



**Subsidence  
Advisory NSW**

## **SCHEME TERMS AND CONDITIONS**

### **Subsidence Advisory NSW Independent Assessment Scheme**

**SCHEME NO. SCM4721**

**2018-2020**

**OCTOBER 2017**

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All inquiries should be directed to: [sa-procure@finance.nsw.gov.au](mailto:sa-procure@finance.nsw.gov.au)

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**CONTACT DETAILS**

Subsidence Advisory NSW  
Newcastle Government Offices  
Ground Floor, 117 Bull Street,  
Newcastle West NSW 2302

Email: [sa-procure@finance.nsw.gov.au](mailto:sa-procure@finance.nsw.gov.au)

Web: [www.procurepoint.nsw.gov.au](http://www.procurepoint.nsw.gov.au)

This document is available at:

<https://www.procurepoint.nsw.gov.au/scm4721>

## 1 DEFINITIONS AND INTERPRETATION

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

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

**Application** means an online application submitted for admission to the Scheme in the form prescribed in Schedule 2.

**Assessment Body** means the entities appointed by DFSI to determine the eligibility of Service Providers to be admitted to the Scheme.

**Business Day** means each day that is not a Saturday, Sunday, public holiday in Australia (including in a State or Territory) and a day in which the banks are not open for business in Sydney.

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

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

but does not include information which:

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

**DFSI** means the NSW Department of Finance, Services and Innovation, of which Subsidence Advisory (SA NSW) is a business unit.

**Order** means the combination of Standard Form Agreement and Purchase Order.

**Performance Report** means a report submitted in accordance with clause 15.

**Purchase Order** means a valid order issued by the Agency for Services available from a Service Provider under the SA NSW Prequalification Independent Assessment Scheme.

**Representative** of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venture, contractor or sub-contractor of that party.

**Scheme** means *Subsidence Advisory NSW Independent Assessment Prequalification Scheme* containing approved prequalified Service Providers intended to be used in one or more transactions to procure Services.

**Services** means the services that the Service Provider may supply under an Order.

**Standard Form Agreement** means the document containing details of the specific assessment job and accompanies the Purchase Order, and in combination with the Purchase Order forms "the Order".

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

**Service Provider Personnel** means employees, partners, agents and subcontractors (including employees of subcontractors) of the Service Provider.

## 2 SCHEME USAGE

### 2.1 The following organisations are entitled to use the Scheme:

- (a) NSW Government Agencies and state owned corporations; and
- (b) Local or federal government entities.

## 3 CONFIDENTIALITY

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

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

### 3.3 Disclosure of Confidential Information

**3.3.1** The Service Provider must not disclose or make public any information or material acquired or produced in connection with any Order made by the Agency for supply of the Services without the prior approval of the Agency and except for the purpose of exercising its rights or performing its obligations under that Order.

### 3.4 Disclosure

**3.4.1** The Service Provider acknowledges and agrees that the Agency may be required to disclose certain information in accordance with the *Government Information (Public Access) Act 2009* (NSW).

## 4 PROCUREMENT POLICY FRAMEWORK

**4.1** Service Providers must adhere to the NSW Government *Goods and Services Procurement Policy Framework for NSW Government Agencies* ('Procurement Policy') at all times.

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

**4.3** Service Providers must adhere to any applicable codes, standards and specifications that are required under any law.

## 5 APPLICATIONS FOR PREQUALIFICATION

**5.1** Applications must be completed in the form prescribed in Schedule 2.

**5.2** Applications must be delivered in accordance with the delivery instructions set out in the form prescribed in Schedule 2.

**5.3** Only those Applications which fully satisfy all requirements set out in these Scheme Conditions and the online Service Provider application form available via Schedule 2 will be considered by the Assessment Body. Applicants agree that, if prequalified under the Scheme, the terms and conditions of any engagement made under the Scheme will be those of the Standard Form of Agreement – Terms and Conditions attached to these Scheme Conditions and agree that it is not necessary to sign the Standard Form of Agreement –

Terms and Conditions for each or any engagement; instead, parties will complete a form of Agreement Details in respect of each engagement.

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

## **6 RATES**

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- 6.1** The range of rates specified in an Application shall remain firm for an initial 24 month period. At that time, an Application may be made by a Service Provider to update the hourly rates specified in an Application.
- 6.2** The rates shall include all costs of the Applicant excluding subsistence and travel costs and including employee related costs, data processing, the provision of personal computers, any other tools or equipment required in the provision of Services.
- 6.3** Subsistence and travel expenses if applicable are to be charged at actual cost, or at the rates specified under the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006, whichever is the lesser.
- 6.4** The hourly rates specified in an Application will be taken into account by the Assessment Body. Agencies may take the hourly rates specified in an Application into account when selecting a Service Provider for work.
- 6.5** The fees to be charged for each individual engagement for which the Service Provider is selected shall be agreed between the Service Provider and the Agency. The Agency may negotiate rates with the Service Provider.

