25.1 The Departments and the Assessment Committee reserve the absolute discretion to:

- (a) accept an Application with or without conditions;
- (b) reject an Application;
- (c) suspend a Service Provider's admission to the Scheme; and
- (d) revoke a Service Provider's admission to the Scheme.

25.2 The Departments will not be held liable for any costs or damages incurred by the Service Provider in the exercise of such discretion.

## **26 PREQUALIFICATION NO GUARANTEE OF WORK**

26.1 The receipt of prequalification by a Service Provider does not guarantee:

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

## **27 REVIEW AND DEVELOPMENT OF THE SCHEME**

27.1 The Scheme will be monitored by the Departments to assess whether the objectives and intent of the Scheme are being met. Modifications may be made at the Departments' discretion during the life of the Scheme.

## SCHEDULE 1

### PREQUALIFICATION SCHEME: PERFORMANCE AND MANAGEMENT SERVICES

#### APPLICATION FORM

All application material to be prepared electronically (e.g. as a WORD document).

**HAND WRITTEN APPLICATIONS WILL NOT BE ACCEPTED**

**Email is the preferred mode of delivery** - your assistance is sought in submitting your application in electronic format by email as follows:

- Complete the application form using MS WORD (or compatible software application).
- Include requested copies of documents, such as Client Referee Reports, etc. These may be scanned and electronically inserted or pasted into the WORD document in the Application Form as images.
- Attach the completed application to the email as a single electronic file being either an MS WORD or Acrobat PDF file.
- If necessary, a file may be split into parts, provided that:
  - a logical sequence of components is sent.
  - each part is identified in the subject line of the email e.g. Part 1 of 3, 2 of 3, etc.

Please send the completed application form to: [consultantprequal@services.nsw.gov.au](mailto:consultantprequal@services.nsw.gov.au)

Applications may be submitted by post or hand delivered in hard copy form, provided that:

- Two (2) copies are supplied, printed on plain white paper without any additional artwork, watermarks, colour, shading or logos, and,
- Copies of all documentation requested in the application are attached to the printed application.

Please send applications by post to:

General Manager, Accreditation  
SCHEME APPLICATIONS  
Policy Support Services  
Department of Services, Technology & Administration  
Level 10, McKell Building  
2-24 Rawson Place  
SYDNEY NSW 2000

Only applications which fully satisfy all of the requirements set out below will be considered:

<b>Item</b>	<b>Mandatory Criteria and Requirements</b>
A	Organisation Details
B	Expertise (including Policy area experience)
C	Capability
D	Other NSW Government Procurement Panels
E	Professional Indemnity Insurance
F	Experience – Corporate History
G	Rates/Costs of Services
H	Applicant Referee Reports
I	Statement

## APPLICATION DETAILS

### A. ORGANISATION DETAILS

The Applicant is to provide contact details, details of the organisation's status, management and key personnel including professional qualifications, registrations and accreditations.

#### CONTACT DETAILS

<b>Service Provider's Organisation Name</b>			
<b>Contact Person (regarding this application)</b>			
<b>Designation or Position Title of Contact Person</b>			
<b>Registered Business Address</b>			
<b>Postal Address</b>			
<b>Phone</b>		<b>Mobile</b>	
<b>Fax</b>		<b>Email</b>	

#### ORGANISATION STATUS

<b>Type of Organisation</b>	<b>Sole Trader ▶</b>		<b>Company ▶</b>		<b>Partnership ▶</b>	
<b>Other Type (describe)</b>						
<b>Date Established</b>						
<b>Australian Company Number (ACN)</b>						
<b>Australian Business Number (ABN)</b>						

## B. EXPERTISE

The Applicant is to identify its:

- areas of substantial expertise by nominating the Work Types and Specialties in which it is seeking prequalification
- policy or government portfolio areas in which the Applicant claims to have substantial expertise

