

PREQUALIFICATION SCHEME: CONTINGENT WORKFORCE

SCM0007

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VERSION NUMBER	DETAILS OF UPDATE	DATE UPDATED
1.0	Original Scheme Documentation	21/01/2013
1.1	Feedback from CMWG (22/01/2013)	23/01/2013
1.2	6.1.3 & 6.1.4 Updated wording of T2P clauses	28/11/13
1.2	6.1.3 add the word 'calendar' to describe number of days worked for the purpose of calculating T2P placement fee	28/11/13
1.2	6.1.1.d (iii) Additional Workers Compensation rate for Category L	28/11/13
1.2	6.1.6 Additional clause	28/11/13
1.2	9.1.4 (b) Clause amended	28/11/13
1.2	27.17.1 'contractor' replaced with 'Contingent Worker'	28/11/13
1.2	Schedule 2: replace 'Contract 100' with 'the Scheme'	28/11/13
1.2	Schedule 2: update superannuation percentage from 9.00% to 9.25%	28/11/13
1.2	Schedule 2 Table 2: additional insurance requirement for Category L	28/11/13
1.2	Schedule 2: add field for notice period	28/11/13
1.2	Annexure 6 Additional role types Category L	28/11/13
1.2	2.3.2: Additional clause	28/11/13
1.2	Addition of Annexure 7	28/11/13
1.2	Annexure 4: Addition of KPI for monthly reporting requirement	28/11/13
1.3	References to Department of Finance and Services amended to read Office of Finance and Services. Reference to Deputy-Director amended to Secretary	20/6/2014
1.3	Addition of Annexure 8	20/6/2014

VERSION NUMBER	DETAILS OF UPDATE	DATE UPDATED
1.3	Rewording of clause AC4.2 in Annexure 7	20/6/2014
1.3	Addition of Category M – NSW State Emergency Services	20/6/2014
1.3	6.1.1.d (iv) Additional Workers Compensation rate for Category M	20/6/2014
1.3	4.1.2 additional insurance requirement for NSW SES	20/6/2014
1.4	Schedule - 4 Master Services Addition of Clause 1.2.4 – redundancy payments	2/10/2014
1.4	Addition of clause 2.7.6 Re-engagement of Public Sector Employees	2/10/2014
1.4	Addition of Annexure 9	2/10/2014
1.4	Addition of clause 17 Dispute Resolution. All subsequent clauses have been re-numbered	2/10/2014
1.4	Addition of Category N – Home Care Service of NSW	2/10/2014
1.4	Addition of Clause 18.2 Sanctions	2/10/2014
1.4	Definition of “Supplier Personnel” is clarified	2/10/2014
1.4	Schedule - 4 Master Services Clause 1.3.1 reworded Addition of clause 1.3.2 – Sub-contract arrangements	2/10/2014
1.4	Addition of Annexure 10	2/10/2014
1.4	4.1.2.j additional insurance requirements for Home Care Workers	2/10/2014
1.4	Schedule 2: update superannuation percentage from 9.25% to 9.50%	2/10/2014
1.4a	Update links in Annexure 10	16/10/2014
1.5	Updated clause 1.1.1(a) – Corrected clause 30 to 31	2/7/2015
1.5	Addition of Clause 2.2 – Objective	2/7/2015

VERSION NUMBER	DETAILS OF UPDATE	DATE UPDATED
1.5	Clause 2.3 reworded	2/7/2015
1.5	Updated Scheme name in Clauses 2.5.1 (a) and 2.7.1	2/7/2015
1.5	Clause 2.14 – Title reworded	2/7/2015
1.5	Addition of Clause 3.5 Conflict of Interest	2/7/2015
1.5	4.1.2 (d)-(h) Transport insurance requirements updated	2/7/2015
1.5	Addition of Clause 6.1.1 (d) (v) Workers Compensation rate for Category N	2/7/2015
1.5	Rewording to align with Dictionary terms: <ul style="list-style-type: none"> - Clauses 6, 14, 17, 18, 28 and 29 - Schedules 1 and 4 - Annexures 1, 4, 5, 9 and 10 	2/7/2015
1.5	Addition of Clause 6.1.8 VMS calculation	2/7/2015
1.5	Updated Clause 9 Evaluation Criteria	2/7/2015
1.5	Updated Contact Details in Clauses 2.6.4, 12, 13, 22 and 28.10.1	2/7/2015
1.5	Updated references in Clauses 14.2.4 and 14.3.2(b)	2/7/2015
1.5	Removal of Clause 14.3 relating to C100	2/7/2015
1.5	Addition of Clause 19.1.1	2/7/2015
1.5	Addition of Clause 28.4.3	2/7/2015
1.5	Dictionary terms added and updated	2/7/2015
1.5	Updated links to Procure Point: <ul style="list-style-type: none"> - Schedules 2 and 3 - Annexure 2 	2/7/2015
1.5	Schedule 4, addition of Clause 1.3.3	2/7/2015