## **7 PREQUALIFICATION PROCESS**

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- 7.1** Applications may be made at any time during the life of the Scheme.
- 7.2** Applications include new Applications, or Applications by existing Scheme members for additional capabilities and/or the removal of limitations. Applications will be assessed periodically at the discretion of the Assessment Body.
- 7.3** The Assessment Body will only assess Applications submitted in the form described at Schedule 2 and in accordance with these Scheme Conditions.
- 7.4** The Assessment Body will assess an Application and advise the Applicant of the outcome. The Assessment Body may investigate an Application as per Clause 3.2.
- 7.5** Enquiries are to be directed to [sa-procure@finance.nsw.gov.au](mailto:sa-procure@finance.nsw.gov.au)

## **8 EVALUATION CRITERIA**

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- 8.1** Applications will be assessed according to the following evaluation criteria:
- (a) demonstrated capability and experience in the capabilities applied for.
  - (b) Clearly demonstrated experience, satisfactory previous performance and Applicant referee reports (all reports to be for work within the last 2 years) that include referee detailed comments in relation to all the Applicant's applied for capabilities.
  - (c) demonstrated management, human resources and current commercial rates and prices, current insurances and other resources.
  - (d) where applicable, Applicants must hold appropriate licenses or professional body memberships.
- 8.2** Other checks may also be undertaken, such as but not limited to:
- (a) ACN

- (b) ICAC
- (c) Financial capability
- (d) Company Directors

**8.3** Applicants who do not satisfy evaluation criteria may be allowed to re-apply and be re-assessed if circumstances change.

## **9 APPLICATION CONTENT**

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**9.1** Applicants need to ensure that the Company Profile provided clearly shows the following information:

- (a) Detail of all key personnel experience and qualifications;
- (b) Provide a clear and concise description of the company consultancy services;

**9.2** Referee reports requested must:

- (a) be for work completed or ongoing in the last 2 years from the date of the Application;
- (b) clearly detail the engagement;
- (c) clearly detail the work actually completed within the capability detail. Comments of “work completed” or repetition of the capability description are not acceptable;
- (d) show detail for all capabilities applied for. (Recommended that Applicants only apply for capabilities they can support from referee reports).

**9.3** All Applicants must provide an updated rates listing with the Application.

## **10 NOTIFICATION OF OUTCOME**

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**10.1** The Assessment Body may accept, accept with limitations or reject an Application. Applicants will be notified via email by DFSI.

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

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**11.1** Should an Applicant believe there are substantive grounds for SA NSW to reconsider their decision not to admit the Applicant to the Scheme; the Applicant may request a review of the decision via a formal email (with a valid email signature) describing the challenge to the decision to [sa-feedback@finance.nsw.gov.au](mailto:sa-feedback@finance.nsw.gov.au).

**11.2** The request for a review should be addressed to SA NSW’s Chief Executive Officer.

## **12 SPECIAL REQUIREMENTS**

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

- (a) For each individual engagement for which the Service Provider is selected, the Service Provider shall, subject to Clause 5.4, enter into an agreement comprised of the Standard Form of Agreement – Terms and Conditions. The parties will complete the Agreement Details for each individual engagement, including fees to be charged for each individual engagement.
- (b) The Service Provider may be required to meet with SA NSW at no charge on a few occasions each year, to discuss relevant matters.

## **13 SERVICE PROVIDER REPORTING OBLIGATIONS**

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- 13.1** Service Providers must immediately notify SA NSW of any significant change in their financial capacity, capability, insurance, licences, ownership status or contact details by sending formal email to [sa-procure@finance.nsw.gov.au](mailto:sa-procure@finance.nsw.gov.au).
- 13.2** Email notifications must contain a valid email signature and describe the changes and any associated issues.
- 13.3** Service Providers must ensure that all relevant insurances are maintained. Service providers should update their on-line application with the new dates at each renewal period.
- 13.4** Service providers must ensure that rate schedules are updated after each 24 month period, if applicable.

## **14 PERFORMANCE MONITORING**

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- 14.1** Monitoring performance and ensuring compliance with the Scheme is the responsibility of the Agency.
- 14.2** The Agency must submit a Performance Report in the form prescribed by Schedule 3 – Performance Report template to DFSI:
  - (a) where the performance of, and the Services provided by, the Service Provider are considered by the Agency to be unsatisfactory; or
  - (b) when a critical aspect of performance is unsatisfactory.

## **15 PERFORMANCE REPORTING BEHAVIOUR**

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



## 16 PERFORMANCE REPORTING PROCESS

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

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

- (a) provide a copy of the Performance Report to the Service Provider; and
- (b) forward the original to [sa-procure@finance.nsw.gov.au](mailto:sa-procure@finance.nsw.gov.au)

If the Service Provider disagrees with the Performance Report, the Agency and the Service Provider must attempt to resolve the disagreement in the first instance. Following an unsuccessful attempt to resolve a disagreement, the Service Provider may refer the Performance Report, with written reasons for the disagreement, to [sa-feedback@finance.nsw.gov.au](mailto:sa-feedback@finance.nsw.gov.au)

**16.3** The contact officer at SA NSW will:

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

## 17 PERFORMANCE MANAGEMENT

**17.1** Monitoring and ensuring compliance in respect of each engagement under the Scheme is the responsibility of the Agency and Agency head.

**17.2** DFSI will manage the performance of Service Providers by:

- (a) applying sanctions, such as temporary suspension from the Scheme, where performance is deemed unsatisfactory;
- (b) revoking a Service Provider's admission to the Scheme, following due consideration of the circumstances, where performance is determined to be unsatisfactory; and
- (c) providing the opportunity for a Service Provider to request a review of the decisions referred in Clauses 17.2a and 17.2b above.

## 18 UPGRADING OF PREQUALIFICATION

**18.1** DFSI may upgrade a Service Provider's status under the Scheme to include additional work capabilities where the Service Provider has submitted an Application in the form described at Schedule 2 for such an upgrade, including documentation and other material in support of its request.

## 19 DOWNGRADING OF PREQUALIFICATION

**19.1** DFSI may downgrade a Service Provider's status under the Scheme if DFSI considers that a Service Provider has:

- (a) not complied with the Scheme Conditions; or
- (b) demonstrated unsatisfactory tendering performance, for example, by declining tendering opportunities without providing valid reasons, accepting a tendering opportunity but not lodging a tender, lodging late tenders or lodging uncompetitive tenders; or

- (c) experienced an adverse change in capacity; or
- (d) experienced an adverse change in business status.