Applicants are to indicate in the schedule below by way of a ✓ in the right hand cell of each relevant row, the work types and specialties in which prequalification is sought

<b>WORK TYPES AND SPECIALTIES</b> (expertise and activities listed under Levels 1 & 2 in upper case are not exclusive of other expertise descriptions an applicant may propose):	
<b>1) PERFORMANCE REVIEW</b>	
a) <b>AGENCY REVIEWS</b> Examine agency appropriateness, effectiveness, efficiency and economy, including strategic and operational elements.	
b) <b>PROGRAM REVIEWS</b> Examine program appropriateness, effectiveness, efficiency and economy in single or across multiple agencies.	
c) <b>TARGETED REVIEWS</b> Examine factors leading to an agency not meeting budgetary or performance targets (eg State Plan).	
d) <b>MANAGEMENT REVIEWS</b> Examine agency appropriateness and effectiveness in terms of strategic directions, leadership and structure.	
e) <b>FUNCTIONAL REVIEWS</b> Examine a cross cutting function of government in all or a cluster of agencies such as recruitment, internal audit.	
f) <b>POLICY/STRATEGY REVIEWS</b> Examine the appropriateness of policy setting in an agency or policy cluster.	
g) <b>LEGISLATIVE/REGULATORY REVIEWS</b> Examine the appropriateness of specific legislative or regulatory instruments.	
<b>2) INFRASTRUCTURE &amp; MAJOR PROJECTS</b>	
a) <b>STRATEGY AND PLANNING</b> Financial and investment strategies; urban development; commercial property; public/private partnership strategy; environmentally sustainable development strategy; resource management; project definition, development and packaging.	
b) <b>RISK</b> Risk assessment and management; construction risk; due diligence	
c) <b>MAJOR PROJECT PROCUREMENT AND DELIVERY</b> Planning and process analysis; procurement review; supply chain review; strategic sourcing	
d) <b>CONTRACTING</b> Contract legal and drafting; contract negotiations; contract administration	
e) <b>COMMUNICATION</b> Stakeholder engagement; communication/technical writing	
f) <b>PROJECT MANAGEMENT</b> Project leadership and governance; project assurance;	

<b>3) SERVICE DELIVERY IMPROVEMENT</b>	
a) <b>SERVICE STRATEGY AND PLANNING</b>	Customer/market research; service strategy development; service modeling; costing/pricing; demand management; commercialisation
b) <b>SERVICE IMPLEMENTATION</b>	Channels and access operation; service support systems; customer relationship management; complaint/compliments systems
c) <b>SERVICE PERFORMANCE</b>	Indicators design; customer satisfaction; continuous improvement
d) <b>SERVICE EVALUATION</b>	Service evaluation; service re-design
<b>4) ORGANISATIONAL CAPACITY</b>	
a) <b>GOVERNANCE AND REPORTING</b>	Program and project performance; performance improvement framework; service level agreements; benchmarking & best practice.
b) <b>CORPORATE AND BUSINESS STRATEGY</b>	Strategic planning and development; corporate and shared services strategy; cultural mapping and profiling; customer service/channel strategy; information management; strategy facilitation and change management; business continuity; disaster recovery; logistics and supply chain strategy
c) <b>BUSINESS PROCESS IMPROVEMENT</b>	Process mapping; business performance management; operational performance management; software application performance management; business process re-engineering
d) <b>COMMUNICATION</b>	Corporate communication; strategic communication; issues management; media and public relations; event management
e) <b>HUMAN RESOURCES</b>	Workforce planning; human resources processes and systems; workplace relations; training and development; knowledge management; employee performance management; climate surveys; occupational health and safety
f) <b>FINANCIAL MANAGEMENT</b>	Transaction management; strategic sourcing/procurement; accounting; taxation advice
g) <b>ASSET MANAGEMENT AND PROCUREMENT</b>	Asset management; strategic sourcing; intellectual property
h) <b>OFFICE SERVICES</b>	Business and administration support systems; records management; correspondence management
i) <b>AUDIT &amp; ASSURANCE SERVICES</b>	Internal Audit, Performance (Operational Audit), Financial Audit, Compliance Audit, General Computer Controls (including Information Systems Security), Probity, Strategic Reviews, Risk Assessment & Review, Fraud Control Review, Corruption Prevention Review, Preparation and conduct Internal Audit Plans & Programs.
j) <b>INVESTIGATION SERVICES</b>	Fraud Investigation, Corrupt Investigation, Conduct & Performance Investigation, Grievance (including Discrimination & Harassment) Investigation, Forensic Accounting, Forensic IT Investigation, Forensic Financial Investigation.