VERSION NUMBER	DETAILS OF UPDATE	DATE UPDATED
1.5	Update the table title in Annexure 3	2/7/2015
1.5	Updated reference clauses in Annexure 4	2/7/2015
1.5	Addition of 2 clauses in Annexure 5 Respect for Safety	2/7/2015
1.5	Annexure 7 updated – Additional Conditions (Transport Cluster)	2/7/2015
1.5	Annexure 8 – addition of Clause 1.7 Liability	2/7/2015
1.5	All references to Office of Finance and Services replaced with Department of Finance, Services and Innovation	2/7/2015
1.6	Annexure 7, AC18.2 – Additional Conditions (Transport Cluster). Clause replaced	18/1/2016
1.6	Dictionary updated to include the definition of “permanent”	18/1/2016
1.7	Annexure 10 Clauses 1 and 7 updated	10/2/2016
1.7	Clauses 2.9.1 and 28.8.2 updated (references to RCTI)	10/2/2016
1.8	Updated Clause 28.9.1 NSW Police Checks	1/11/2016
1.8	Addition of Clause 6.1.1 (c) (i) Supplier Fees	1/11/2016
1.8	Amend name of Principal	1/11/2016
1.8	Addition of Clause 2.1.3	1/11/2016
1.8	Dictionary updates	1/11/2016
1.8	Updated Clause 6.1.4 Supplier Fees	1/11/2016
1.9	Addition of Annexure 11	13/12/2016
1.9	Remove policy link NSW Trains	13/12/2016
2.0	All references to WorkCover replaced with Workers Compensation	13/02/2017

VERSION NUMBER	DETAILS OF UPDATE	DATE UPDATED
2.0	Addition of Clause 6.1.1 (d) (vi) Workers Compensation rate for Category D – ACT Industrial	13/02/2017
2.0	Rename Category M – State Emergency Services	21/03/2017
2.0	Reword Clause 6.1.1 to include extra Workers Compensation rates for the ACT	21/03/2017
2.1	Remove two duplicate dot points under Clause 1.2.1 in Schedule Four	23/11/2017
2.1	Addition of Clause 31.4.1	23/11/2017
2.1	Addition of word “Trusts” under clause 1.3.1 in Schedule Four	23/11/2017
2.2	Reword Clause 6.1.1 (d) to provide flexibility in Workers Compensation rates	26/03/2018
3.0	Update Clause 6.1.1(c) to include acquisition	09/07/2018
3.0	Addition of the definition of acquisition	09/07/2018
3.0	Annexure 5 - update references to transition to include acquisition	09/07/2018

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SECRETARY, DEPARTMENT OF FINANCE, SERVICES AND INNOVATION (“Principal”)

Rules of participation in the Prequalification Scheme: Contingent Workforce

Capitalised terms are defined in these terms.

1. About these Rules

- 1.1.1 The terms that apply to the Supplier’s participation in this Scheme are set out in:
- (a) clauses 1 to 31 of these Rules;
 - (b) the Master Services described in Schedule 4;
 - (c) the Dictionary;
 - (d) the terms and conditions for an engagement by a Customer (“Customer Order”) in Schedule 2.
 - (e) the Application Form in Schedule 1 submitted by the Supplier and accepted by the Principal Representative,
- (together, the “Scheme”).
- 1.1.2 If there is any inconsistency between any parts of this Scheme, then the part listed higher prevails to the extent of the inconsistency.