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

## **20 TEMPORARY SUSPENSION**

**20.1** SA NSW may suspend a Service Provider from the Scheme for up to three (3) months if the Service Provider has:

- (a) not complied with the Scheme Conditions; or
- (b) demonstrated unsatisfactory performance.

**20.2** Before a Service Provider is suspended, DFSI will advise the Service Provider of the matter(s) prompting the proposed action and will give the Service Provider the opportunity to show why prequalification should not be suspended.

**20.3** DFSI will advise the Service Provider of the reasons for the suspension and of any actions by the Service Provider required to lift the suspension. A Service Provider that has been suspended from the Scheme must inform DFSI if and when the actions required to lift the suspension have been undertaken.

**20.4** DFSI will regularly review the status of Service Providers who have been suspended. If the action taken by the Service Provider is considered by DFSI to be insufficient, the suspension period may be extended and the Service Provider will be notified accordingly. DFSI may revoke the suspension if it is satisfied that the Service Provider has taken appropriate action to address the reasons for the suspension.

## **21 REMOVAL FROM THE SCHEME**

**21.1** DFSI may revoke a Service Provider's admission to the Scheme if DFSI considers that a Service Provider has:

- (a) breached the Scheme Conditions; or
- (b) failed to meet applicable financial requirements; or
- (c) been the subject of substantiated reports of unsatisfactory performance for other NSW Government agencies; or
- (d) been determined by the Assessment Body as not suitable for future work; or
- (e) provided unsatisfactory tendering performance with tenders under the Scheme; or
- (f) experienced an adverse change in capacity or capability; or
- (g) experienced an adverse change in business status; or
- (h) failed to promptly and adequately address the reasons for a temporary suspension from the Scheme under clause 20; or
- (i) been convicted of a breach of its obligations under work health and safety legislation or environmental protection legislation; or
- (j) otherwise failed to meet the standards required of the Scheme in terms of its project outcomes, business management systems, client satisfaction and ethical business practices.

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

## 22 REQUEST FOR REVIEW OF DFSI DECISION

- 22.1** Where a Service Provider considers that there are substantive grounds for DFSI to reconsider its decisions under clauses, 19, 20 and 21 the Service Provider may request a review of the decision by writing, providing full details of the reasons for the request for review to [sa-feedback@finance.nsw.gov.au](mailto:sa-feedback@finance.nsw.gov.au).
- 22.2** DFSI will inform the Service Provider of the outcome of the review.

## 23 PUBLICITY

- 23.1** Service Providers must not advertise, promote or publicise in any form their admission to the Scheme without the written consent of SA NSW.

## 24 APPLICANT'S ACKNOWLEDGMENT

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

## 25 DISCLAIMER

- 25.1** DFSI and the Assessment Body reserve the absolute discretion to:
- (a) accept an Application with or without limitations and/or conditions;
  - (b) reject an Application;
  - (c) suspend a Service Provider's admission to the Scheme; and
  - (d) revoke a Service Provider's admission to the Scheme.
- 25.2** DFSI will not be held liable for any costs or damages incurred by the Service Provider in the exercise of such discretion.

## 26 PREQUALIFICATION NO GUARANTEE OF WORK

- 26.1** Prequalification by a Service Provider does not guarantee:
- (a) continuity of the prequalification during the duration of the Scheme or the continuity of the Scheme;
  - (b) receipt of opportunities to quote for work; or
  - (c) that engagements or work of any kind or quantity will be offered.
- 26.2** SA NSW reserves the right to use off-scheme service providers where it is considered that the Scheme cannot adequately service the project requirement or other specific constraints are present.

## 27 REVIEW AND DEVELOPMENT OF THE SCHEME

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

# STANDARD FORM OF AGREEMENT - Terms and Conditions

## PREQUALIFICATION SCHEME: SA NSW INDEPENDENT ASSESSMENT

### OPERATIVE CLAUSES

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#### C 1 DEFINITIONS AND INTERPRETATION

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

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

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

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

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

but does not include information which:

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

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

**'Existing contract material'** means

- a) any Material which exists at the date of this Agreement; and
- b) any Service Provider's Material,

which is incorporated with the New Contract Material.

**'New Contract Material'** means any Material created, written or otherwise brought into existence by the Service Provider in the course of performing this Agreement in which subsists newly created Intellectual Property rights but for the avoidance of doubt does not include the Service Provider's Material.

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

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

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

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

**'Material'** includes but is not limited to documents, information and data stored by any means.

**'Moral Rights'** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing at the commencement date of this Agreement or which may come into existence on or after the commencement date.

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

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

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

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

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

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

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

**C 1.2** Except where the context otherwise requires, a reference in this Agreement to:

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

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

## **C 2 ENGAGEMENT**

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

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

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- C 3.1** The Service Provider undertakes that at the date of this Agreement, no conflict of interest exists or is likely to arise in the performance of the Services. The Service Provider must notify the Principal, in writing, immediately upon becoming aware of the existence, or possibility, of a conflict of interest.
- C 3.2** On receipt of a notice under clause 3.1 the Principal may:
- a) approve the Service Provider continuing to perform the Services, which approval may be subject to reasonable conditions to ensure appropriate management of the conflict; or
  - b) where in the Principal's reasonable view the conflict of interest cannot be appropriately managed, exercise its rights of termination under this Agreement

### **C 4 SERVICE PROVIDER'S OBLIGATIONS**

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#### **C 4.1 Professional Standard of Care**

The Service Provider must perform the Services in a diligent manner and to the standard of skill and care expected of a Service Provider qualified, competent and experienced in the provision of services of the nature of those set out in the Agreement Details.

#### **C 4.2 Knowledge of Requirements of the Principal**

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

#### **C 4.3 Personnel**

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

#### **C 4.4 Discrepancies in Information**

If the Service Provider considers that any information, documents and other particulars made available to it by any person on behalf of the Principal are inadequate or contain errors or ambiguities, the Service Provider must give written notice to the Principal detailing the errors or ambiguities as soon as practicable. Rectification of errors or ambiguities shall be the responsibility of the person supplying the information or documents, but the Principal shall use reasonable endeavours to procure such rectification.

#### **C 4.5 Program**

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

- a) within 7 days of the date of this Agreement submit, for the approval of the Principal, a program for the performance and completion of the Services;
- b) submit a revised program as soon as practicable after any circumstance renders such revision necessary or after any request by the Principal to do so;



- c) perform the Services expeditiously and in accordance with the most recent program approved by the Principal; and
- d) report on progress against the program monthly or at such other interval as requested in writing by the Principal.

#### **C 4.6 Reports and Deliverables**

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

#### **C 4.7 Change in the scope or timing of the Services**

As soon as practicable after becoming aware of any matter which is likely to change or which has changed the scope or timing of the Services, the Service Provider must give notice to the Principal detailing the circumstances, extent or likely extent and implications of the change and whether the Service Provider will be proposing a variation in accordance with Clause C8.

#### **C 4.8 Principal's Materials**

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

#### **C 4.9 Service Provider's Relationship with the Principal**

The Service Provider must liaise, co-operate and confer with the Principal or any other person nominated by the Principal. The Service Provider must not act outside the scope of the authority conferred on it by this Agreement and must not purport to bind the Principal in any way or hold itself out as having any authority to do so, except as specifically authorised pursuant to this Agreement.

#### **C 4.10 Confidentiality**

- a) The Service Provider:
  - i) must not disclose any Confidential Information to any person without the prior written consent of the Principal; and
  - ii) must take reasonable steps to ensure that the Confidential Information in its possession is kept confidential and protected against unauthorised use and access.
- b) The Service Provider agrees to use the Confidential Information solely for the purposes of the Services and for no other purpose.
- c) Notwithstanding clause 4.10 (a), the Service Provider may disclose Confidential Information to its officers, employees, agents and permitted sub-contractors ("permitted recipient") where such disclosure is essential to carrying out their duties or in accordance with this Agreement.
- d) Before disclosing the Confidential Information to a "permitted recipient", the Service Provider will ensure that the permitted recipient is aware of the confidentiality requirements of this Agreement and is advised that he, she or it is strictly forbidden from disclosing the Confidential Information or from using the Confidential Information other than as permitted by this Agreement. The Principal may, at its sole discretion and at any time, require the Service Provider to arrange for a permitted recipient to execute a deed (in such form as may be required by the Principal) relating to the non-disclosure and use of the Confidential Information and the Service Provider will promptly arrange for such deed to be executed and provided to the Principal.
- e) The Confidential Information must not be copied or reproduced by the Service Provider and/or the permitted recipient without the express prior written permission of the

Principal, except for such copies as may be reasonably required to accomplish the purpose for which the Confidential Information was provided pursuant to this Agreement.

#### **C 4.11 Privacy and Disclosure of Personal Information**

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

- a) where the Service Provider is responsible for holding the Personal Information, ensure that Personal Information is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;
- b) not use Personal Information other than for the purposes of the Agreement, unless:
  - i) required or authorised by law; or
  - ii) authorised in writing by the individual to whom the Personal Information relates but only to the extent authorised;
- c) not disclose Personal Information without the prior written agreement of the Principal or the prior written agreement of the individual to whom the Personal Information relates, unless required or authorised by law;
- d) ensure that only authorised personnel have access to Personal Information;
- e) immediately notify the Principal if:
  - i) the individual to whom the Personal Information relates authorises the Service Provider's to use his/her Personal Information for other purposes;
  - ii) the individual to whom the Personal Information relates consents to the Service Provider's disclosing of his/her Personal Information; and/or
  - iii) it becomes aware that a disclosure of Personal Information is, or may be required or authorised by law;
- f) make its officers, employees, agents and sub-contractors aware of the Service Provider's obligations under this clause including, when requested by the Principal, requiring those officers, employees, agents and sub-contractors to promptly sign a suitable privacy deed relating to Personal Information. The Service Provider will promptly arrange for such deed to be executed and provided to the Principal;
- g) comply with such other privacy and security measures as the Principal reasonably advises the Service Provider in writing from time to time; and
- h) immediately notify the Principal upon becoming aware of any breach of clause 4.11.

#### **C 4.12 Compliance with Law & Government Guidelines**

The Service Provider must, to the extent the same are relevant to this Agreement and/or the performance of the Services, comply with all laws, regulation, privacy principles, Australian and/or ISO standards and any NSW Government policies, guidelines and code of conduct communicated by the Principal to the Service Provider during the continuance of the Agreement.

#### **C 4.13 Service Provider's Representative**

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



**C 4.14 Advice or assistance from others, including Legal Counsel**

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

**C 4.15 Subcontracting and Assignment**

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

**C 4.16 Fitness for Purpose**

The Service Provider acknowledges and agrees that the Principal relies upon the skill and knowledge of the Service Provider in providing the Services. The Service Provider must ensure that all work, documents and other deliverables produced by it are reasonably suitable in all respects for the purposes required by this Agreement.

**C 4.17 Access to Service Provider's Premises**

The Service Provider must, at all reasonable times and upon reasonable notice, permit the Principal access to the Service Provider's premises in order for the Principal to inspect, discuss and assess the Contract Material and any other material obtained by the Service Provider from any person in connection with the Services.

**C 4.18 Insurances**

- a) The Service Provider must obtain and thereafter maintain at its own cost, comprehensive insurance policies in relation to any liability arising out of this Scheme and the Agreement.
- b) The Service Provider shall, and shall ensure that any sub-contractors will, arrange and maintain with a reputable insurance company for the term of the contract:
  - i) a public liability policy of insurance to the value of at least \$20 million in respect of each claim;
  - ii) workers' compensation insurance as required by all relevant laws of Australia relating to workers' compensation. Where the Service Provider is unable to obtain workers' compensation insurance because the Service Provider is a sole trader or partnership, the Service Provider must hold appropriate personal accident insurance.
  - iii) if applicable, a professional indemnity insurance policy:
- c) Professional indemnity insurance may be required in some circumstances. SA NSW will establish the risk standing for a particular engagement and specify the professional indemnity insurance requirements accordingly.

- d) Where the Principal considers that additional insurance may be necessary to cover liabilities that may arise during the performance of Services, the Principal and the Service Provider shall consult about these matters, including, in particular, about the level of cover required.
- e) The Service Provider shall, on request from time to time by the Principal, produce to the Principal, satisfactory evidence of insurance.
- f) The insurances referred to in this clause shall be effective from the start date of this Agreement and shall be maintained for the period of the Agreement provided however, where applicable, professional indemnity insurance shall, unless the Principal otherwise agrees in writing, be continued to be maintained for a period of one year following the expiration or earlier termination of this Agreement.
- g) The Service Provider shall maintain on the eTendering website details of all applicable insurance policies. .

#### **C 4.19 Records**

##### **a) Keeping of Records**

The Service Provider must, during the period of this Agreement, keep proper accounts, records (including information stored by computer and other devices) and time sheets in accordance with accounting principles generally applied in commercial practice in respect of its time charge billing, its reimbursable expenditure and fees and reimbursements payable to others properly engaged pursuant to this Agreement and maintain the same for a period of 7 years.

##### **b) Access**

The Service Provider must, within a reasonable time of any request by the Principal, give the Principal access to, or verified copies of, any information which may be reasonably required to enable any claim by the Service Provider to payment to be substantiated and verified by the Principal.

## **C 5 PRINCIPAL'S OBLIGATIONS**

### **C 5.1 Provide Information**

The Principal will, as soon as practicable, make available to the Service Provider all relevant information, documentation or data or any other material and particulars within the Principal's possession or control, give all necessary instructions and answer any queries made by the Service Provider relating to the Principal's requirements in connection with this Agreement.

### **C 5.2 Principal's Representative**

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

### **C 5.3 Payment**

- C 5.3.1 In consideration of the provision of the Services in accordance with this Agreement, the Principal will pay the Service Provider the Fees specified in the Agreement Details.
- C 5.3.2 Payment of any part of the Fees does not constitute an acceptance by the Principal of the Services and does not amount to a waiver of any right or action which the Principal may have at any time against the Service Provider.
- C 5.3.3 If the Service Provider has obtained the Principal's prior written approval to incur or pay any costs, expenses, fees or charges, the Principal will reimburse the Service Provider for those costs, expenses, fees or charges.

- C 5.3.4** Subject to clause 5.3.5, the Principal will make a payment within 15 days following the rendering of a tax invoice by the Service Provider, but if the Principal has, within a reasonable period of time after receiving a tax invoice, requested access to information under clause 4.19 (b), the time for payment will be extended by the number of days elapsing between the date of the Principal's request for access and the date when access is granted.

The Principal will not be obliged to make any payment to the Service Provider under this Agreement until the Service Provider has submitted proof of insurance in accordance with clause 4.18.

## **C 6 CLAIMS FOR PAYMENT**

- C 6.1** The Service Provider may render to the Principal a tax invoice at the completion of the Agreement.. Any payment claim will be for the Services performed (and for approved reimbursable expenses, if any, incurred) during the previous month.
- C 6.2** If applicable, the payment claim must be accompanied by a completed Combined Subcontractor's Statement and Supporting Statement in the form prescribed in Schedule 1, executed on the date of the payment claim.

## **C 7 GOODS AND SERVICES TAX**

- C 7.1** To the extent that a party to this Agreement ("GST Service Provider") is or becomes liable to pay GST in connection with any Supply made under this Agreement and the amount of any such GST is not included in the amount payable under this Agreement:
- a) the GST Service Provider may add to the price of the Supply an amount equal to the GST payable on the Supply ("GST Amount"); and
  - b) the other party will pay the GST Service Provider the price for the Supply in accordance with this Agreement plus the GST Amount.
- C 7.2** If, for any reason, the GST Service Provider's GST liability in respect of a particular Supply is different from the amount of GST paid by the other party:
- a) the GST Service Provider must immediately repay to the other party the amount of any excess paid by the other party above the GST Service Provider's GST liability; or
  - b) the other party must pay the deficiency in the amount previously paid by the other party to the GST Service Provider for that Supply, as appropriate.
- C 7.3** Each party warrants that at the time any supply is made under this agreement on which GST is imposed, that party is or will be registered under the GST Law.
- C 7.4** Any invoice rendered by a party to this agreement in connection with a Supply under this Agreement which seeks to recover an amount of GST payable by that party must conform to the requirements for a tax invoice (as that term is defined in the GST Law).

## **C 8 VARIATIONS**

### **C 8.1 Instruction**

The Principal may, on the recommendation of the Service Provider or otherwise, instruct the Service Provider in writing to vary the Services and the Service Provider must comply with any such instruction.

### **C 8.2 Consequences of Variation or Proposed Variation**

- a) Before instructing a variation, the Principal may request the Service Provider to provide a written estimate of the time and cost effects of the proposed variation. A written estimate so requested must be provided by the Service Provider within a reasonable time nominated by the Principal.

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

## C 9 INTELLECTUAL PROPERTY

### C 9.1 New Contract Material

Copyright (including future copyright) in all New Contract Material, vests in the Principal or is otherwise hereby assigned by the Service Provider to the Principal. Title to, and Intellectual Property rights in, all New Contract Material (other than copyright) shall, on creation, vest or otherwise be assigned or transferred to the Principal, without the need for further assurance.

### C 9.2 Existing Contract Material

This Agreement does not affect the Intellectual Property rights in Existing Contract Material, but the Service Provider hereby grants, and ensures that relevant third parties grant to the Principal, without additional cost, a nonexclusive, irrevocable, transferable licence:

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

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

### C 9.3 Perfection of rights

The Service Provider must execute all documents and do all acts and things required, at its cost (unless otherwise agreed), for the purposes of giving effect to the provisions of this Agreement dealing with Intellectual Property rights.

### C 9.4 Moral Rights

The Service Provider must hold, or obtain, consents from all authors of Contract Material to its use and adaptation by the Service Provider or the Principal, without restriction and without any requirement to attribute the Contract Material to its authors.

### C 9.5 Limitations on the use by the Service Provider of the Contract Material

The Service Provider must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Agreement unless it has obtained the prior written approval of the Principal to do otherwise. Any such approval may be given on any terms or conditions the Principal considers appropriate.

## C 10 INDEMNITY

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

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

- C 10.2** The Service Provider's liability to indemnify those indemnified under this Agreement shall be reduced proportionally to the extent that any unlawful, wrongful, wilful or negligent act or omission of those indemnified caused or contributed to the liability or loss.
- C 10.3** The indemnity contained in this clause 10 is a continuing obligation of the Service Provider separate and independent of any other responsibility of the Service Provider and will continue beyond the period of this Agreement.
- C 10.4** The Principal may, in its absolute discretion, agree to cap the Service Provider's liability under clause 10 of this Agreement to a monetary amount. Any cap on liability must be specified in the Agreement Details.

## **C 11 TERMINATION**

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

This Agreement will terminate on the Completion date in Item 3 of the Standard Form of Agreement, when the Services are fully performed or in accordance with any agreed variation of service times. In addition, the parties agree it is open to the Principal to give notice to the Service Provider that it considers that the Services have been fully performed or that it does not require further performance of the Services by the Service Provider.

### **C 11.2 Termination by the Principal for insolvency or default by the Service Provider**

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

### **C 11.3 Termination by the Service Provider**

- a) If the Principal:
  - i) fails to pay the Service Provider in accordance with this Agreement; or
  - ii) commits a substantial breach of this Agreement,
 then the Service Provider may give notice to the Principal specifying the failure or breach and requiring the Principal to remedy the failure or breach.
- b) If the Principal fails to remedy the breach within a period of not less than fourteen (14) days, the Service Provider may at any time thereafter, terminate this Agreement by giving written notice of termination to the Principal.

- c) The Service Provider may, at any time after the establishment of the scheme, terminate its participation in the scheme on 30 days notice to the Principal.

#### **C 11.4 Effect of Termination**

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

#### **C 11.5 Adjustment of the Fee on Termination**

Upon termination of this Agreement, the Principal will pay the Service Provider for the Services performed by the Service Provider up to the date of termination but in the case of termination under clause 11.2, such payment shall take into account any adjustments and deductions for loss or damage suffered, or reasonably likely to be suffered by the Principal as a consequence of breach of this Agreement by the Service Provider. The Principal may offset any money due against any money payable by the Service Provider to the Principal and recover any short-fall from the Service Provider as a debt due and payable.

#### **C 11.6 Further Services after Termination**

If the Principal requests the Service Provider to provide further Services or undertake any additional work of a minor, incidental or ancillary nature in connection with the Services after termination pursuant to clause 11.1, and the Service Provider agrees to perform the work, then notwithstanding such termination, all such work or services shall be deemed to be part of the Services and subject to the terms of this Agreement.

### **C 12 CONSEQUENCES OF TERMINATION**

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

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

**C 12.2** The Service Provider must, except to the extent approved by the Principal in writing, deliver to the Principal, within 7 days of termination or expiry of this Agreement:

- a) all Confidential Information of the Principal;
- b) all Contract Material and Principal's Material; and
- c) all copies of (a) and (b) above.

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

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



- C 12.5** Clauses in this Agreement dealing with access to records, licences and consents, confidentiality, intellectual property, insurance, consequences of termination, dispute resolution, and any other provision of this Agreement which by its nature should survive termination shall survive termination, expiry or repudiation of this Agreement.

## C 13 DISPUTE RESOLUTION

- C 13.1** For any dispute arising under this Agreement:

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

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

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

## C 14 NOTICES

- C 14.1** 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 Agreement Details or the address last notified by the intended recipient to the sender;
- b) must be signed by an authorised officer of the sender;
- c) will be taken to have been delivered:
  - i) in the case of delivery in person - when delivered to the recipient's address for service and a signature received as evidence of delivery;
  - ii) in the case of delivery by post - within three business days of posting;

- iii) in the case of delivery by facsimile – at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient and
- iv) in the case of delivery by email, on receipt of confirmation by the sender that the recipient has received the email.

**C 14.2** If delivery or receipt of a notice occurs on a day on which business is not generally carried on in the place to which the communication is sent, or occurs later than 4.00pm (local time) on any day, it will be taken to have occurred at the commencement of business on the next business day in that place.

## **C 15 WORK HEALTH AND SAFETY**

### **C 15.1 Safe design review report**

If the Services include the design of any plant, substance or structure, the Service Provider must conduct a safe design review ensuring, so far as is reasonably practicable, that the plant, substance or structure is designed to be without risks for those who will manufacture, construct, assemble, alter, fit-out, commission, use, store, maintain, refurbish, renovate, repair, decommission, demolish, dismantle or dispose of the plant, substance or structure.

The Service Provider must provide the Principal with a safe design review report that includes all necessary information regarding the safe use of any plant, substance or structure designed as part of the Services, including:

- the purpose(s) for which it was designed; and
- any conditions necessary to ensure that the plant, substance or structure is without risks to health and safety when used for the purpose(s) for which it was designed or any reasonably foreseeable related activities.

In accordance with section 295 of the *Work Health and Safety Regulation 2017* (NSW) (WHS Regulation), if the Service Provider designs a structure as part of the Services, the Service Provider must include in the safe design review report details of any hazards relating to the design of the structure that:

- create a risk to the health or safety of persons who are to carry out any construction work on the structure; and
- are associated only with the particular design and not with other designs of the same type of structure.

### **C 15.2 Work site safety**

If the Service Provider is required to visit, work, or control work on a work site, including a site controlled by others, the Service Provider must:

- a) make its own inspections of the site and identification of hazards arising from the work site;
- b) assess the risk of harm to the health or safety of any person from any hazard identified under its control;
- c) in assessing risks and hazards, take into account its own inspections and any hazard identification or risk assessment, elimination or control information provided to the Service Provider;
- d) review and comply with any risk assessment and any measures adopted to control risk advised to the Service Provider by the Principal or others;
- e) eliminate or control risks to the health or safety of any person where those risks are under its control;
- f) in any review, assessment and control of risks, take into account but not rely alone on any hazard identification or risk assessment, elimination or control information provided to the service Provider by the Principal or others;



- g) not rely on the omission of any mention or detail of any hazard in the information provided by the Principal as evidence of the absence or limitation of any hazard; and
- h) comply with all authorised directions, procedures and policies pertaining to visiting, working or controlling work on the work site.
- i) document and implement a Safe Work Method Statement for the Services in accordance with the NSW Government's Work Health and Safety Management Systems and Auditing Guidelines (WHSMS Guidelines).
- j) Comply at all times with any other work health and safety laws, policies and procedures, including any other obligations under the Work Health and Safety Act 2011 and any of its regulations
- k) The Service Provider is responsible for the work under the Agreement at all times until Completion Date and is engaged as principal contractor for the work, in accordance with clause 293 of the WHS Regulation, and authorised to exercise such control of the workplace as is necessary to discharge the duties of principal contractor under the WHS Regulation.
- l) The Service Provider must submit the Service Provider's Safe Work Method Statements to the Principal prior to carrying out the relevant work on the work site.

### **C 15.3** Locating Existing Services

If the Services include any excavation work, the Service Provider is responsible for locating existing services and repairing any damage caused by the Service Provider's activities under the Agreement.

Before commencing excavation the Service Provider must obtain, from the Dial Before You Dig information service or relevant public authorities or owners of underground services, written confirmation of the exact positions of all underground services at and around the work site, and verify and prominently mark the locations of the underground services on the work site.

## **C 16 PROTECTION OF CHILDREN AND OTHER VULNERABLE PEOPLE**

**C 16.1.1** The Service Provider must ensure that all persons performing Services on the site or sites under the Agreement, understand and comply with the following requirements:

- a) the Service Provider must gain permission to enter the residential premises or facility before performing the Services and may only enter approved areas. The Service Provider, must report their presence to the person in charge of any school or facility on arrival each day and record, in the Site Visit Log, the details of all Service Provider personnel performing Services at the site or sites that day.
- b) Service Provider personnel should avoid talking with, touching or interacting with any children or residents or other users of any school or facility except where performing Services requires it or in an emergency or safety situation.
- c) Service Provider personnel must only use approved toilets and other facilities, unless the person in charge of any school or facility gives written authority to use alternative arrangements.
- d) Appropriate privacy must be maintained when performing Services on toilets and similar facilities. Service Provider personnel must ensure that toilets and similar facilities are not occupied or in use by children, residents or other users before entering to perform the Services, and that performance of Services does not continue when use of the facilities is required. Where practicable male employees should perform Services on male facilities and female employees on female facilities.

- e) Service Provider personnel should report any concerns about children's behaviour or child abuse to the person in charge of the relevant school or facility.
- f) Service Provider Personnel must wear or carry an identity card at all times when on the site or sites.

## **C 17 CONTRA PROFERENTEM**

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- C 17.1** In the interpretation of this Agreement, no rules of construction shall apply to the disadvantage of one party on the basis that that party put forward the Agreement or any part of it.

## **C 18 JURISDICTION**

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- C 18.1** This Agreement will be governed by and construed in accordance with the laws of the State of New South Wales.

## SHORT FORM STANDARD FORM OF AGREEMENT - Agreement Details

### Prequalification Scheme: Subsidence Advisory NSW Independent Assessment SCM4721

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#### GUIDE NOTE:

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

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

A business (trading) name is not a legal entity and must not, by itself, be used as the name for the Service Provider.

The name(s) of the owner(s) of the business name should be inserted as follows:

"[insert name of first owner] of [insert address of first owner], [insert name of second owner] of [insert address of second owner] and [insert name of third owner] and [insert address of third owner] trading under the business name "[insert business name]"

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

#### Principal

{insert department /agency/business enterprise (if business enterprise is not a legal entity)} acting for and on behalf of the Crown in right of the State of New South Wales] or [{insert name of statutory authority, statutory corporation or business enterprise (if business enterprise is a separate legal entity)}] of [insert address] ABN [ ]

#### Service Provider

insert name of Service Provider [ of [insert address] ABN [ ]

#### Service Provider's Proposal

Attached: Yes / No Dated:

#### Purchase Order

**Purchase Order Number:**

Copy Attached: Yes / No

#### Item 1:

**Services** (clause C1.1)

#### Item 2:

**Fees** (clause C5.3)

#### Item 3:

**Commencement Date:** (clause C2)

**Completion Date:** (clause C11)

#### Item 4:

**Program** (clause C4.5(a))

Program for performance and completion of the Services is [required] / [not required].

<b>Item 5:</b>	<b>Reports &amp; Deliverables</b> (clause C4.6)
<b>Item 6:</b>	<b>Service Provider's Representative</b> (clause C4.13)
<b>Item 7:</b>	<b>Principal's Representative</b> (clause C5.2)
<b>Item 8:</b>	<b>Notices</b> (clause C14) Principal's Name: Address: Email: Attention:
	Service Provider's Name: Address: Email: Attention:
<b>Item 9</b>	Insurance Conditions identified by the Principal (clause C4.18)  Indemnity Conditions identified by the Principal (clause C10)  Cap on liability:

**Agreement Details Acceptance:**

<b>Organisation Name (Principal):</b>	
<b>Contact Name:</b>	<b>Date:</b>
<b>Phone:</b>	<b>Signature:</b>
<b>Email:</b>	
<b>Organisation Name (Service Provider):</b>	

<b>Contact Name:</b>	<b>Date:</b>
<b>Phone:</b>	<b>Signature:</b>
<b>Email:</b>	

## SCHEDULE 1 – Combined Subcontractor’s Statement and Supporting Statement

Refer to clause C6 of the Scheme Conditions

For the purposes of this Statement the terms “principal”, “head contractor”, “subcontractor”, and “construction contract” have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

The Contractor is both a “head contractor” in terms of the *Building and Construction Industry Security of Payment Act 1999*, and a “subcontractor” in terms of the *Workers Compensation Act 1987*, *Payroll Tax Act 2007* and *Industrial Relations Act 1996*, and makes relevant statements below accordingly.

This Statement must be signed by the Contractor (or by a person who is authorised, or held out as being authorised, by the Contractor, to sign the statement).

Relevant legislation includes *Workers Compensation Act 1987*, s175B; *Payroll Tax Act 2007*, Schedule 2 Part 5; *Industrial Relations Act 1996* s127; and *Building and Construction Industry Security of Payment Regulation 2008* cl 19.

Information, including Notes, Statement Retention and Offences under various Acts, is included at the end of this Schedule.

### Main Contract

Contractor:

ABN:

(Business name of the Contractor)

of

(Address of the Contractor)

has entered into a

ABN:

(Note 2)

contract with

(Business name of the Principal)

(Note 3)

Contract number/identifier

### Subcontracts

The Contractor has entered into a contract with the subcontractors listed in the attachment to this Statement.

(Note 4)

### Period

This Statement applies for work between:

and

inclusive,

subject of the payment claim dated:

(Note 5)

I, \_\_\_\_\_ a director or a person authorised by the Contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this statement and declare that, to the best of my knowledge and belief:

- (a) The abovementioned Contractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick ☐ if true and comply with (b) to (h) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick ☐ and only complete (e) to (h) below. You must mark one box.

(Note 6)

- (b) All workers compensation insurance premiums payable by the Contractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid.
- (d) Where the Contractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Contractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this statement.
- (e) Where the Contractor is also a principal contractor to subcontracts in connection with the work, the Contractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above.
- (f) All amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as in dispute).

(Note 7)

(Note 8)

(Note 9)

(Note 10)

(g) Signature

Full name

(h) Position/Title

Date

**NOTE:** Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.

#### Attachment

##### Schedule of subcontractors paid all amounts due and payable

Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

##### Schedule of subcontractors for which an amount is in dispute and has not been paid

Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

## Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 of the *Payroll Tax Act 2007*, section 127 of the *Industrial Relations Act 1996* and sections 13(7) and 13(9) of the *Building and Construction Industry Security of Payment Act 1999*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.  
A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.
2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 of the *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.  
Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'  
Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'
5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

### Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

### Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act 1987* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

In terms of s 13(8) of the *Building and Construction Industry Security of Payment Act 1999* a head contractor who serves a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances is guilty of an offence.

### Further Information

For more information, visit the WorkCover website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au), Office of State Revenue website [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au), or NSW Industrial Relations, <http://www.industrialrelations.nsw.gov.au>. Copies of relevant legislation can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).



## Schedule 2 - Application Form

All applications must be submitted online via the “Service Provider Application Form” link on the NSW Government eTendering website at:

<https://tenders.nsw.gov.au/?event=public.Schemes.list>

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

Applications submitted by email will not be accepted.

Enquiries should be directed to [sa-procure@finance.nsw.gov.au](mailto:sa-procure@finance.nsw.gov.au)

## SCHEDULE 3 - Performance Report Template

### Prequalified Service Provider Performance Report

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#### PREQUALIFICATION SCHEME: INDEPENDENT ASSESSMENT SERVICES

Under the Scheme Conditions, all engaging agencies are required to submit a Service Provider Performance Report for each engagement of Services.

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

#### ENGAGEMENT DETAILS

Service Provider's Name:			
Service Provider's Contact Person:		Phone:	
RFX No.: Purchase Order Number:			
Engagement / Project No.: File and Claim No.:			
Engagement / Project Name:			
Engagement Description:			
Date Engagement Commenced:			
Date Engagement Completed:			
Total Fee for this engagement (including GST):	\$		

## ASSESSMENT

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

### Additional Comments on the Service Provider's performance

< comments may be extended on next page >