<b>5) GENERAL TECHNICAL EXPERTISE</b>	
a) <b>POLICY DEVELOPMENT</b> Research – quantitative/qualitative; policy analysis; stakeholder engagement/management; consultation/facilitation	
b) <b>BUSINESS CASES DEVELOPMENT</b>	
c) <b>CONTRACTS AND CONTRACTING</b> Tender preparation	
d) <b>PROJECT GOVERNANCE AND MANAGEMENT</b>	
e) <b>ISSUES MANAGEMENT</b>	
f) <b>FINANCIAL ANALYSIS</b> Financial modelling; financial benchmarking	
g) <b>ECONOMIC ANALYSIS</b> Resource modelling; value for money; willingness to pay; cost-benefit; benchmarking & best practice assessment; goal, process and outcomes evaluation	
h) <b>BUDGET MANAGEMENT</b> Spend optimisation review & management; critical path assessment	
i) <b>ENVIRONMENT IMPACT ASSESSMENT</b>	

**POLICY AREAS:**

Policy areas are used by the Departments to determine the breadth of expertise of the applicant. For the Work Types and Specialties ticked in the above schedule indicate in the schedule below the policy area(s) in which the applicant claims to have substantial expertise.

<b>DEMONSTRATED EXPERIENCE AT COMMONWEALTH, STATE OR LOCAL GOVERNMENT LEVEL IN ONE OR MORE OF THE FOLLOWING:</b>			
Community Services	<input type="checkbox"/>	Utilities/Telecommunications	<input type="checkbox"/>
Ageing and Disability	<input type="checkbox"/>	Sport and Recreation	<input type="checkbox"/>
Housing	<input type="checkbox"/>	Arts	<input type="checkbox"/>
Health	<input type="checkbox"/>	Environment	<input type="checkbox"/>
Education	<input type="checkbox"/>	Emergency Services	<input type="checkbox"/>
Justice	<input type="checkbox"/>	Central Government – Policy, Legislation, Public Administration	<input type="checkbox"/>
Economic Services	<input type="checkbox"/>	Public Employment/Workplace Relations	<input type="checkbox"/>
Primary Industry	<input type="checkbox"/>	Taxation	<input type="checkbox"/>
Transport	<input type="checkbox"/>	Defence	<input type="checkbox"/>

### C. CAPABILITY

For each Work Type and Specialty in which the applicant is seeking prequalification, the applicant must provide a brief statement demonstrating the applicant's capability. This statement must be supported by completing the schedule of Experience – Corporate History in this application by listing relevant experience for the applicant's Work Types and Specialties.

In addition, the applicant must provide a written statement of no more than one page demonstrating the applicant's capabilities under the following general criteria:

<b>DEMONSTRATED CAPABILITIES AND EXPERIENCE IN ALL OF THE FOLLOWING:</b>
1. Well developed project leadership, planning and management skills.
2. Demonstrated ability to provide high level strategic advice to government.
3. Good understanding of contemporary approaches to public sector administration and reform.
4. Highly developed oral and written communication, consultation, negotiation and presentation skills to influence and gain agreement from diverse stakeholders.

### D. OTHER NSW GOVERNMENT PROCUREMENT PANELS:

The Applicant to identify where it is registered on other NSW Government procurement panels or prequalification schemes:

<b>QUALIFICATION FOR OTHER NSW GOVERNMENT PROCUREMENT PANELS OR SCHEMES:</b>	
Accounting & Actuarial	
Audit & Risk Committee Independent Chairs & Members	
Environmental	
Construction	
Project Management	
ICT Assurance	
Other Services (Specify)	

### E. INSURANCE

Applicants are required to maintain policies of insurance for Public Liability, Workers' Compensation, and Professional Indemnity.

Professional Indemnity Insurance may be waived in some circumstances, eg generally only where the entity is a 'sole trader'. Refer to clause 4.18 of the standard form of agreement for details.

<b>PROOF OF CURRENCY OF INSURANCES:</b>
1. Workers' compensation (if a company or an employer), Public Liability and Professional Indemnity insurance broker's certificates of currency are to be attached to the application.
2. Professional indemnity insurance may be waived in certain circumstances. Service Providers without Professional Indemnity Insurance will be excluded from some engagements (e.g. where there is a legal requirement for insurance under the <i>Professional Standards Act</i> ).

Electronically Insert/Paste the requested document here - (or physically attach to application in printed format)
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**G. RATES/COSTS OF SERVICES**

For the purpose of assessment a detailed breakdown of proposed charges and flexible fees structuring proposals is to be provided. This may include a range of fees for different services and personnel that may be engaged in an assignment.

Work allocated to Service Providers will be the subject of a separate engagement agreement in each matter. It is expected that each engagement agreement will reflect competitive rates for the particular task and the nature and extent of the services to be provided at that time.

**DETAILED BREAKDOWN OF PROPOSED CHARGES AND PROPOSALS FOR FLEXIBLE FEES STRUCTURING:**

**a. Hourly rates**

What is the hourly rate for type of service and personnel?

Level of personnel (eg analyst, partner)      \$      per hour  
Service type (eg financial, infrastructure)

\_\_\_\_\_

**b. Costing basis**

Does the applicant propose to cost out all work on a time-spent basis? If not, specify the charges for work which would be costed out on a different basis.

\_\_\_\_\_

**c. Disbursements and charges**

Provide details of any proposed disbursements charges such as photocopying, facsimile, delivery, telephone, searching fees, transport and couriers.

\_\_\_\_\_

**d. Waiting and travelling time**

Does the applicant propose to charge for time spent waiting or travelling and if so on what basis?

\_\_\_\_\_

**e. Alternative Costing Proposals**

Does the applicant propose any other costing system it believes might be advantageous for engaging Departments to consider? If so provide full details.

\_\_\_\_\_

**Settlement Discounts**

Applicants should note that the Government’s normal Terms of Payment are within 30 days of the receipt of a properly rendered invoice.

Applicants should indicate the settlement discount offered:

(a) \_\_\_\_\_% for payment within 14 days from the date of receipt of invoice.

(b) \_\_\_\_\_% for payment within \_\_\_\_\_ days from the date of receipt of invoice.

If this condition is not completed, the prices offered will be deemed to be in accordance with the Government’s normal Terms of Payment.

## H. APPLICANT REFEREE REPORTS

### EVIDENCE OF CLIENT SATISFACTION BASED ON ENGAGEMENTS COMPLETED IN THE LAST THREE (3) YEARS

All applicants are required to provide evidence of client satisfaction based on engagements completed in the last three years in types of services relevant to those offered under this application, as listed in section B of the Application form.

Evidence must be provided in the form of the *Applicant Referee Report* provided below.

Three *Applicant Referee Reports* are to be provided. Copies of signed Applicant Referee Reports must be attached to the Application form.

Where a client is reporting on more than one engagement, a separate *Applicant Referee Report* must be used for each engagement.

Applicant Referee Reports will only be considered:

- for completed engagements where a fee in full has been paid by the client to the Service Provider;
- where the engagements were completed in the last three (3) years;
- where the engagement was in an area listed in Section B of the Application form
- where the Applicant Referee Reports (showing key performance areas) have been submitted; and
- where reports are complete including the specific signatures requested.

**IMPORTANT:** Service Providers must provide Applicant Referee Reports and demonstrate recent history of consistent good performance in order to meet the mandatory requirements.

DPC and DSTA may choose to contact a Client to verify or clarify any aspect of Applicant Referee Reports submitted by a Service Provider in support of their Application in assessing eligibility for membership of the Scheme. Engaging agencies may also contact these or other referees relevant to a particular assignment.

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.

**CLIENT LETTERHEAD** is to be Positioned or Aligned or Inserted or Attached **HERE**  
 (The Client Company Name, Address, ABN and Logo is to be clearly visible)

**APPLICANT REFEREE REPORT**

This report may be used to assist in assessing the suitability of a Service Provider for the *Prequalification Scheme – Performance and Management Services*. **To be completed by the “client” on the Client’s Company Letterhead.**

**The NSW Department of Premier and Cabinet and/or the NSW Department of Services, Technology & Administration may contact the Client to verify or clarify aspects of this Report**

**Engagement Details** Note: Engagements must have been **completed in the last three years**

<b>Provider’s Organisation Name</b>			
<b>Service Provider’s Contact Person</b>		<b>Phone</b>	
<b>Engagement / Project Name</b>			
<b>Engagement Description</b>			
<b>Date Engagement Commenced</b>		<b>Date Completed</b>	
<b>Total Fee for service to Service Provider</b>	\$	(including GST )	

<div style="border: 1px solid black; padding: 5px; display: inline-block;"> <b>As the client who paid for this service, How well did the SERVICE PROVIDER <u>meet your expectations?</u></b> </div>	N/A	Unsatisfactory	Marginal	Acceptable	Good	Superior
1. <b>Time Management</b> e.g. meeting milestones, resourcing, planning, reporting						
2. <b>Management &amp; suitability of personnel</b> e.g. skills , experience, sufficient numbers, appropriate seniority used						
3. <b>Standard of Service</b> e.g. meeting brief, budget, value for money, no rework, supervision, no over servicing or under servicing						
4. <b>Quality Outcomes</b> e.g. accuracy, usability and effectiveness of results						
5. <b>Cost</b> Actual Cost did not exceed cost estimate without prior agreement						
6. <b>Communications</b> Appropriate level of reporting						
7. <b>Information Technology</b> IT used where appropriate, to increase efficiency and reduce costs						
8. <b>Cooperative Relationships</b> e.g. Cooperative approach, commitment, resolving issues						

<b>9. Recommendation for Future Work?</b> Would you recommend the Service Provider for similar type of work?		◀ No		◀ Yes
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**Comments** on Service Provider's Performance (may be expanded to extend over to another page)

**Signed (by Client) e.g. General Manager, Director, Senior Project Manager**

<b>Signature</b>		<b>Name</b>	
<b>Date</b>		<b>Position Title</b>	
<b>Tel</b>		<b>Mob</b>	<b>e-mail</b>

**Delivery Instructions:** To be forwarded by the Client to the Service Provider. (The Service Provider is to include all Applicant Referee Reports in their application to form a single and complete submission.)

## I. STATEMENT

### COMPLETE AND ACCURATE INFORMATION

This Statement is to be signed and dated to verify the completeness and authenticity of the information provided in the Application. The Statement must be signed by a director of a company, partner of a partnership or sole trader, as applicable to the Applicant's business arrangements. Applications which are incomplete or found to be misleading or inaccurate may not be further considered.

<b>Item</b>	<b>Mandatory Criteria and Requirements</b>
<b>A</b>	Organisation Details
<b>B</b>	Expertise (Including Policy area experience)
<b>C</b>	Capability
<b>D</b>	Other NSW Government Procurement Panels
<b>E</b>	Insurance
<b>F</b>	Experience – Corporate History
<b>G</b>	Rates/Costs of Services
<b>H</b>	Applicant Referee Reports
<b>I</b>	Statement

As the Director/Partner/Sole Trader of the firm submitting this application, I confirm the completeness and authenticity of the information provided in this application.

<b>Signature of Applicant (a scanned signature is acceptable)</b>	
<b>Name of above Applicant as per Signature</b>	
<b>Position Title</b>	
<b>Date</b>	

**SCHEDULE 2**

**PRE-QUALIFICATION SCHEME: PERFORMANCE AND MANAGEMENT  
SERVICES**

**STANDARD FORM OF AGREEMENT**

**AGREEMENT**

**BETWEEN**

***[INSERT AGENCY NAME]***

**(THE “PRINCIPAL”)**

**AND**

***[INSERT SERVICE PROVIDER NAME AND ABN]***

**(THE “SERVICE PROVIDER”)**

**THIS AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_

**BETWEEN** [ {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 [ ] (the “Principal”)

**AND** [insert name of Service Provider of [insert address] ABN []] (the “Service Provider”).

**GUIDE NOTE:**

Where the Service Provider is a company, the full corporate name of the company should be used.

Where the Service Provider is an individual(s), the full name(s) of the individual(s) 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 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.

## **OPERATIVE CLAUSES**

### **1. DEFINITIONS AND INTERPRETATION**

**1.1** In this Agreement, unless the context requires:

'Agreement' means this document and any annexures and schedules.

'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

- d) the Contract Material;
- e) the Principal's Material;
- f) any material which relates to the affairs of a third party;

but does not include information which:

- g) must be disclosed to perform the Services;
- h) is or becomes public knowledge other than by breach of this Agreement;

- i) 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
- j) is required to be disclosed pursuant to law, regulation, legal process or a regulatory authority.

'Service Provider' includes the officers, employees, agents and sub-contractors of the Service Provider.

'Service Provider's Proposal' means the document submitted by the Service Provider to the Principal dated *[insert date]* which applies to the services work to be completed and fees for executing the Services, a copy of which is annexed to this Agreement and marked "A".

'Contract Material' means:

- a) 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 ('New Contract Material'); and
- b) any Material which exists at the date of this Agreement and which is incorporated with the New Contract Material ('Existing Contract Material').

'Fee' or 'Fees' means the fee or fees described in the Schedule.

'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.

'Schedule' means the schedule to this Agreement.

'Services' means the services set out in the Schedule 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.

**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**

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 Schedule or on such date as may be agreed in writing between the parties.

## **3. CONFLICT OF INTEREST**

**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.

## **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 Schedule.

### **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 Schedule:

- 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 Schedule.

#### **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, codes of practice, 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 Schedule 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 sub-contractor 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) a professional indemnity insurance policy:

- A. if the Service Provider is a member of an approved scheme under the Professional Standards Act, 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 waived 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, 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 Schedule 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**

- a) 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 Schedule.
- b) 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.
- c) 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.
- d) Subject to clause 5.3(e), 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.
- e) 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**

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 non-exclusive, irrevocable, transferable licence:

- a) to use, reproduce, communicate to the public and adapt for its own purposes; and
- b) where so specified in this Agreement, to perform any other act with respect to copyright and to manufacture, sell, hire or otherwise exploit,

all those Intellectual Property rights, but only as part of the Contract Material and any developments of that material.

### **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, wilful 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, wilful 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.

## **11. TERMINATION**

### **11.1 Completion of the Services**

This Agreement will terminate upon the Principal giving a notice to the Service Provider that it considers that the Services have been fully performed or that it does not require further performance of the Services by the Service Provider.

### **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.

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.

**12.3** The Service Provider must for a minimum period of six (6) 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.