2. Supply of Services

2.1 Purpose of the Scheme

- 2.1.1 The purpose of the Contingent Workforce Scheme established by the Principal is so that an Eligible Customer may at any time issue a Customer Order to a Supplier for Services in accordance with the Rules and any Ordering Process set out in a Customer Order placed with the Supplier.
- 2.1.2 The Customer may seek potential Contingent Workers from multiple Suppliers on the Scheme for a placement on a non-exclusive basis but Suppliers acknowledge that only one Supplier will receive a Customer Order for any placement of a Contingent Worker.
- 2.1.3 This Scheme is only open to recruitment organisations with the exception of suppliers applying for categories M and N.

2.2 Objective

- 2.2.1 The objective of this Scheme is to provide a quality contingent workforce that is effectively and efficiently managed and co-ordinated across government. This Scheme will see the implementation of systems and processes to manage appropriate buying behaviours aligned with Government workforce planning objectives. It will capture information associated with the NSW Government’s use of contingent workers with the aim to reduce cost and improve candidate quality.

2.3 Orders

- 2.3.1 Each Customer Order placed in accordance with these Rules will create a separate Customer Order
- 2.3.2 The terms and conditions of the standard Customer Order between the Supplier and the Customer for the supply of the Services will be agreed on the Customer Order.

2.4 Contingent Worker(s) to Employee

- 2.4.1 Contingent Workers are not eligible for placement on any eligibility list within NSW Government.
- 2.4.2 In the case that a Contingent Worker is successfully placed in a role following their Application for any role advertised via an Expression of Interest (EOI), the Supplier may invoice a fee as follows:
- (a) 0 – 90 calendar days: 7.05% of Salary Package
 - (b) 91 – 180 calendar days: 5.25% of Salary Package

- (c) 181 – 270 calendar days: 3.50% of Salary Package
- (d) 271 – 365 calendar days: 1.75% of Salary Package
- (e) More than 365 calendar days: nil fee

2.5 No exclusivity or minimum Orders

2.5.1 The Supplier acknowledges that:

- (a) it is not the exclusive Supplier of the Services, or services similar to the Services and, at the date of establishment of the Scheme, the Principal discloses that the following whole of government arrangements are in place for services similar to the Services described in the Master Services Schedule:
 - (i) NSW Government Performance and Management Services Scheme and consultancy panels in general;
 - (ii) ICT Services Scheme and any future contract or agreement; and
 - (iii) Executive Search Scheme and any future contract or agreement.
- (b) they may not be invited to participate in a competitive process for the supply of services (including the Services) and that a Customer is under no obligation to place any Orders or acquire any minimum quantity of Services.

2.6 Amendments to the Scheme

2.6.1 The Scheme rules may be amended periodically by the Department as required.

2.6.2 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

2.6.3 Suppliers will be notified via email of amendments to the Scheme rules.

2.6.4 Suppliers may withdraw from the Scheme at any time by notice in writing to the Director Category Management, Human Services at contingentlabour@finance.nsw.gov.au.

2.7 Scope of Categories

2.7.1 The scope of Categories is outlined at Annexure 6. Types of work that are NOT within the scope of the proposed Scheme are those that are included in:

- (a) NSW Government Performance and Management Services Scheme and consultancy panels in general;
- (b) ICT Services Scheme and any future contract or agreement; and
- (c) Executive Search Scheme and any future contract or agreement.

2.8 Range and Depth of Contingent Worker(s)

2.8.1 This Scheme is for the provision of Contingent Worker(s) and is intended to be used when temporary engagement of Contingent Worker(s) is required. As a minimum and to assist with classification and reporting of placements, the Scheme includes the Categories as listed in Annexure 6.

2.8.2 All Categories will be available to all Suppliers provided that they can service one or more of the listed Category(s) and must be able to substantially provide the role types within the respective Category(s) ensuring talent pool quality and size. Applications will be accepted for one or more Categories. Once on the Scheme, Suppliers will be able to apply for additional Categories if not all Categories are awarded to them.

2.8.3 Role types (listed in Annexure 6) are not exhaustive within each Category and, therefore, any and all other Contingent Worker(s) recruited, irrespective of whether they fit into a specific Category or not, are included under the terms of this Scheme.

2.8.4 Accordingly, the Principal reserves the right to include additional Contingent Worker role types within the Categories under this Scheme which will be subject to the same terms and conditions of this Scheme. Alternatively, during the period of the Scheme, Suppliers may apply to the Principal Representative for additional role types to be included under this Scheme. If accepted these additional role types will also be subject to the same terms and conditions of this Scheme.

2.8.5 Similarly, additional Categories that may be added during the period of the Scheme will also be subject to the same terms and conditions of this Scheme.

2.8.6 The re-engagement of Public Sector Employees will be dealt with as per Master Services clause 1.2.4 and Annexure 9.

2.9 Vendor Management System

2.9.1 The Principal may implement a Vendor Management System (VMS) in relation to the engagement of Contingent Workers by Eligible Customers. It is anticipated that the VMS selected will be accessed via the internet by both Eligible Customer 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)

2.10 Managed Service Provider

2.10.1 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 Customer at no additional cost to the Customer.

2.10.2 If the Supplier is successfully engaged as a MSP by a Customer, the Supplier must agree to transition any and all Contingent Worker(s) from that Customer prior to commencing as the MSP for that Customer. Transition will occur as per Annexure 5.

2.11 Payroll Services Provider

2.11.1 The Principal proposes to implement a Payroll Provider (PP) arrangement. All Suppliers agree to work with the PP where requested by the Principal Representative or an Eligible Customer at no additional cost to the Customer.

2.12 Record and Contingent Worker Database Management

2.12.1 Suppliers are required to submit monthly reports in the format as outlined in Annexure 2. Monthly reports must be received by the Prequalification Scheme: Contingent Workforce contract officer by the tenth (10th) calendar day of every month.

2.12.2 Suppliers should maintain a comprehensive record and Contingent Worker database for all registered Contingent Worker(s), current placements as well as placement history and Customer details. Record management processes must comply with privacy legislation. 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.

2.13 Financial Capacity and Stability

2.13.1 Suppliers seeking admission to the Scheme 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. The Supplier must be able to provide uninterrupted payment of Contingent Workers' entitlements engaged for the purposes of this Scheme. The Principal reserves the right to audit Supplier's financial records prior to acceptance to the Scheme and for verification purposes during the course of the Scheme.

2.14 Supplier Forums

2.14.1 The Department will regularly engage with the Suppliers through Supplier forums to provide updates on the four pillars. The presentation slides will be made available on the Procure Point website.

2.14.2 An Industry Briefing was held on 30 January 2013 to provide information about the Contingent Workforce Prequalification Scheme. The presentation slides are available on the Procure Point website.

3. Confidentiality

3.1 Disclosure of Confidential Information

3.1.1 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.

3.2 Disclosure to Customers

3.2.1 Despite clause 3.1, 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.

3.3 Disclosure

- 3.3.1 The Department of Finance, Services and Innovation and Eligible Customers may disclose certain information in connection with the Scheme in accordance with the Government Information (Public Access) Act 2009 (NSW).

3.4 Information submitted with an Application

- 3.4.1 Information submitted with an Application will be treated as confidential by NSW Government Agencies unless otherwise required by law.
- 3.4.2 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.

3.5 Conflict of Interest

- 3.5.1 Prior to engaging and during the engagement, the Supplier agrees to declare any Conflict of Interest.

4. Insurances

- 4.1.1 The Supplier must obtain and thereafter maintain at its own cost comprehensive insurance policies in relation to any liability arising out of these Rules and a Customer Order.
- 4.1.2 Suppliers agree to hold and maintain on the eTendering website the following insurance policies or such insurances at the levels specified in the Customer Order:
- (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) Workers' Compensation insurance in accordance with applicable legislation
 - (d) Rail-specific roles (Worksite Protection) require Public Liability insurance with an indemnity of at least \$100 million in respect of each claim for the period of cover. Rail-specific roles if on live rail require Public Liability of \$250 million in respect of each claim for the period of cover.
 - (e) Rail-specific roles (Generalised Industrial Labour) require Public Liability insurance with an indemnity of at least \$50 million in respect of each claim for the period of cover. Rail-specific roles if on live rail require Public Liability of \$250 million in respect of each claim for the period of cover.
 - (f) Rail-specific roles (Track Assessment) require Professional Indemnity insurance with an indemnity of at least \$10 million in respect of each claim for the period of cover
 - (g) Rail-specific roles (Track Assessment) require Public Liability insurance with an indemnity of at least \$250 million in respect of each claim for the period of cover. Rail-specific roles if on live rail require Public Liability of \$250 million in respect of each claim for the period of cover.
 - (h) