

# **PREQUALIFICATION SCHEME RULES: TALENT ACQUISITION**

**SCM0012**

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## Rules of participation in the Prequalification Scheme: Talent Acquisition

### 1. About these Rules

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- 1.1 The terms that apply to the Supplier’s participation in this Scheme are set out in:
- (a) clauses 1 to 46 of these Rules
  - (b) the Services are described in Schedules 1-4
  - (c) the Definitions in Annexure 2
  - (d) the Application Form in Appendix A submitted by the Supplier and accepted by the Principal Representative
  - (e) the terms and conditions for an engagement by a Customer (“Customer Order”) in Appendix B and incorporates the terms and conditions set out in Appendix C
  - (f) the Supplier Performance reporting requirements in Appendix D
- (together, the “Scheme”).
- 1.2 If there is any inconsistency between any parts of this Scheme, then the part listed higher prevails to the extent of the inconsistency.

### 2. General Overview

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#### 2.1 Purpose of the Scheme

- (i) allow Government to engage suppliers with less red tape
- (ii) make it easier for Suppliers to do business the NSW Government, in particular small to medium enterprises and regional businesses
- (iii) “open up” the contractual arrangements to more Suppliers
- (iv) better leverage the available talent pool that industry can offer
- (v) preserve the Government’s position of leverage within the market place
- (vi) be respectful of associated risk.

#### 2.2 Objective

- (i) This Scheme will be managed by the Principal and will leverage NSW Government buying power whilst opening up opportunities to small and medium enterprises, regional and boutique Suppliers. The Secretary, DFSI, will be the Principal of the Scheme. NSW Procurement, on behalf of the Principal, will manage this Scheme. This Scheme replaces SCM0227 (Prequalification Scheme – Executive Search) and A1651200 (Assessment Services Panel Contract).

### 3. Scheme Framework

- 3.1 The Scheme creates a new framework for the prequalification of Suppliers to provide a suite of products and services to source, assess and select talent for Executive and Non-Executive roles. The Scheme will be implemented in a phased approach. In phase one, the Scheme will include the four categories and associated products and services in the table below and as detailed in Schedules 1-4 as applicable.

**Scheme Categories:**

Category 1: Design and Delivery of Assessments	Category 2: Talent Search	Category 3: Psychometric Tools	Category 4: Recruitment Technologies
Design and delivery of assessments Design and delivery of assessment centres	Executive Non-Executive	Cognitive Ability Tests Skills-based Tests Personality Assessments Emotional Intelligence Assessments	Video Interviews Reference Checks

- 3.2 The scope of services under each of the Categories is outlined in Schedules 1-4, as applicable. Complementary arrangements that are NOT within the scope of this Scheme are:
- (i) Pre-employment Checks: including licence checks, qualification checks, performance history checks, financial responsibility checks and international checks. The Customer must use Contract CR0011 (Criminal Record Checks).
  - (ii) Print advertising: The Customer must use Contract DPC2017/008 (Media Customer Services).
  - (iii) Contingent Workers (Executive and Non-Executive): The Customer must use Scheme 0007 (Contingent Workforce).
  - (iv) Consultancy services: The Customer must use Contract SCM0005 (Performance and Management Services).
- 3.3 The Supplier must comply with recruitment and selection requirements contained in applicable government employment legislation, policies and guidelines. A Customer must work with the Supplier to ensure the requirements of merit-based employment under Part 3 of the *Government Sector Employment (General) Rules 2014* are met.
- 3.4 The Customer and Supplier are expected to promote workforce diversity in all processes related to sourcing, assessing and selecting candidates for roles.
- 3.5 The Customer must ensure that in filling roles, wherever possible consideration is given to meeting the Premier's Priority of driving public sector workforce diversity under which the NSW Government is working toward.

### 4. Engagement with a Supplier for the supply of Services

- 4.1 The Customer may seek services from Suppliers on the Scheme for engagement on an exclusive or non-exclusive basis.
- 4.2 The use of the Scheme by a Customer for the procurement of these products and services is mandatory. The Scheme includes a wide range of Suppliers who have been evaluated based on their capability, capacity and overall value for money to provide a range of products and services. The Suppliers on the Scheme have been screened to ensure compliance requirements have been met and many contractual issues resolved, enabling Customers to purchase with confidence and reduced risk.
- 4.3 The Customer may at any time issue a Customer Order to a Supplier for Services in accordance with these Rules.
- 4.4 Each Customer Order placed in accordance with these Rules will create a separate Agreement.

- 4.5 An Agreement between the Supplier and the Customer for the supply of the Services includes:
- (i) these Rules, including its Annexures; the applicable Customer Order set out in Appendix B, including any special conditions; and the standard Terms and Conditions set out in Appendix C. Prequalification under the Scheme does not guarantee the Supplier with any of the following: continuity of the prequalification during the duration of the Scheme
  - (ii) receipt of opportunities to tender
  - (iii) that Customer contracts or work of any kind or quantity will be offered
  - (iv) invitation to participate in a competitive process for the supply of services.

## 5. Customer Responsibilities

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- 5.1 The Customer is required to understand and comply with the NSW Procurement Board Goods and Services Policy Framework when engaging a Supplier under the Scheme.
- 5.2 The Customer can request a Request for Quote (RFQ) from one or more Suppliers for an assignment in any category. The Customer will evaluate the proposals and select the Supplier to undertake the assignment.
- 5.3 Each assignment allocated to a Supplier is considered a separate and distinct engagement. The Customer and Supplier must enter into a separate agreement for each engagement using the applicable Customer Order in Appendix B.

## 6. Code of Practice for Procurement

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- 6.1 The Supplier must adhere to the **NSW Procurement Board Policy Framework** (including NSW Government Procurement: Small and Medium Enterprises Policy Framework) at all times. Any breach of the NSW Procurement Board Policy Framework may result in the removal from the Scheme and/or termination of a Customer Order.
- 6.2 Suppliers must adhere to the Statement of Business Ethics (at <https://www.finance.nsw.gov.au/about-us/business-ethics>) and any conduct contrary to that statement may result in removal from the Scheme and/or termination of a Customer Order.
- 6.3 The Principal will regularly engage with the Suppliers through Supplier forums to provide updates and presentation slides will be made available on the ProcurePoint website.

## 7. Amendments to the Scheme

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- 7.1 The Scheme will be monitored by the Principal to assess whether the objectives and intent of the Scheme are being met. Modifications may be made at the Principal's discretion during the life of the Scheme.
- 7.2 The Scheme rules may be amended periodically by the Principal as required.
- 7.3 Suppliers must ensure they comply with the most recent version of the Scheme Rules which are available to view or download at [www.procurepoint.nsw.gov.au](http://www.procurepoint.nsw.gov.au)
- 7.4 Suppliers will be notified via email of amendments to the Scheme Rules.
- 7.5 The Principal may change a Supplier's status under the Scheme to include additional Categories where:
- (i) the Supplier considers that it is eligible for such an upgrade; and
  - (ii) the Supplier has submitted an Application for such an upgrade, including documentation and other material in support of its request.
- 7.6 The Principal may change a Supplier's status under the Scheme if the Supplier has requested formally in writing withdrawal from a Category.

## 8. Record and Employee Database Management

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- 8.1 Suppliers should maintain a comprehensive record and Employee database for all engagements including placement history and Customer details. Record management processes must comply with privacy legislation, NSW Government Digital Information Security Policy and the State Records Act (NSW 1988). Access to this data may be required by the NSW Government during the Scheme and should be granted by Supplier, subject to any legislative data and privacy requirements being met.



## 9. Financial Capacity and Stability

- 9.1 Applicants must be financially viable and demonstrate a record of financial viability over a 3-year period immediately prior to their Application for entry to the Scheme and/or meet any necessary financial security provisions requested by the Principal Representative.

## 10. Disclosure of Confidential Information

- 10.1 The Supplier must not disclose or make public any information or material acquired or produced in connection with any Customer Order made with a Customer for supply of the Services without the prior approval of the Customer and except for the purpose of exercising its rights or performing its obligations under that Contract.
- 10.2 Despite this clause 10, the Supplier acknowledges and agrees that the Principal and its Representatives may make available to any Customer information and materials concerning or relating to the Supplier or its performance of any Customer Order.
- 10.3 The Principal and Customers may disclose certain information in connection with the Scheme in accordance with the Government Information (Public Access) Act 2009 (NSW).
- 10.4 Information submitted with an Application will be treated as confidential by NSW Government Agencies unless otherwise required by law.
- 10.5 Information submitted with an Application may be subject to investigation, reference checking, searches, interview, enquiries and confirmation. Applicants and Suppliers are deemed to have authorised any such action.

## 11. Applications for Prequalification

- 11.1 The Applicant can apply for prequalification to one or more Scheme's categories listed in clause 3.1 of these Rules through the e-Tenders system.
- 11.2 The Applicant is not entitled at law or equity to recover any costs or expenses associated with the submission of an application.
- 11.3 In applying for Scheme prequalification, the Applicant agrees that it accepts the Rules.
- 11.4 Only those Applications which fully satisfy all requirements set out in these Rules and the application form in Appendix A will be considered by DFSI.
- 11.5 Applicants agree that, if granted admission to the Scheme, the terms and conditions of any engagement will be those of the Customer Order at Appendix B, incorporating these Rules and the terms and conditions in Appendix C and agree that it is necessary to sign the Customer Order for each or any engagement.

## 12. Prequalification Process

- 12.1 The Scheme will be composed of Suppliers who are approved to be accepted following the assessment of an Application submitted in the form prescribed in Appendix A and in accordance with these Rules.
- 12.2 The panel to be formed under the Scheme will be composed of Suppliers who are approved to be accepted following the assessment of an Application submitted in the form prescribed in Appendix A and in accordance with these Rules.
- 12.3 Applications may be made at any time during the life of the Scheme.

## 13. Evaluation Criteria

- 13.1 Applications will be assessed according to the following evaluation criteria:
- (i) demonstrated acceptance of Rules by the Applicant, including acceptance of Supplier Fees, willingness to comply with system and data collection requirements
  - (ii) demonstrated experience, satisfactory previous performance and Applicant referee reports
  - (iii) meeting appropriate insurance requirements
  - (iv) the requirements set out for each category, as summarised in Schedules 1 to 4.

Other checks will also be undertaken, such as but not limited to:

- (v) ACN
  - (vi) ABN
  - (vii) Company Directors
- 13.2 Those who do not meet clauses 13.1 and 0 **Error! Reference source not found.** will be invited to re-apply and will be assessed at the next periodical meeting of the Principal.
- 13.3 The Scheme will be composed of Suppliers who are determined to be accepted following an assessment of each submitted application for each relevant category, and in accordance with these Scheme rules.
- 13.4 The Assessment Committee will consider applications to each category and determine the membership of the Scheme, based on the evaluation criteria for each category.
- 13.5 Applications may be made at any time throughout the life of the Scheme but will be assessed periodically at the discretion of the Assessment Committee.
- 13.6 The Assessment Committee may accept an application (with or without qualification) or reject the application.
- 13.7 The Principal will notify Applicants in writing of the Assessment Body's decision.
- 14. Notification of Outcome**
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- 14.1 The Principal may accept an Application (with or without qualification) or reject the Application. Applicants will be notified in writing of the outcome of their Application.
- 15. Request for Review of the Decision**
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- 15.1 Should an Applicant believe that there are substantive grounds for the Principal to reconsider its 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:
- Director Category Management – Human Services, NSW Procurement  
Department of Finance, Services and Innovation  
Level 11, McKell Building  
2-24 Rawson Place  
SYDNEY NSW 2000
- 15.2 The Principal will refer the matter to the Review Committee and inform the Supplier of the outcome via email.
- 16. Changes to Supplier Status**
- 
- 16.1 Suppliers must immediately inform the Principal of any significant change in their financial capacity, capability, ownership status, contact details or address by writing with full details to [tas@finance.nsw.gov.au](mailto:tas@finance.nsw.gov.au) or as otherwise directed by the Principal.
- 16.2 The changes notified will be reviewed and assessed by the Principal as per the Scheme Rules.
- 17. Termination of membership by a Supplier**
- 
- 17.1 The Supplier may, at any time after the establishment of the relevant Scheme discontinue its participation in that Scheme on 90 days' notice to NSW Procurement, DFSI.
- 17.2 The Supplier must continue to fulfil its contractual obligations under any agreement entered into under the Scheme.
- 17.3 Customer Orders placed prior to a Supplier having discontinued its membership on the Scheme must be fulfilled, provided that the Customer may cancel or terminate or transition the Customer Order at the Customer's option without liability.
- 18. Customer Service Quality**
- 
- 18.1 Suppliers are required to provide high quality customer service suitable to the needs of the Customers of this Scheme. Customer service satisfaction shall be monitored by the Principal Representative and will inform decisions about continued participation in the Scheme.

- 18.2 The Supplier must have appropriately qualified and experienced Consultants dedicated to meet the range of recruitment requirements and should be dedicated to service this Scheme.

## 19. **Supplier Performance Management**

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- 19.1 The Principal will manage the performance of Suppliers by:
- (i) monitoring performance on tendering, financial capability and NSW Procurement Board Policy Framework compliance
  - (ii) applying sanctions, such as temporary suspension from the Scheme, where performance is determined to be unsatisfactory
  - (iii) revoking a Supplier's membership of the Scheme, following due consideration of the circumstances, where performance is determined to be unsatisfactory
  - (iv) providing the opportunity for a Supplier to request a review of the decisions referred in paragraphs ((ii)) and ((iii)) above.

## 20. **Sanctions**

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- 20.1 Sanctions may be imposed where the Supplier, an employee or any person acting on behalf of the Supplier engages in conduct that is misleading or deceptive, or is likely to mislead or deceive a Customer as to the Service Provider's prequalification status or capabilities; for breach of Scheme rules; for fraudulent behaviour or for poor performance.

## 21. **Vendor Neutrality**

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- 21.1 Where the Supplier is also the Managed Service Provider (under the NSW Government Contingent Workforce - Managed Service Provider Contract) for a Customer, the Supplier agrees that:
- (i) it will maintain vendor neutrality by ensuring it will not also provide 'Talent Search' services under Schedules 2A, 2B and 2C to that Customer; and
  - (ii) in its role as Managed Service Provider, it will select 'Talent Search' suppliers solely on the basis of proven performance as agreed with the Customer, and not show preferential treatment to Talent Search suppliers on any other basis

## 22. Relationship Management

- 22.1 The Relationship Manager as a single point of contact for the Principal Representative is to appropriately address any performance related matters raised by the Principal Representative and/or by Customers.
- 22.2 The Principal may object to and direct the Supplier to remove any of its personnel (including the Relationship Manager) who in their opinion are incompetent, unsuitable, or who have acted in breach of the Rules or other improper behaviour (without limitation, who have been dishonest). If requested, the Supplier will remove the named personnel and will not re-employ such personnel in connection with supply of Services pursuant to this Scheme.
- 22.3 The Relationship Manager will also be required to attend regular meetings between the Supplier and the Principal Representative as required.

## 23. Suspension from the Scheme

- 23.1 The Principal may suspend a Supplier from the Scheme for up to three (3) months if it considers that the Supplier has:
- (i) not complied with the Scheme Rules or
  - (ii) demonstrated unsatisfactory performance or
  - (iii) not complied with KPIs.
- 23.2 Before a Supplier's membership on the Scheme is suspended, the Principal will advise the Supplier in writing of the matters prompting the proposed action and will give the Supplier the opportunity to provide reasons as to why its membership should not be suspended.
- 23.3 The Principal 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 the Principal if and when the actions required to lift the suspension have been undertaken.
- 23.4 The Principal will regularly review the status of Suppliers who have been suspended under this clause 23. If the action taken by the Supplier is considered by the Principal to be insufficient, the suspension period may be extended and the supplier will be notified accordingly. The Principal may revoke the suspension if it is satisfied that the Supplier has taken appropriate action to address the reasons for the suspension.

## 24. Removal from the Scheme

- 24.1 The Principal may revoke a Supplier's membership on the Scheme if it considers that a Supplier's performance is unsatisfactory, the Supplier has not complied with relevant policies and laws or the Supplier is in breach of the Scheme Rules, including but not limited to, if the Supplier has:
- (i) provided false or misleading information with their Application to the Scheme
  - (ii) breached any of the Scheme Rules
  - (iii) failed to meet applicable financial requirements
  - (iv) been the subject of substantiated reports of unsatisfactory performance for other Customers
  - (v) been determined by the Principal as not suitable for future work
  - (vi) provided unsatisfactory performance with contracts under the Scheme
  - (vii) otherwise failed to meet the standards required of the Scheme in terms of project outcomes, business management systems, client satisfaction and ethical business practices
  - (viii) refused to supply Services to a Customer without reasonable grounds for such refusal
  - (ix) breached the NSW Government Code of Practice for Procurement.
- 24.2 Before a Supplier's membership on the Scheme is revoked, the Principal will advise the Supplier via email of the matters prompting the proposed action and will give the Supplier the opportunity to provide reasons as to why its membership should not be revoked.

## 25. Request for Review of Decision

- 25.1 Where a Supplier considers that there are substantive grounds for the Principal to reconsider its decisions for suspension or revocation, the Supplier may, within 20 days from the letter or email advising of the original decision, request a review of the decision in writing, by emailing full details of the reasons for the request for review to:
- Director Category Management – Human Services, NSW Procurement  
 Department of Finance, Services and Innovation  
 Level 11, McKell Building  
 2-24 Rawson Place  
 SYDNEY NSW 2000
- 25.2 The Principal will review and inform the Supplier of the outcome via email.

## 26. Re-Application Process

- 26.1 Suppliers who are removed from the Scheme can re-apply for admittance to the Scheme after 12 months from the date of removal.
- 26.2 During the Removal Period, no new Customer Orders can be entered into by a Supplier.

## 27. Disclaimer

- 27.1 The Assessment Committee reserves the absolute discretion to decide any of the following:
- (a) accept an application with or without limitations and/or conditions
  - (b) reject an application
  - (c) suspend a supplier's admission to the scheme
  - (d) revoke a supplier's admission to the scheme.
- 27.2 The Assessment Committee or personally its members will not be held liable for any costs or damages incurred by the Supplier in the exercise of such discretion.

## 28. Scheme Modification and Termination

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

- 28.2 The Scheme can be terminated with 90 days' notice at the sole discretion of the Principal by posting a Scheme Termination Notice on the NSW Government eTendering website.
- 28.3 The Principal and NSW Government agencies may disclose certain information regarding the Scheme in accordance with the Government Information (Public Access) Act (NSW) 2009 and the NSW Procurement Board Procurement Policy Framework.

## 29. **Compliance with Relevant Legislation and Standards**

- 29.1 In addition to any relevant legislation and standards not specified here, Suppliers must comply with the work health and safety requirements in the performance of this Scheme and any Codes of Practice, approved and issued pursuant to the Work Health and Safety Act 2011 and/or regulation made under the Act.

## 30. **Other Obligations**

- 30.1 In addition to the Supplier's obligations listed elsewhere in these Rules, Suppliers under the Scheme are subject to the following conditions:
- (i) the Supplier may be required to meet with the Principal at no charge on a few occasions each year to discuss relevant matters and provide a report on relevant issues
  - (ii) the Supplier must declare in the application to the Scheme, and during the life of the Scheme whilst a member of the Scheme, if it is subject to an ICAC proceeding
  - (iii) the Supplier must declare in the application to the Scheme, and during the life of the Scheme whilst a member of the Scheme, if they are being prosecuted or have been convicted of any breach of work health and safety legislation, environmental protection legislation, industrial relations legislation, and competition and consumer act, or any other laws that a prosecution or conviction would be relevant and material to the goods or services to be provided under the Scheme
  - (iv) the Supplier agrees to cooperate with any financial assessment required by the Assessment Committee
  - (v) the Supplier agrees that it accepts the Scheme Rules and any future changes
  - (vi) the Supplier agrees not to assign its membership under the Scheme.

## 31. **Online Systems**

- 31.1 The Principal will promote the existence of the Scheme on ProcurePoint and provide links for Customers to obtain more information about the Suppliers approved on the Scheme.
- 31.2 The Principal may implement a Vendor Management System (VMS) in relation to the engagement of Suppliers by Eligible Buyers. It is anticipated that the VMS selected will be accessed via the internet by both Eligible Buyer and the Supplier. All Suppliers on this Scheme agree to work with the VMS at no additional cost to the Customer. All suppliers agree to accept Recipient Created Tax Invoices ( RCTI ).
- 31.3 The Principal proposes to implement a panel of Managed Service Providers (MSP) arrangement. All Suppliers agree to work with the MSP where requested by the Principal Representative or an Eligible Buyer at no additional cost to the Customer.
- 31.4 The Principal may choose to implement additional online systems and/or portals during the term of the proposed Scheme. Any such new systems are not expected to entail any significant new costs to Suppliers and all Suppliers will be expected to use these nominated systems.

## 32. **Records**

- 32.1 The Supplier must keep and maintain all necessary records in relation to each Customer Order.
- 32.2 The Principal reserves the right to have a site inspection of the Supplier's premises or an audit of its records during the Scheme for the purpose of evaluating compliance with the Scheme.
- 32.3 The Principal may request additional information via email and/or the eTendering system. The Supplier must provide this information by the due date.

### 33. Marketing and Publicity

- 33.1 Suppliers must follow agreed and appropriate Customer guidelines with respect to the marketing of Talent Acquisition Services within the NSW Government. Written Customer agreement from an appropriate Customer Representative must be acquired prior to the commencement of any marketing activity. Customers reserve the right to demand the cessation of any marketing activity deemed to be inappropriate and/or unwanted by that Customer.
- 33.2 The Principal will promote the Scheme as follows:
- (a) a User Guide which will be published on the ProcurePoint website at <http://www.procurepoint.nsw.gov.au/>
  - (b) advertising in Government publications
  - (c) focused category management forums
  - (d) regular customer interactions by Category Managers and Client Services Officers
  - (e) Facility for the Suppliers to market their Services on the NSWBuy system.
- 33.3 Suppliers must not advertise, promote or publicise in any form their admission to the Scheme without the written consent of the Principal.

### 34. Value Added Services and Innovation

- 34.1 Value-added Services may be offered to Customers during the term of the Scheme but these Services must meet the intent of the Scheme and will be provided to Customers at no additional cost to the NSW Government.
- 34.2 Value-added Services which Suppliers may consider providing throughout the life of the Scheme may include but are not limited to:
- (a) offering technical assistance to Customers in the development of the job specifications
  - (b) eRecruitment via the VMS
  - (c) eRecruitment via the VMS and MSP
  - (d) Consolidated invoicing.

### 35. Professional Associations

- 35.1 The Principal prefers that Suppliers are current corporate members of an industry body/association such as the Recruitment and Consulting Services Association (RCSA) or the Information Technology Contract and Recruitment Association (ITCRA). The Principal expects that Suppliers will abide and agree to be bound by the guidelines set out by relevant industry associations.
- 35.2 Suppliers should note that where conflict exists between this Scheme and provisions under any professional association code of conduct (e.g. the RCSA Code for Professional Practice and/or the ITCRA's Code for Professional Practice) the provisions of this Scheme take precedence.

### 36. Small and Medium Enterprises

- 36.1 The Supplier must comply with applicable NSW Government policies and guidelines including the NSW Government Procurement: Small and Medium Enterprises Policy Framework (available at <http://www.procurepoint.nsw.gov.au/>).
- 36.2 Under the Scheme the Supplier must prepare a Small and Medium Enterprises Participation Plan (<http://www.procurepoint.nsw.gov.au/policy/goods-and-services/small-and-medium-enterprises-policy-framework>) (SMEPP) for contracts valued at \$10 million and above.

### 37. Right to Represent

- 37.1 In the case of a candidate being introduced by more than one Supplier for a particular role, the Candidate's choice of Supplier will be deferred to.



## SCHEDULE 1 – Design and Delivery of Assessments

### 1. General overview

- 1.1 Schedule 1 of the Talent Acquisition Scheme allows the Customer to engage a Supplier to design and / or deliver assessments, including pre- and post-assessments, for the recruitment and selection of executives and Non-Executives in the NSW public sector.
- 1.2 The Supplier should refer to the Public Service Commission's Recruitment and selection guide for information about assessments in the NSW public sector. This can be accessed at: [www.psc.nsw.gov.au/workforce-management/recruitment/recruitment-and-selection](http://www.psc.nsw.gov.au/workforce-management/recruitment/recruitment-and-selection).
- 1.3 The conditions in this schedule are specific to Design and Delivery of Assessments and should be read in conjunction with the Scheme's overarching terms and conditions.

### 2. Scope of Services

- 2.1 The Customer can engage a Supplier for the following services:
  - (i) high level design of assessments: for example, consulting with Customers to define approach and methodology, design the assessment and assessor training
  - (ii) delivery of assessments and assessment centres: for example, end to end delivery of assessments and assessment centres, including provision of assessors and assessor training
  - (iii) pre- and post-assessment activities: for example, development of candidate summary reports, and provision of candidate feedback
  - (iv) Design and deliver fit-for-purpose capability-based assessments, such as:
    - (a) interview questions and interviews
    - (b) work sample exercises
    - (c) situational judgment scenarios
    - (d) group activities
    - (e) role plays.
- 2.2 Design and deliver pre- or post-assessments (e.g. pre-screening questions or 360-degree feedback surveys).
- 2.3 Design and deliver assessment centres: for example, designing assessments and assessment centres and developing all resources.
- 2.4 Administer assessments and evaluate candidates against the capabilities, experience and knowledge required for the role.
- 2.5 The Customer can engage a Supplier to design and deliver in part or in full, any number of the assessment services described in 2.1 (above). For example:
  - (i) the Supplier is expected to ensure that assessments are designed to be inclusive to all applicants, including those from diversity groups
  - (ii) the Supplier is expected to ensure that adjustments are offered and made at all stages of the recruitment process in order to accommodate special needs, as required.

### 3. Excluded Services

- 3.1 Services for the procurement of Psychometric Tools and Recruitment technologies are excluded from Design and Delivery of Assessments. The Customer must refer to Schedule 3 and Schedule 4 of the Scheme, respectively, and use a Supplier pre-qualified to provide Psychometric Tools and recruitment technologies.

### 4. Conditions

- 4.1 The following conditions for inclusion in the Scheme apply. The Supplier must:
  - (i) design and deliver assessments that enable an evaluation of candidates' capabilities, experience and knowledge against the pre-established standards for the role using multiple assessment techniques



- (ii) explain to the Customer how assessments will evaluate the candidates' capabilities, experience and knowledge against the capabilities, experience and knowledge needed for the role
- (iii) confirm that assessments are administered correctly and that results can be interpreted accurately by the Customer
- (iv) ensure Assessors are from one or more of the following groups:
  - (a) registered Psychologists
  - (b) HR and / or candidate assessment professionals with relevant experience/certification
  - (c) job specialists (from the recruiting Customer or other relevant eligible buyer) who have been trained in administering assessments.
  - (d) representative of diversity groups, including being gender-balanced.
- (i) fully briefed on the assessment methodology to be used prior to commencement of an assignment
- (ii) provide information relating to qualifications and experience of Assessors to the Customer prior to the commencement of each assignment
- (iii) ensure that assessment centres are designed and administered by a registered psychologist with extensive experience in behavioural assessment methods
- (iv) ensure applicant information packages and instructions are standardised to ensure each candidate is given the same information throughout the process.

## 5. **Evaluation Criteria**

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- 5.1 Applicants applying for prequalification to provide services for the design and delivery of assessments will be assessed according to the evaluation criteria set out in the application form.

## 6. **Pricing**

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- 6.1 The Customer can obtain approved Supplier rates via the NSWBuy website.
- 6.2 The Customer and the Supplier will consider the scope of services to negotiate a total cost for the engagement.

## SCHEDULES 2A and 2B – Talent Search: Executive

### 1. General Overview

- 1.1 Talent Search will initially comprise Executive Search which applies to ongoing and term employment in senior executive roles including but not limited to, NSW Public Service senior executives, NSW Health senior executives, NSW Police Force senior executives, NSW Transport senior executives and other statutory senior executives.
- 1.2 Under phase two of the Scheme it is intended to include further sub-categories: Non-Executive roles and NSW Government boards and committees.
- 1.3 Applicants will be able to apply for Specialist Diversity Status as part of the application process. This would only apply to Applicants with demonstrated specialist knowledge, expertise or exclusive partnerships, in providing search services for Workforce Diversity groups, such as Aboriginal people and people with a disability.
- 1.4 Details of Suppliers for Talent Search are available on ProcurePoint.
- 1.5 The conditions in this schedule are specific to Talent Search and should be read in conjunction with the Scheme's overarching terms and conditions.

### 2. GSE structure

- 2.1 The GSE Act established a single, leaner, flatter and more mobile executive structure for the Public Service, known as Public Service senior executive (PSSE). For PSSEs, the GSE Regulation and GSE (General) Rules set out the employment arrangements including a model written executive contract to which they agree to be bound when they are employed.
- 2.2 The structure for the PSSE comprises the following four broad bands:
  - Band 4 – Department Secretaries
  - Band 3 – Deputy Secretaries and Customer Heads
  - Band 2 – Executive Directors
  - Band 1 – Directors
- 2.3 Since the GSE Act commenced, further reforms have been undertaken to align the senior executive employment arrangements in NSW Health Service (commencing 1 January 2017), NSW Transport Service (commencing 1 July 2017) and NSW Police Force (commencing 31 October 2017) with those in the Public Service.
- 2.4 Executive Search provides search services for ongoing and term employment in senior executive roles including but not limited to the NSW Public Service, NSW Health Service, NSW Police Force, NSW Transport and other statutory senior executives.
- 2.5 The Supplier list for Executive Search comprises two tiers which are based on the PSSE bands (see below):
  - (i) Level One: Bands 1 and 2 (or equivalent remuneration package)
  - (ii) Level Two: Bands 3 and above (or equivalent remuneration package)

### 3. Areas of specialisation

- 3.1 As part of the application process, Applicants will identify their areas of specialisation from the following list:

- Accounting and Finance
- Arts
- Education
- Engineering
- Generalist
- Health
- Human Resources
- ICT
- Insurance
- Legal
- Marketing & Communication
- Natural Resources
- Policy
- Procurement
- Property
- Safety
- Other

#### 4. Requirements

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4.1 The common requirements for Applicants applying for prequalification to provide Talent Search services are:

- (i) demonstrated experience in providing executive search services
- (ii) understanding and ability to comply with GSE legislation for recruitment, including application of the Capability Framework in recruitment processes
- (iii) demonstrated capacity to promote Workforce Diversity and accommodate the needs of key Workforce Diversity groups in all processes related to search services.

4.2 Additional Requirements – Level Two

The additional requirements for Applicants applying for prequalification to provide services for Level Two include demonstrated experience in providing executive search services for Deputy Secretaries / Agency Heads / Secretaries or equivalent.

#### 5. Scope of Services

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5.1 The indicative full suite of services under Executive Search is listed below. The Customer can engage a Supplier to deliver some or a full suite of services. The Customer and Supplier will consider the scope of services to be undertaken as part of the fee negotiations (refer to condition 8).

5.2 Sourcing

- (i) participate in initial briefing with the Customer to confirm scope of the assignment, engagement and delivery timetable
- (ii) provide consultation to the Customer regarding sourcing strategy and assessments required / recommended
- (iii) attend meetings with other relevant stakeholders as agreed with the Customer
- (iv) develop a sourcing plan for agreement by the Customer
- (v) draft advertisement copy for review by the Customer
- (vi) co-ordinate niche / specialised / specific non-usual bespoke non-standard online advertising as approved by the Customer
- (vii) create a candidate briefing document
- (viii) undertake sourcing activities as agreed
  - (a) Manage all candidate enquiries and applications
  - (b) Proactivity identify and approach talent

- (ix) engage potential candidates in discussions and develop candidate profiles for Customer review.
- 5.3 Short-listing
- (i) create a long list of candidates based on the role's capabilities for review by the Customer
  - (ii) conduct first round interviewing with candidates as agreed by the Customer
  - (iii) prepare a short list of candidates based on the role capabilities (including relevant documentation and candidate capability assessment outcomes)
  - (iv) liaise with the Customer to confirm candidates to be interviewed by the Assessors.
- 5.4 Interviewing and selecting
- (i) co-ordinate candidate interviews (date, venue, interview schedule, candidate attendance, interview questions, and all relevant assessment)
  - (ii) be available to attend interviews if required (as observer)
  - (iii) assist Assessors in reviewing the candidate capability assessment outcomes
  - (iv) conduct reference checks of preferred candidate(s) and provide transcripts to the Assessors
  - (v) create documentation to support the Assessor's final decision
  - (vi) notify and provide feedback to unsuccessful candidates
  - (vii) notify and manage successful candidate through the offer process
  - (viii) assist with on-boarding of successful candidate
  - (ix) consult with Customers to discuss suitability and performance of placed candidate(s) prior to end of candidate probation period.
6. **Excluded services**
- 
- 6.1 Services for the procurement of the design and delivery of assessment are excluded from Talent Search. The Customer must use Schedule 1 - Design and Delivery of Assessments in the Scheme for these services.
- 6.2 The Customer (not the Supplier) must book any print media using Contract DPC2017/008 (Media Customer Services) in accordance with government advertising policy.
- 6.3 The Customer, if deemed a Public Service Agency, must advertise roles on the I Work for NSW public website to meet the legal requirement for external advertising. Advertising on online job boards can also be booked through *I Work for NSW*.
7. **Pricing**
- 
- 7.1 The pricing for any assignment is dependent upon the scope of services to be undertaken by the Supplier.
- 7.2 The maximum price guide below is based on the indicative full suite of services (refer to condition 5.1) being undertaken by the Supplier and is calculated as a percentage fee negotiated no higher than the maximum remuneration package for the relevant Band.
- 7.3 The Customer will select to engage the supplier/s on an exclusive or non-exclusive basis.
- 7.4 The maximum price for a full suite of services as defined in clause 5.1 is as follows:

Maximum Price Guide - Full Suite of Services					
Band	Schedule	Maximum Fee	Milestone payments		
			Engagement	Shortlist	Placement
PSSE Bands 1 & 2 (or equivalent remuneration package)	<b>2A</b>	20%	1/3	1/3	1/3
PSSE Bands 3 & above 2 (or equivalent remuneration package)	<b>2B</b>	22%	1/3	1/3	1/3

- 7.5 Customers may select a partial recruitment service, selecting a subset of the services defined in clause 5.1.
- 7.6 Pricing for partial recruitment services is capped at the following rates:

Resource type	Description	Years of experience	Maximum resource rates (daily)
Partner	Senior Management member	12+	\$3,300
Director	Management member with deep expertise	10+	\$3,000
Senior Manager	Senior employee with significant specialist expertise and team leadership capabilities	8+	\$2,650
Manager	Junior level of entity management, specialist technical and subject matter expertise; manages assignment schedules and resource allocation	6+	\$2,050
Senior Consultant	Field leadership role, moderate level of technical and subject matter expertise; provides business system advice and consulting services	4+	\$1,600
Consultant	Performs detailed data and systems analysis, identifies risks, gathers additional data, interprets data and provides recommendations for improvement. Higher level technical skills, broader experience base, business process & industry knowledge and requiring less supervision than an analyst	<4	\$1,300
Analyst	Performs data gathering and analysis with strong technical skills. Low level of industry knowledge. Supervised by more senior members.	0-4	\$1,000

7.7 The 'placement' fee is not payable to the Supplier should no candidate be appointed, for any reason. If the Customer subsequently appoints a candidate/s from the short or long list provided by the Supplier, the Customer will pay the Supplier the total recruitment fee that applies to the engagement. This condition will only apply for 12 months from the date the short or long list is received by the Customer.

## 8. Talent Pools

8.1 The Customer can create a Talent Pool for any assignment under Executive Search where the Assessors consider the other candidate(s) have also met the pre-established standards for the role.

8.2 The Supplier is only entitled to charge a maximum of 1/3 of the total agreed fee (the placement fee only) for any subsequent placements resulting from the Talent Pool. Where further services are required of the Supplier in making the appointment the Customer will negotiate such a fee with the Supplier based on the further services undertaken by the Supplier. This condition will only apply for 12 months from the date the short or long list is received by the Customer.

8.3 A Supplier is not entitled to renegotiate the fee structure when a placement is made from the Talent Pool.

8.4 The Talent Pool remains the property of NSW Government.

## 9. Interim Executives

9.1 Interim executives are to be sourced and services charged for in accordance with the Talent Acquisition Scheme (SCM0012) by Prequalified suppliers then will be administered and managed under the Prequalification Scheme: Contingent Workforce (SCM0007).

9.2 The agreed fee must include all costs of the Supplier. The Supplier must not charge the Customer for their employee related cost, data processing, provision of personal computers, any other tools or equipment required in the provision of services, travel costs within the Sydney Metropolitan Area and any administration fee, disbursement or other charges such as photocopying, facsimile, delivery, telephone, searching fees, transport and couriers.

9.3 The Supplier may be reimbursed for any direct out-of-pocket expenses but must be approved by the Customer before being committed by the Supplier. The list of out-of-pocket expenses includes, but is not limited to the following:

- (i) candidate travel and accommodation (outside the Sydney Metropolitan Area or Interstate or Overseas)
- (ii) consultant travel and accommodation (outside the Sydney Metropolitan Area or Interstate)
- (iii) video-conferencing.

9.4 The Supplier is to invoice the Customer for the actual cost of the approved out-of-pocket expenses. For candidate and consultation travel and accommodation the Supplier must charge the lesser amount between the actual cost and the travel rates specified in the NSW Treasury annual circular related to travel. The current circular is available at <https://www.procurepoint.nsw.gov.au/buying/travel-and-related-services/travel-policies>.

## 10. Performance guarantee

10.1 The Supplier must find a suitable replacement at no cost to the Customer (except for agreed expenses) should the candidate leave the Customer within six months of start date for any reason other than restructure, redundancy or non-performance related reasons.

10.2 The Supplier will not approach a candidate, placed as result of the Supplier's service, to consider another role within 12 months of the date of appointment.

## 11. Sourcing and Retention Capability

11.1 Suppliers should actively promote the NSW Government as an "employer of choice" and market the benefits of working with the NSW Government to potential Contingent Worker(s) (to source for NSW Government) and to current Contingent Worker(s) (to retain within the NSW Government). Some of the key benefits Suppliers can use in promotion are:

- (i) flexible working conditions
- (ii) variety of roles and opportunities across the NSW Government
- (iii) opportunity to gain competence in working in a government environment
- (iv) experience working in a broad, diverse and large organisation
- (v) opportunities to contribute to the development of the State.

## 12. **Geographical Coverage**

- 12.1 The Scheme covers all NSW agencies and eligible buyers.

## 13. **Relocation**

- 13.1 Relocation fees of any kind are to be agreed by the Customer and the Supplier prior to the engagement of the Employee. All relocation fees shall be at cost to the Customer and a Customer must use a NSW Government contract/s that will support the relocation effort.

## 14. **Customer Order**

- 14.1 The Customer Order shall be developed by the Customer and specify, as a minimum, the information contained in Appendix B of the Scheme. No placement of candidate to a Customer is to occur without receipt of a Customer Order from the Customer.

## 15. **Electronic Data Exchange**

- 15.1 Where Customers elect to conduct business electronically, the Supplier agrees to use that platform for data exchange as directed by the Customer and at no additional cost to the Customer.

## 16. **Quality and Qualifications of Candidates**

- 16.1 Suppliers are required to provide high quality Candidate(s) to meet the needs of Customers.
- 16.2 Skill level and requirements will be determined at the time of the Customer providing the Supplier with the specifications for Candidate(s). Where a Category is Award-based, the skill level and requirements must comply with the relevant Awards or agreement. It is the responsibility of the Supplier to advise the Customer if Award conditions apply to a particular role and specifically what they are and when they apply.
- 16.3 It is a requirement that (where practical) Suppliers provide a maximum of three (3) screened Candidate profiles as standard practice.
- 16.4 The Supplier must ensure that the Candidates being provided to the Customer hold the relevant licences / certificates of competency.



## SCHEDULE 2C – Talent Search: Non-Executive

### 1. General Overview

- 1.1 Talent Search: Non-Executive applies to recruitment services for the employment of the NSW Public Service employees, other than senior executives, on an ongoing or temporary basis.
- 1.2 Recruitment in the NSW Public Service is governed by the *Government Sector Employment Act 2013* (GSE Act).
- 1.3 Before engaging a Non-Executive Search Supplier, Customers should consider alternative recruitment models which may include: mobility provisions (reassignment, transfer or secondment), accessing candidates from agency specific talent pools or accessing candidates from public service wide recruitment pools. The decision to engage a Non-Executive Search Supplier must have regard to overall value for money.
- 1.4 Applicants for Talent Search: Non-Executive will be assessed on their capability to provide recruitment services in accordance with the GSE Act requirements for recruitment of Public Service Non-Executive employees.
- 1.5 Non-Public Service Customers in the government sector, including those in the NSW Health Service, NSW Transport Service, NSW Police Force, and Teaching Service, can use Talent Search: Non-Executive to source recruitment services for Non-Executive roles, and must brief Suppliers on the recruitment requirements under their governing legislation or relevant policies.
- 1.6 Details of Suppliers for Talent Search - Non-Executive are available on ProcurePoint.
- 1.7 The conditions in this schedule are specific to Talent Search Non-Executive and should be read in conjunction with the Scheme's overarching terms and conditions.

### 2. GSE Structure

- 2.1 Recruitment in the NSW Public Service is governed by a legal framework that includes:
  - (i) *Government Sector Employment Act 2013 (GSE Act)*  
The GSE Act establishes an ethical framework where recruitment and promotion of employees is on the basis of merit. Division 5 of the GSE Act enables the employment of Public Service employees (other than senior executives). It provides for employment in a classification of work and assignment to a role in that work classification on an ongoing or temporary basis
  - (ii) *Government Sector Employment Regulation 2014 (GSE Regulation)*
  - (iii) *the GSE Regulation supports the GSE Act, with information on Public Service employment, including general conditions of employment, and workforce diversity*
  - (iv) *Government Sector Employment (General) Rules 2014 (GSE Rules)*
  - (v) *the GSE Rules deal with any matter relating to the employment of Public Service non-executive employees. Part 3 of the GSE Rules deals sets out a number of matters, including: recruitment, including the recruitment process and the application of the principle of merit; the conditions of engagement; and capabilities for roles.*
- 2.2 Recruitment in the non-Public Service of the government sector may align with those under the GSE Act for the NSW Public Service, to the extent provided for in their governing legislation.

### 3. Areas of specialisation

3.1 As part of the application process, Applicants will identify their areas of specialisation from the following list:

- Accounting and Finance
- Administration
- Health
- Human Resources
- ICT and Digital
- Construction/Engineering
- Customer Service
- Marketing & Communication
- Natural Resources/Environment
- Policy
- Procurement
- Property
- Safety
- Transport
- Volume Recruitment Solutions
- Other

### 4. Requirements

4.1 The common requirements for Applicants applying for prequalification to provide Non-Executive recruitment services are:

- (i) demonstrated experience in providing Non-Executive recruitment services
- (ii) understanding and ability to comply with GSE legislation for recruitment, including application of the Capability Framework in recruitment processes
- (iii) demonstrated capacity to promote Workforce Diversity and accommodate the needs of key Workforce Diversity groups in all processes related to search services.

### 5. Scope of Services

5.1 The indicative full suite of services under Talent Search: Non-Executive are listed below.

#### 5.2 Sourcing

- (i) participate in initial briefing with the Customer to confirm scope of the assignment, engagement and delivery timetable
- (ii) provide consultation to the Customer regarding sourcing strategy and assessments required / recommended
- (iii) attend meetings with other relevant stakeholders as agreed with the Customer
- (iv) develop a sourcing plan for agreement by the Customer
- (v) draft advertisement copy for review by the Customer
- (vi) co-ordinate non-standard online advertising as approved by the Customer
- (vii) create a candidate briefing document
- (viii) undertake sourcing activities as agreed
  - (a) Manage all candidate enquiries and applications
  - (b) Proactivity identify and approach talent
- (xi) engage potential candidates in discussions and develop candidate profiles for Customer review.

#### 5.3 Short-listing

- (i) create a long list of candidates based on the role's capabilities for review by the Customer
- (ii) conduct first round interviewing with candidates as agreed by the Customer
- (iii) prepare a short list of candidates based on the role capabilities (including relevant documentation and candidate capability assessment outcomes)
- (iv) liaise with the Customer to confirm candidates to be interviewed by the Assessors.

#### 5.4 Interviewing and selecting

- (i) co-ordinate candidate interviews (date, venue, interview schedule, candidate attendance, interview questions, and all relevant assessment)
- (ii) be available to attend interviews if required (as observer)
- (iii) assist Assessors in reviewing the candidate capability assessment outcomes
- (iv) conduct reference checks of preferred candidate(s) and provide transcripts to the Assessors'
- (v) create documentation to support the Assessor's final decision
- (vi) notify and provide feedback to unsuccessful candidates
- (vii) notify and manage successful candidate through the offer process
- (viii) assist with on-boarding of successful candidate
- (ix) consult with Customers to discuss suitability and performance of placed candidate(s) prior to end of candidate probation period.

#### 6. Excluded services

- 6.1 Services for the procurement of the design and delivery of assessment are excluded from Talent Search. The Customer must use Schedule 1 - Design and Delivery of Assessments in the Scheme for these services.
- 6.2 Services for the procurement of senior executives are excluded from Talent Search – Non –Executive. The Customer must use Schedules 2A and 2B in the Scheme for these services.
- 6.3 The Customer (not the Supplier) must book any print media using Contract DPC2017/008 (Media Customer Services) in accordance with government advertising policy.
- 6.4 The Customer, if deemed a Public Service Agency, must advertise roles on the I Work for NSW public website to meet the legal requirement for external advertising. Advertising on online job boards can also be booked through *I Work for NSW*.

#### 7. Pricing

- 7.1 The pricing for any assignment is dependent upon the scope of services to be undertaken by the Supplier.
- 7.2 The maximum price guide below:
  - (i) is based on the indicative full suite of services (refer to clause 5) being undertaken by the Supplier
  - (ii) is calculated as a percentage fee of the TRP agreed at commencement of the assignment
  - (iii) is no higher than the maximum TRP for the relevant role.
- 7.3 The Customer will select to engage the Supplier/s on an exclusive or non-exclusive basis.
- 7.4 The maximum price for a full suite of services as defined in clause 5.1 is as follows:

Maximum Price Guide - Full Suite of Services	
Salary	Maximum Fee
Agreed Total Remuneration Package (TRP) for the Non-Executive role	12%

- 7.5 Customers may select a partial recruitment service, selecting a subset of the services defined in clause 5.1.

7.6 Pricing for partial recruitment services is capped at the following rates:

Resource type	Description	Years of experience	Maximum resource rates (daily)
Partner	Senior Management member	12+	\$3,300
Director	Management member with deep expertise	10+	\$3,000
Senior Manager	Senior employee with significant specialist expertise and team leadership capabilities	8+	\$2,650
Manager	Junior level of entity management, specialist technical and subject matter expertise; manages assignment schedules and resource allocation	6+	\$2,050
Senior Consultant	Field leadership role, moderate level of technical and subject matter expertise; provides business system advice and consulting services	4+	\$1,600
Consultant	Performs detailed data and systems analysis, identifies risks, gathers additional data, interprets data and provides recommendations for improvement. Higher level technical skills, broader experience base, business process & industry knowledge and requiring less supervision than an analyst	<4	\$1,300
Analyst	Performs data gathering and analysis with strong technical skills. Low level of industry knowledge. Supervised by more senior members.	0-4	\$1,000

- 7.7 The 'placement' fee is not payable to the Supplier should no candidate be appointed, for any reason. If the Customer subsequently appoints a candidate/s from the short or long list provided by the Supplier, the Customer will pay the Supplier the total recruitment fee that applies to the engagement. This condition will only apply for 12 months from the date the short or long list is received by the Customer.

8. **Talent Pools**

- 8.1 The Customer can create a Talent Pool for any assignment under Non-Executive Search where the Assessors consider the other candidate(s) have also met the pre-established standards for the role.
- 8.2 The Supplier is only entitled to charge a maximum of 1/3 of the total agreed fee (the placement fee only) for any subsequent placements resulting from the Talent Pool. Where further services are required of the Supplier in making the appointment the Customer will negotiate such a fee with the Supplier based on the further services undertaken by the Supplier. This condition will only apply for 12 months from the date the short or long list is received by the Customer.
- 8.3 A Supplier is not entitled to renegotiate the fee structure when a placement is made from the Talent Pool.
- 8.4 The Talent Pool remains the property of NSW Government.

9. **Performance guarantee**

- 9.1 The Supplier must find a replacement candidate for the position at no cost to the Customer (except for agreed expenses) should the candidate cease employment with the Customer within the candidate probation period for any reason other than restructure, redundancy or non-performance related reasons.
- 9.2 The Supplier will not approach a candidate, placed as result of the Supplier's service, to consider another role within 12 months of the date of appointment.

## 10. **Sourcing and Retention Capability**

- 10.1 Suppliers should actively promote the NSW Government as an “employer of choice” and market the benefits of working with the NSW Government to potential employees. Some of the key benefits Suppliers can use in promotion are:
- (i) is based on the indicative full suite of flexible working conditions
  - (ii) variety of roles and opportunities across the NSW Government
  - (iii) opportunity to gain competence in working in a government environment
  - (iv) experience working in a broad, diverse and large organisation
  - (v) opportunities to contribute to the development of the State.

## 11. **Geographical Coverage**

- 11.1 The Scheme covers all NSW agencies and eligible buyers.

## 12. **Relocation expenses**

- 12.1 The Customer is responsible for the payment of relocation expense allowances (if any) to the successful candidate for a Non-Executive role.

## 13. **Customer Order**

- 13.1 The Customer Order shall be developed by the Customer and specify, as a minimum, the information contained in Appendix B of the Scheme. No placement of candidate to a Customer is to occur without receipt of a Customer Order from the Customer.

## 14. **Electronic Data Exchange**

- 14.1 Where Customers elect to conduct business electronically, the Supplier agrees to use that platform for data exchange as directed by the Customer and at no additional cost to the Customer.

## 15. **Quality and Qualifications of Candidates**

- 15.1 Suppliers are required to provide high quality Candidate(s) to meet the needs of Customers.
- 15.2 Skill level and requirements will be determined at the time of the Customer providing the Supplier with the specifications for Candidate(s). Public Service employees are typically covered by several industrial instruments. The Customer is responsible for including in the specifications, the name of the industrial instruments that govern the role's salary, conditions of employment and any occupational qualifications.
- 15.3 It is a requirement that (where practical) Suppliers provide a maximum of three (3) screened Candidate profiles as standard practice.
- 15.4 The Supplier must ensure that the Candidates being provided to the Customer hold the relevant licences / certificates of competency.

## SCHEDULE 3 – Psychometric Tools

- 1. General Overview**
  - 1.1 Schedule 3 of the Talent Acquisition Scheme allows the Customer to engage a Supplier to provide and administer approved psychometric tools.
  - 1.2 The Supplier should refer to the Public Service Commission's Recruitment and Selection guide for information about assessments in the NSW public sector. This can be accessed at: [www.psc.nsw.gov.au/workforce-management/recruitment/recruitment-and-selection](http://www.psc.nsw.gov.au/workforce-management/recruitment/recruitment-and-selection).
  - 1.3 The conditions in this schedule are specific to Psychometric Assessment Tools and should be read in conjunction with the Scheme's overarching terms and conditions.
- 2. Scope of Services**
  - 2.1 Under this Schedule, the Customer can engage a Supplier for the following services:
  - 2.2 Supply and deliver psychometric assessment tools, such as:
    - (a) Cognitive ability tests - Verbal reasoning, Numerical reasoning, Abstract reasoning
    - (b) Skills-based tests
    - (c) Personality assessments
    - (d) Emotional intelligence assessments.
  - 2.3 Provide candidate feedback services either face-to-face, over the phone, or a combination of both.
  - 2.4 The Customer should work with the Supplier to ensure that each psychometric tool is appropriate for all applicants, including those from diversity groups, and make reasonable adjustments in order to accommodate special needs, as required.
- 3. Excluded Services**
  - 3.1 Services for the procurement of design and delivery of assessments and recruitment technologies are excluded from Schedule 3 – Psychometric Tools. The Customer must refer to Schedule 1 and Schedule 4 of this Scheme, respectively, and use a Supplier pre-qualified to provide the relevant service(s).
- 4. Conditions**
  - 4.1 The following conditions apply for inclusion in the Scheme and for the delivery of services detailed under this Schedule:
  - 4.2 The Supplier must:
    - (i) administer the psychometric tool to each candidate either online, face-to-face or over the phone
    - (ii) only use Psychometric Tools that have been approved for use under this Scheme
    - (iii) brief the assessors about how Psychometric Tools will enable evaluation of candidate's capabilities, experience and knowledge for the specific role or role type
    - (iv) brief assessors on the Psychometric Tools that they offer to ensure that they are administered correctly and results are to be interpreted by the end user
    - (v) provide a summary report outlining how each candidate performed against the capabilities assessed
    - (vi) offer candidate feedback services, face-to-face, over the phone, or a combination of both. Consideration must be given to the appropriate method of contact for people with disability
  - 4.3 The Customer must only purchase Psychometric Tools that are prequalified under the Scheme
  - 4.4 All candidate data is the property of the NSW Government.
- 5. Prequalified psychometric tools**
  - 5.1 The Supplier can apply to have additional Psychometric Tools prequalified. The Psychometric Assessment Tools will be evaluated periodically, as determined by the Department.

- 5.2 A full list of the Psychometric Tools prequalified under this Scheme is available on ProcurePoint.
- 5.3 The Supplier must ensure that all Psychometric Assessment Tools are mapped to the NSW Public Sector Capability Framework and provide evidence of this as part of their application.

6. **Evaluation Criteria**

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- 6.1 Suppliers applying for prequalification to deliver Psychometric tools will be assessed according to the evaluation criteria set out in the application form.

7. **Pricing**

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- 7.1 The Customer can obtain approved Supplier rates via the NSWBuy website.
- 7.2 The Customer and Supplier will consider the scope of services to negotiate a total cost for the engagement.

8. **Excluded Costs and Charges**

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- 8.1 The agreed pricing must include all costs of the Supplier. The Supplier must not charge the Customer for employee related cost, data processing, the provision of personal computers, any other tools or equipment required in the provision of services, travel costs within the Sydney Metropolitan Area, administration, disbursement or other charges such as photocopying, facsimile, delivery, telephone, searching fees, transport and couriers.

## SCHEDULE 4 – Recruitment Technologies

### 1. General Overview

- 1.1 Schedule 4 of the Talent Acquisition Scheme allows the Customer to engage a Supplier to provide and administer approved recruitment technologies.
- 1.2 The Supplier should refer to the Public Service Commission's Recruitment and selection guide for information about assessments in the NSW public sector. This can be accessed at: [www.psc.nsw.gov.au/workforce-management/recruitment/recruitment-and-selection](http://www.psc.nsw.gov.au/workforce-management/recruitment/recruitment-and-selection).
- 1.3 The conditions in this schedule are specific to Recruitment Technologies and should be read in conjunction with the Scheme's overarching terms and conditions.

### 2. Scope of Services

- 2.1 Under this Schedule, the Customer can engage a Supplier to provide and administer approved recruitment technologies, such as Video interviewing software.
- 2.2 The Customer should work with the Supplier to ensure that each recruitment technology is appropriate for all applicants, including those from diversity groups, and to make reasonable adjustments in order to accommodate special needs, as required.

### 3. Excluded Services

- 3.1 Services for the procurement of the design and delivery of assessments and Psychometric Assessment Tools are excluded from Schedule 4 – Recruitment technologies. The Customer must refer to Schedule 1 and Schedule 3 of the Scheme, respectively, and use a pre-qualified Supplier to provide the relevant product(s) and service(s).

### 4. Conditions

- 4.1 The following conditions apply for the delivery of services under this Schedule:
  - (i) The Supplier must:
    - a) only provide recruitment technologies that have been approved for use under the Scheme
    - b) administer the recruitment technology to each candidate either online, face-to-face or over the phone
    - c) brief Assessors on the recruitment technologies that they offer to ensure that they are administered correctly and that the results can be interpreted by the end user
  - (ii) The Customer must only purchase recruitment technologies that have been approved for use under the Scheme.



## 5. Prequalified recruitment technologies

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- 5.1 The Supplier can only use recruitment technologies that are prequalified under the Scheme.
- 5.2 The Supplier can apply to have additional recruitment technologies prequalified. The recruitment technologies will be evaluated periodically, as determined by the Principal.
- 5.3 A full list of the recruitment technologies prequalified under this Scheme is available on ProcurePoint [www.procurepoint.nsw.gov.au](http://www.procurepoint.nsw.gov.au)

## 6. Evaluation Criteria

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- 6.1 Suppliers applying for prequalification to provide and deliver recruitment technologies will be assessed according to the evaluation criteria set out in the application form.

## 7. Pricing

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- 7.1 The Customer can obtain approved Supplier rates via the NSWBuy website.
- 7.2 The Customer and Supplier will consider the scope of services to negotiate a total cost for the engagement.
- 7.3 The agreed pricing must include all costs of the Supplier. The Supplier must not charge the Customer for employee related cost, data processing, the provision of personal computers, any other tools or equipment required in the provision of services, travel costs within the Sydney Metropolitan Area, administration, disbursement or other charges such as photocopying, facsimile, delivery, telephone, searching fees, transport and couriers.

## Appendix A – Application Form

1. All Applications must be submitted online via the “Supplier Application Form” link on the NSW Procurement website at <https://tenders.nsw.gov.au>
2. A summary of the Application Form can be viewed via the above link and Applications can be submitted by clicking “Submit Application”.
3. Enquiries are to be directed to [tas@finance.nsw.gov.au](mailto:tas@finance.nsw.gov.au)

## Appendix B – Customer Order Forms

1. Eligible Buyers may at any time issue a [Customer Order](#) to a Prequalified Supplier for Services in accordance with the Scheme Rules.
2. Each assignment allocated to a Supplier is considered a separate and distinct engagement.
3. The Customer and Supplier must enter into a separate agreement for each engagement using the Customer Order available at [www.procurepoint.nsw.gov.au](http://www.procurepoint.nsw.gov.au).
4. Where the total value of the relevant Customer order is more than \$150,000 (including GST) a Request for Quote (RFQ) from two or more Suppliers for an assignment in any category is required. The Customer will evaluate the proposals and select the Supplier to undertake the assignment.
5. Enquiries are to be directed to [tas@finance.nsw.gov.au](mailto:tas@finance.nsw.gov.au)

## Appendix C – Terms and Conditions

### 1 Background

The Supplier is a member of the Talent Acquisition Prequalification Scheme (“the Scheme”).

The Customer requires the provision of Services from the Supplier set out in the Customer Order it has provided to the Supplier.

The Supplier has agreed to supply the Services on the terms and conditions of this Agreement.

The Supplier has fully informed itself of all aspects of the Customer’s requirements as set out in the Customer Order and applicable Schedule.

### 2 Definition and Interpretation

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

**‘Agreement’** refers to a Customer Order, these terms and conditions, the Scheme Rules 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 Supplier by the Customer, 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 ought to know is confidential; and includes but is in no way limited to:
  - i the Contract Material
  - ii the Customer Material
  - iii any material which relates to the affairs of a third partybut 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 Principal or a third party
  - D. is required to be disclosed pursuant to law, regulation, legal process or a regulatory authority.

**‘Contract End Date’** means the date specified in the Customer Order.

**‘Contract Material’** means any Material created, written or otherwise brought into existence by the Supplier in the course of performing this Agreement in which subsists newly created Intellectual Property rights but for the avoidance of doubt does not include Customer IP or Supplier IP.

**‘Contract Start Date’** means the date specified in the Customer Order.

**‘Customer Material’** means any Material supplied by the Customer to the Supplier by whatever means in relation to this Agreement.

**‘Customer IP’** means any Intellectual Property Rights of the Customer in existence at the date of this Agreement.

**‘Existing IP’** includes:

- a) any Material which exists at the date of this Agreement
- b) any Customer IP
- c) any Supplier IP

which is incorporated in the Contract Material.

**‘Fee’** means the fee or fees described in the Customer Order.

**'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.

**Infringement Claim** means any claim which would, if true, involve a breach of a warranty under clause 9.

**'Intellectual Property Rights'** 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.

**'Performance Standards'** means the performance standards set out in Annexure One to the Scheme Rules.

**'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.

**'Records'** means all records and documentation relating to the Agreement.

**'Schedule'** means Schedule 1, 2, 3 or 4, as applicable, for the category of services to be provided under the Customer Order.

**'Services'** means the services set out in the Customer Order and applicable Schedule to the Scheme Rules and any incidental or related services requested in writing by the Customer.

**'Supplier'** includes the officers, employees, agents and subcontractors of the Supplier.

**'Supplier IP'** 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 Supplier before or after the date of this Agreement, otherwise than in the course of performing this Agreement.

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

**'Term'** means the period of the Agreement as set out in the Customer Order.

## 2.2

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
- 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.

- 2.3** 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.

### **3 Engagement and Term**

- 3.1** The Customer engages the Supplier to provide the Services in accordance with this Agreement.
- 3.2** The Supplier shall commence the Services on the Contract Start Date set out in the Customer Order or on such date as may be agreed in writing between the parties and continues until the Contract End Date or termination of the Agreement.

### **4 Formation of Agreement**

#### **4.1 Parts of Agreement**

The Agreement between the Customer and Supplier consists of:

- (a) the Special Conditions if any, specified in the Customer Order
- (b) these Terms and Conditions
- (c) the other parts of the Customer Order, including any attachments
- (d) the applicable Schedule
- (e) the Scheme Rules.

If there is an inconsistency between the parts referred to in paragraphs (a) to (e) above, then the provision in the part higher in the list prevails to the extent of the inconsistency.

### **5 Supplier Obligations**

- 5.1** The Supplier must provide the Services in compliance with the Schedule and Customer Order and to a standard that meets or exceeds any applicable Performance Standards.
- 5.2** If the Supplier fails to meet any Performance Standard, then the Supplier must at no additional cost to the Customer promptly:
- (a) if requested by the Customer, in the case of Services re-perform those Services which gave rise to the failure to meet the Performance Standard
  - (b) use all reasonable endeavours to correct the issue which caused the failure to meet the Performance Standard
  - (c) arrange all additional resources reasonably necessary to perform the Services in accordance with the Performance Standard as soon as practicable
  - (d) if requested by the Customer, provide a detailed report on the steps taken by the Supplier to prevent similar future non-compliance with the Performance Standards.
- 5.3** The Supplier must ensure it maintains sufficient capability and resources in relation to Services to meet its obligations under this Agreement.
- 5.4** The Supplier must perform its obligations under the Agreement:
- (a) in accordance with best industry practice
  - (b) with all due care, skill and diligence expected of a professional service supplier
  - (c) in a cost effective manner consistent with the required level of quality and performance.
- 5.5** If a Supplier, or any of its officers, employees, agents or sub-contractors is found to have:
- (a) offered any inducement or reward to any public servant or employee, agent or subcontractor of the Principal, Customer or the NSW Government in connection with the Agreement
  - (b) committed corrupt conduct in the meaning of the Independent Commission Against Corruption Act 1988
  - (c) a record or alleged record of unethical behaviour; or not complied with the requirements of the Customer's Business Ethics Statement.

- (d) improper conflicts of interest by the Supplier
- then the Customer reserves the right to terminate the Agreement.

The Supplier must:

- (a) ensure that the Services comply with all relevant laws that relate to or otherwise apply to the Services (as applicable)
- (b) comply with all laws, codes and standards relating to its supply of Services, including the *State Records Act NSW* (1988)
- (c) comply with all Customer standards, policies and procedures notified from time to time (other than any which are expressly inconsistent with the Agreement) including but not limited to the following:
  - (i) NSW Government Procurement Policy Framework
  - (ii) Small to Medium Enterprise Policy Framework
  - (iii) Statement of Business Ethics
  - (iv) NSW Government Digital Information Security Policy.
- (d) comply with all other reasonable requirements and directions of the Customer in relation to the Services.

## 6 Customer Obligations

- 6.1** The Customer will, as soon as practicable, make available to the Customer all relevant material and particulars within the Customer's possession or control, give all necessary instructions and answer any queries made by the Supplier relating to the Customer's requirements in connection with this Agreement.
- 6.2** In consideration of the provision of the Services in accordance with this Agreement, the Customer will pay the Supplier the fees specified in the Customer Order.
- 6.3** Payment of any part of the fees does not constitute an acceptance by the Customer of the Services and does not amount to a waiver of any right or action which the Customer may have at any time against the Supplier.
- 6.4** 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.

## 7 Pricing and Invoicing

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

## 8 GST

### 8.1 Taxes

The Supplier is responsible for all Taxes arising from or relating to the Agreement, and must pay Taxes which are imposed on the Supplier arising from or relating to the Agreement, except for any income tax or capital gains tax payable by the Customer.

### 8.2 GST

The parties agree that:

- (e) unless expressly stated otherwise, all amounts payable by the Customer to the Supplier under the Agreement are inclusive of GST
- (f) if a supply under the Agreement is subject to GST, and the consideration payable or to be provided for the supply is not inclusive of GST, then the party receiving the supply must pay to the party making the supply an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate
- (g) the additional amount is payable at the same time as the consideration for the supply is payable
- (h) if the additional amount differs from the amount of GST payable by the party making the supply, the parties must adjust the additional amount
- (i) if a party is entitled to be reimbursed or indemnified under the Agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

### 8.3 Withholding tax

If a law requires the Customer to deduct an amount in respect of Taxes from a payment under the Customer Contract, then:

- (a) the Customer agrees to deduct the amount for the Taxes
- (b) the Customer agrees to pay an amount equal to the amount deducted to the relevant Government Agency as required by applicable law and give the original receipts to the Supplier.

## 9 Conflict of Interest

**9.1** The Supplier warrants that no conflict of interest exists or is likely to arise in the performance of the Services.

**9.2** The Supplier agrees to notify the Customer immediately upon becoming aware of the existence, or possibility, of a conflict of interest, whereby the Customer 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.

## 10 Intellectual Property

### 10.1 Existing Intellectual Property Rights

All Existing IP of the parties created before the date of the Agreement will be retained by the relevant party.

### 10.2 New Intellectual Property Rights

The Supplier assigns or will procure the assignment to the Customer, on creation:

- (a) Intellectual Property Rights in all modifications made to the Customer IP by the Supplier or its Subcontractors
- (b) All other Intellectual Property Rights created by the Supplier or its Subcontractors in the Contract Material in the performance of the Services.

### 10.3 Supplier Licence

The Supplier grants to the Customer a, perpetual, royalty-free, non-exclusive, irrevocable licence:

- (a) to use the Supplier IP (including all Intellectual Property Rights created by the Supplier or its Subcontractors in the performance of the Services that are not assigned to the Customer) to the extent necessary for the Customer to receive the full use and benefit of the Services
- (b) sub-licence any of the rights granted under clause 9.3(a) to any person, but only in relation to the use or receiving benefits of the Services.

### 10.4 Customer Licence



The Customer grants to the Supplier, and to the extent necessary any relevant Subcontractor, for the term of the Agreement, a royalty free, non-exclusive, non-transferable licence to use the Customer IP only to the extent necessary to provide the Services.

### 10.5 Confidentiality

Nothing in clause 9.3 (Supplier Licence) and 9.4 (Customer Licence) removes or limits the obligations of confidentiality under clause 10.

### 10.6 Indemnity for Infringement Claim

- (a) The Supplier must (either directly itself or by procuring Subcontractors to do so) at the Customer's request and sole option:
  - i. defend at no cost to the Customer, all Infringement Claims
  - ii. provide, at no cost to the Customer, all reasonable assistance required by the Customer to defend any Infringement Claim
- (b) indemnify the Customer against all costs (including legal costs on a solicitor and own Customer basis), losses, damages and expenses that the Customer may sustain or incur as a result of an Infringement Claim
- (c) satisfy any settlement of or judgement given in an Infringement Claim.

### 10.7 Other remedies

If, as a result of any Infringement Claim, the Customer is prevented from using the results of the Services, the Supplier must, at the Customer's option and at the Supplier's cost:

- (a) promptly procure for the Customer the right to use the results of the Services (as applicable) on reasonable commercial terms as contemplated under the Customer Contract free of any claim or liability for infringement
- (b) promptly modify any deliverables so that they cease to infringe those rights (while still complying with any applicable specifications).

## 11 Confidentiality

### 11.1 Disclosure of Confidential Information

The Recipient must not disclose the Confidential Information supplied by the Discloser to any person except in the circumstances set out in clause 10.2.

### 11.2 Permitted Disclosures

If the Recipient discloses the Discloser's Confidential Information to a Representative or with the consent of the Discloser under clause 10.2 (Disclosure of Confidential Information) then:

- (a) it must use its best endeavors to ensure that persons receiving the Confidential Information from it do not disclose the information except in the circumstances permitted in clause 10.1
- (b) the Discloser may at any time require the persons receiving the Confidential Information to give written undertakings relating to the non-disclosure of the Confidential Information and the Recipient must arrange for all such undertakings to be given promptly
- (c) the Recipient must reserve the right to demand immediate delivery of all documents or other materials in its possession, power or control or in the possession, power or control of the third party who has received Confidential Information from it containing or referring to that Confidential Information.

### 11.3 Use of Confidential Information

The Recipient must not use the Discloser's Confidential Information except for the purpose of exercising the Recipient's rights or performing its obligations under the Customer Contract or any other agreement between the parties.

### 11.4 Return of Confidential Information

On the Discloser's request, the Recipient must immediately deliver to the Discloser or destroy all documents or other materials containing or referring to the Confidential Information which are in its possession, power or control, or in the possession, power or control of persons who have received Confidential Information from the Recipient, except to the extent that:

- (a) the Recipient requires the Confidential Information for the purpose of performing its obligations or exercising its rights under the Agreement or other agreement between the parties; or
- (b) the Recipient is otherwise entitled to retain the Confidential Information.

## 12 Privacy

**12.1** Where the Supplier has access to Personal Information in order to fulfil its obligations under the Agreement, the Supplier must:

- (a) 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 Customer 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) 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 Supplier's obligations under this clause.

**12.2** The Supplier must:

- (a) comply with the Customer's privacy policies (and each specific privacy policy of the Customer in relation to the collection and/or handling of personal or private information relating to third parties including the obtaining of any necessary consents to its use by the Customer or by third parties) as notified in writing to the Supplier from time to time as if it were bound by that policy
- (b) comply with the *Privacy Act 1988* (Cth) and all other applicable privacy laws and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information, as if it were regulated by those laws
- (c) comply with all directions by the Customer:
  - (i) relating to the means by which the Customer complies with the *Privacy and Personal Information Protection Act 1998* (NSW), the Customer's privacy policies, and all other applicable laws, codes and privacy policies
  - (ii) co-operate with the Customer in the resolution of any complaint alleging a breach of such laws, codes or privacy policy.

## 13 Insurance

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

- (a) Professional Indemnity insurance with an indemnity of at least \$5 million in respect of each claim for the period of cover
- (b) Public Liability insurance with an indemnity of at least \$5 million in respect of each claim for the period of cover
- (c) Product Liability insurance with an indemnity of at least \$5million in respect of each claim for the period of cover

- (d) Workers' Compensation insurance in accordance with applicable legislation.

## **14 Indemnity and Liability**

- 14.1** The Supplier will indemnify and keep indemnified the Customer for and against all actions, claims, costs, expenses and damages (including all legal costs) in respect of:
- (a) the Supplier's breach of its Confidentiality (clause 10) and Privacy (clause 11), Intellectual Property (clause 9) under this Agreement
  - (b) a claim against the Customer, its officers or employees made by a third party arising out of or in connection with a wilful, unlawful or negligent act or omission of the Supplier, its directors, officers, employees, agents and subcontractors in the performance of the Supplier's obligations to the Customer under this Agreement.
- 14.2** The Supplier's liability in respect of and indemnity given in this clause shall be reduced proportionally to the extent that any unlawful, negligent or deliberately wrongful act or omission of the Customer caused or contributed to the loss.

## **15 Representatives, Reports and Audit**

### **15.1 Responsibilities**

The Customer Representative and the Supplier Representative will be responsible for the co-ordination and management between the parties of the Customer Order, including ensuring the performance by the parties of their respective roles and responsibilities.

### **15.2 Reports**

The Supplier must provide to the Customer the reports with the content and in the frequency and form (electronic or physical) set out in the Customer Order.

### **15.3 Review meetings**

The Supplier Representative must attend meetings with the Customer Representative at a place and time to be notified to the Supplier by the Customer on the frequency set out in the Customer Order to:

- a) review the performance of the Supplier in relation to the Agreement and the Price incurred by the Customer up to that date, including any faults in the provision of any of the Services over the previous review period and any actions undertaken by the Supplier to resolve the relevant faults
- b) discuss any other issues in relation to the Services or the Agreement.

### **15.4 Additional reports and review meetings**

The Customer may request additional reports and review meetings to those required to be provided under clauses 14.3 and 14.4 as set out in the Customer Order. The Supplier will provide these additional reports and review meetings at no additional cost to the Customer.

### **15.5 Records and inspection**

The Supplier must, and must ensure all Subcontractors:

- (a) keep and maintain all necessary Records during the term of the Agreement and 7 years thereafter
- (b) make those Records available for inspection and/or audit as reasonably required by the Customer, a regulator, any external auditor or advisor or any of their authorised representatives, during normal business hours. Copies and extracts of any Records may be taken for these purposes
- (c) permit the Customer to inspect or appoint a third party to inspect the Supplier's premises to confirm compliance with the Agreement

- (d) provide all appropriate resources and all reasonable assistance required by any person conducting any inspection and/or audit, and fully co-operate with that person in good faith and at the Supplier's sole cost.

## **15.6 Annual audit**

The Customer may conduct itself, or appoint a third party to conduct, an audit of the Supplier's performance and compliance with the Customer Order.

## **15.7 Costs of audit**

The auditors' costs incurred by the Customer in the audit under clause 0 (Annual audit) will be paid by the Customer. However, where the auditor objectively determines that the performance by the Supplier falls below the Performance Standards or identifies breaches of the Customer Contract by the Supplier, all the costs of the Customer (including third party auditor fees) in respect of that audit will be paid by the Supplier.

## **15.8 Costs**

Unless expressly provided otherwise in this clause 14, the Customer and the Supplier will each pay their own costs and expenses in connection with this clause 14.

## **16 Subcontracting**

**16.1** The Supplier must not assign or subcontract any part of this Agreement without the prior written consent of the Customer, which consent may be given or withheld in the Customer's absolute discretion.

**16.2** The Customer may, in giving its consent, impose such conditions as it sees fit.

## **17 Variation**

**17.1** The Customer may, by written notice, on the recommendation of the Supplier or otherwise, request a change to the Services.

**17.2** If the change to the Services requires the Supplier to provide additional services:

- (a) the Supplier may agree in writing to perform the additional services
- (b) the fee for the additional services is as agreed in writing by the Supplier and the Customer.

**17.3** Before instructing a change to the Services, the Customer may request the Supplier to provide a written estimate, within a reasonable time nominated by the Customer, of the time and cost impact of the proposed variation.

**17.4** If the change to the Services involves a reduction in the Services:

- (a) the Supplier must take all reasonable steps to minimise its loss resulting from the reduction in the Services requested by the Customer
- (b) the Customer is liable for all reasonable costs actually incurred by the Supplier as a consequence of the reduction in Services and the Customer will reimburse such costs on presentation of invoices/receipts within 30 days after receiving the invoices/receipts from the Supplier.

## **18 Termination**

**18.1** This Agreement will terminate upon the Contract End Date or upon the Customer giving notice to the Supplier that it considers that the Services have been fully performed or that it does not require further performance of the Services by the Supplier.

**18.2** Either party may terminate this Agreement by giving the other party twenty-one (21) days written notice.

**18.3** A party may terminate this Agreement by written notice with immediate effect if:

- (a) the other party breaches a material term of this Agreement and fails to remedy the breach within 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.

- 18.4** The Customer may specifically terminate this Agreement by written notice (unless remedied within 21 days after written notice has been received by the Supplier) if the Supplier:
- (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 Customer has a conflict of interest in performing the Services.
- 18.5** If the Customer gives notice under clause 17.2, the Customer must pay the Supplier for all Services provided by Supplier up to the date of termination.
- 18.6** Clauses in this Agreement dealing with confidentiality, intellectual property, insurance, consequences of termination, and any other provision of this Agreement shall survive termination, expiry or repudiation of this Agreement.

## 19 Dispute Resolution

- 19.1** 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 and the Principal a notice setting out the details of the dispute
  - (c) the Principal will arrange a meeting between Supplier and the Customer to discuss and consider the notice of the dispute and liaise with both Parties to attempt to resolve the issue.
- 19.2** If the dispute remains unresolved after a further 5 Business Days after the meeting described in clause 18.1(c), the parties will refer the dispute to mediation.
- 19.3** If, after mediation the dispute remains unresolved, the parties may commence legal proceedings.
- 19.4** This clause does not affect either party's rights to:
- (a) terminate the Agreement in accordance with clause 17 or otherwise
  - (b) commence court proceedings seeking interlocutory relief.
- 19.5** Notwithstanding the existence of a dispute, each party must continue to perform its obligations under the Agreement.

## 20 Assignment or novation by Customer or Supplier

- 20.1** The Customer may assign any of its rights under this Agreement, without the consent of the Supplier to any Department, government Customer 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 the Principal.
- 20.2** The Supplier must execute all documents necessary to give effect to any novation or assignment permitted under this clause 19.
- 20.3** The Supplier must not assign its rights under this Agreement or purport to novate its rights and obligations under this Agreement without the prior written consent of the Principal.

## 21 Notices

- 21.1** 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 Customer Order or the address last notified by the intended recipient to the Sender
  - (b) must be signed by the authorised officer. Any change to the authorised officer must be notified to the other party in writing.
- 21.2** 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.

## 22 General

### 22.1 Remedies cumulative

The rights and remedies provided in this Agreement are in addition to other rights

#### **21.2 Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Agreement or any part of it.

#### **21.3 Governing law and jurisdiction**

This Agreement is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of New South Wales.

#### **21.4 No supplier / no employment / no partnership**

The Supplier agrees that the Supplier will not be taken to be, nor will it represent that it is, the employee, partner, officer and/or agent of the Customer.

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## Appendix D – Reporting

1. Suppliers are required to submit six-monthly [reports](#) in the format as found on ProcurePoint.
2. Six-monthly reports must be received by the Scheme contract officer by the twentieth (20th) business day of January and July relating to the previous 6 month's activities and advising of services provided during the reporting period.
3. Failure to provide accurate and timely reporting may result in removal from the Scheme.
4. Enquiries are to be directed to [tas@finance.nsw.gov.au](mailto:tas@finance.nsw.gov.au)

## Annexure One – Performance Standards

1. The Performance Standards are summarised in the following table:

No.	Supplier obligation	Performance Standard
1	Management/operational meetings	<p>The Supplier must attend scheduled meetings unless otherwise determined by the Principal Representative.</p> <p>All of the Supplier representatives who attend the meeting must, to the reasonable satisfaction of the Principal Representative, be suitably qualified and informed of the matters to be considered and have the authority to make relevant decisions.</p>
2	Reports	<p>All reports must be provided on time in accordance with the Scheme's requirements and to a standard satisfactory to the Principal Representative.</p> <p>Suppliers are required to record information and provide periodic and ad hoc electronic management reports based on parameters specified by the Principal Representative (specific data fields, definitions and reporting format) to Customers and the Principal at no additional cost to the NSW Government. Hard copy reports will also be provided to Customers, if requested.</p>
3	Records, processes and procedures	All records, processes and procedures must be maintained in an accurate and accountable manner, as reasonably determined by the Principal Representative.
4	Invoicing	All invoices must be submitted in accordance with the invoicing requirements in the Scheme.
5	Key Supplier Representatives - performance of role	All key Supplier Representatives must perform their designated role to the specified satisfaction of the Principal Representative.
6	Key Supplier Representatives – replacements	<p>All proposed replacements for key Supplier Representatives are to be:</p> <ul style="list-style-type: none"> <li>(a) notified to the Principal Representative as soon as possible; and</li> <li>(b) suitably qualified and experienced as reasonably determined by the Principal Representative.</li> </ul>
7	Compliance	The Supplier must comply with the terms of the Scheme and the Principal and Customer's policies and procedures.
8	Services	The Supplier must ensure that the Services are provided on time and in accordance with the requirements set out in the Scheme.



## Annexure Two – Definitions

**Applicant** means an organisation who has applied for admission to the Scheme.

**Assessment Committee** means the entity appointed by the Principal to evaluate and determine the eligibility of Applicants to be admitted to the scheme.

**Assessor** means a person involved in the recruitment process in the capacity of evaluating candidates against pre-established standards for a role.

**Capability Framework** means the NSW Public Sector Capability Framework.

**Contingent Worker** means a person employed by a Supplier and who works on a temporary basis for a Customer as defined in the Prequalification Scheme: Contingent Workforce (SCM0007).

**Customer** includes NSW Government departments, statutory authorities, statutory corporations and government business enterprises including Eligible Buyers.

**Department** means the NSW Department of Finance, Services & Innovation, unless otherwise specified.

**Diversity** means the seen and unseen characteristics that make each of us different. When applied to the workforce, this means reflecting the breadth of difference that exists within the NSW community.

**Eligible Buyer** is an organisation that is a registered buyer of NSW Government contracts and may be public bodies that are not government agencies. A list of Eligible Buyers can be found at <http://www.procurepoint.nsw.gov.au/documents/eligible-buyer-list.pdf>

**Eligible person** means the persons referred to in Part 5, Rule 26 of the GSE (General) Rules.

**Exclusive** means the client has requested an exclusive service to seek candidates.

**GSE Act** means the Government Sector Employment Act 2013.

**GSE (General) Rules** means the Government Sector Employment (General) Rules 2014.

**Interim Executive** means specialist executive, with senior management expertise.

**Level 1** means the prequalification group under Talent Search that provides executive search services for NSW Public Service senior executive bands 1 and 2.

**Level 2** means the prequalification group under Talent Search that provides executive search services for NSW Public Service senior executive band 3 and above.

**Non-exclusive** means the client is seeking candidates but is not necessarily seeking an exclusive approach.

**Non-senior Executive** means a role at the level of Clerk Grade 12 and below in the Crown Employees (Administrative and Clerical Officers - Salaries) Award 2007 or Total Remuneration Package equivalent.

**NSW Government Boards and Committees** means entities, acting on the direction of government, to provide advice on certain areas of interest, support consultation with the community or oversee service delivery. Entities encompass boards of government trading enterprises, marketing boards, regulatory boards, professional registration boards, Area Health Service boards, trust boards and advisory councils and committees, as well as people from other under-represented groups. A list of NSW Government Boards and Committees is available on the PSC website.

**NSW Health senior executive** means a person to whom Part 3 of the Health Services Act 1997 applies.

**NSW Police Force senior executive** means a person to whom Part 5, section 32 of the *Police Act 1990* applies.

**NSW Public Service senior executive** means the Secretary of a Department and any other Public Service employee to whom Division 4 of Part 4 of the GSE Act applies.

**NSW Transport senior executive** means a person to whom Part 7A, section 68F of the Transport Administration Act 1988 applies,

**Performance Report** means a report submitted in accordance with clause 14.

**Public Service Customer** means a Customer to which Part 1, section 3 of the GSE Act applies.

**Rules** means the scheme rules of SCM0012.

**Specialist Diversity Supplier Status** means that a Supplier is prequalified to provide services/products that are tailored to promote the employment of Aboriginal people, people with a disability and any other specified workforce diversity group.

**Supplier** means an organisation who has applied for, and been granted admission to, the Scheme by the Assessment Committee and is a prequalified member of the Scheme.

**Scheme** means the Talent Acquisition Scheme administered by the Principal Talent pool (sometimes referred to as recruitment pool) means a group of suitable candidates, created pursuant to Rule 19 of the GSE (General) Rules, who have been assessed against capabilities at certain levels. Agencies can search the talent pool for candidates who have the required set of capabilities at the required level for a particular role, without advertising every time a vacancy occurs.

**Total Remuneration Package** means salary and any employment benefits (including contributions by the employer to a superannuation scheme).

**Workforce diversity** has the same meaning as Part 5, section 63 of the GSE Act: *'includes (but is not limited to) diversity of the workforce in respect of gender, cultural and linguistic background, Aboriginal people and people with a disability.'*