**12.4** 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 Negotiation**

The Service Provider and the Principal will endeavour to resolve any dispute speedily by negotiation.

### **13.2 Expert Determination**

- a) If a dispute between the Service Provider and the Principal:
  - i) is agreed by both parties to involve a claim or claims not exceeding \$100,000 in the aggregate for either party; and
  - ii) is not resolved by negotiation,

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

- b) If the Service Provider and the Principal do not agree upon an Expert, either party may request the Australian Commercial Disputes Centre to nominate an Expert and the dispute shall be referred to such nominee.
- c) The Expert shall be appointed on terms which include the following:
  - i) the Expert may meet with the parties jointly but must not meet or communicate with either party separately;
  - ii) during any meeting with both parties, the Expert may ask questions of the parties which must be answered orally or in writing as requested by the Expert;
  - ii) the determination of the Expert shall be made as an expert and not as an arbitrator; and
  - iv) as soon as possible, and, unless otherwise agreed by the parties and the Expert, within 60 days of the acceptance by the Expert of the appointment, the Expert must give the parties a determination in writing as to the respective rights and entitlements of the parties, including the amount, if any, due from one party to the other.

### **13.3 Submissions**

Within 14 days of acceptance by the Expert of the appointment, any party making a claim will submit their claim in writing to the Expert and within a further 7 days, the other party will submit its response to the claim. All such submissions shall include all evidence which the parties wish the Expert to take into account. A copy of all submissions and any documents sent to the Expert must be sent to the other party at the same time.

### **13.4 Effect of Determination**

The determination of the Expert shall be final and binding on the parties except where the Expert's determination relating to a dispute is that one party shall pay to the other an amount (or carry out work without charge to the value of in excess) of \$100,000 and either party gives notice to the

other party of its dissatisfaction with that determination within 28 days of the determination being given.

### **13.5 Costs**

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

### **13.6 Continuing Performance**

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

## **14. NOTICES**

- a) 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 Schedule 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.
- b) 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**

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**

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

**Execution by the Principal:**

Signed for and on behalf of ..... )  
..... )  
(insert name of Principal) )  
 )  
 )  
by..... ) ..... )  
(insert name of person signing on the Principal's behalf) ) (signature of Principal's representative)  
 )  
 )  
 )  
 )  
 )  
in the presence of..... ) ..... )  
(insert name of witness) ) (signature of witness)

**Execution by the Service Provider:**

**Guide Note:** Use the following execution clause where the Service Provider is a corporation and that corporation has a common seal. Where the Service Provider is a corporation but does not have a common seal, or where the Service Provider is a natural person or a partnership, use the appropriate alternate execution clause, as provided below.

The **COMMON SEAL** of..... )  
..... ) (Corporate Seal)  
(insert name of Service Provider) )  
 )  
A.C.N: ..... )  
(insert Service Provider A.C.N.) )  
was duly affixed hereto in accordance with its )  
Constitution in the presence of: )  
 )  
 )  
 )  
..... ) ..... )  
(signature of Secretary or other authorised officer) ) (signature of Director)  
 )  
 )  
..... ) ..... )  
(name of Secretary or other authorized officer) ) (name of Director)



▶ **[ALTERNATE – Where Service Provider is a partnership:]**

**Signed by** ..... )  
(insert name of partner authorised to sign on behalf of the )  
partnership) )  
)  
)  
for an on behalf of ..... ) ..... )  
(insert name of Service Provider) ) (signature of Partner)  
)  
)  
in the presence of..... ) ..... )  
(insert name of witness not a party to this Agreement) ) (signature of witness)

# SCHEDULE

<b>Item 1:</b>	<b>Services</b> (clause 1.1)
<b>Item 2:</b>	<b>Fees</b> (clause 2 1.1& 5.3)
<b>Item 3:</b>	<b>Commencement Date</b> (clause 2)
<b>Item 4:</b>	<b>Program</b> (clause 4.5(a)) Program for performance and completion of the Services is <b>[required]</b> / <b>[not required]</b> .
<b>Item 5:</b>	<b>Reports &amp; Deliverables</b> (clause 4.6)
<b>Item 6:</b>	<b>Service Provider's Representative</b> (clause 4.13)
<b>Item 7:</b>	<b>Principal's Representative</b> (clause 5.2)
<b>Item 8:</b>	<b>Notices</b> (clause 12) Principal's Name: Address:  Facsimile No: Email: Attention:  Service Provider's Name: Address:  Facsimile No: Email: Attention:

# ANNEXURE "A"

*[Attach a copy of the Service Provider's Proposal as Annexure "A"]*

### SCHEDULE 3

#### PREQUALIFICATION SCHEME: PERFORMANCE AND MANAGEMENT SERVICES

##### SERVICE PROVIDER PERFORMANCE REPORT

Under clause 13 of the Scheme Conditions, all engaging agencies are required to submit a Service Provider Performance Report for each engagement where: the performance of, and the services provided by, the Service Provider are considered by the agency to be unsatisfactory; or where the total value of the relevant engagement is \$150,000 or more.

**AGENCY LETTERHEAD** is to be Positioned or Aligned or Inserted or Attached **HERE**  
 (The Agency Name, Address, and Logo is to be clearly visible)

##### SERVICE PROVIDER PERFORMANCE REPORT

This report may be used to assist in assessing the ongoing suitability of a Service Provider for the *Prequalification Scheme – Performance and Management Services*. **To be completed by the Agency on letterhead.**

**The NSW Department of Premier and Cabinet and/or the NSW Department of Services, Technology & Administration may contact the Agency to verify or clarify aspects of this Report**

<b>Service Provider's Organisation Name</b>							
<b>Service Provider's Contact Person</b>		<b>Phone</b>					
<b>Engagement / Project Name</b>							
<b>Engagement Description</b>							
<b>Date Engagement Commenced</b>		<b>Date Completed</b>					
<b>Total Fee</b>	\$	(including GST )					
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> <b>As the client who paid for this service, How well did the SERVICE PROVIDER <u>meet your expectations</u>?</b> </div> <span style="font-size: 2em; vertical-align: middle;">▶</span>		N/A	Unsatisfactory	Marginal	Acceptable	Good	Superior
1. <b>Time Management</b> e.g. meeting milestones, resourcing, planning, reporting							
2. <b>Management &amp; suitability of personnel</b> e.g. skills , experience, sufficient numbers, appropriate seniority used							
3. <b>Standard of Service</b> e.g. meeting brief, budget, value for money, no rework, supervision, no over servicing or under servicing							
4. <b>Quality Outcomes</b> e.g. accuracy, usability and effectiveness of results							
5. <b>Cost</b> Actual Cost did not exceed cost estimate without prior agreement							
6. <b>Communications</b> Appropriate level of reporting							
7. <b>Information Technology</b> IT used where appropriate, to increase efficiency and reduce							

costs					
8. <b>Cooperative Relationships</b> e.g. Cooperative approach, commitment, resolving issues					
9. <b>Recommendation for Future Work?</b> Would you recommend the Service Provider for similar type of work?		◀ No		◀ Yes	

**Comments** on Service Provider's Performance (may be expanded to extend over to another page)

--

**Signed (by Agency) e.g. General Manager, Director, Senior Project Manager**

<b>Signature</b>		<b>Name</b>	
<b>Date</b>		<b>Position Title</b>	
<b>Tel</b>		<b>Mob</b>	<b>e-mail</b>

**Delivery Instructions:** To be forwarded by the engaging agency to:

NSW Department of Services, Technology & Administration  
 Prequalification Scheme: Performance and Management Services, Accreditation, Certification  
 & Business Information Unit  
 Policy Support Services  
 Level 10 McKell Building  
 2-24 Rawson Place  
 SYDNEY NSW 2000.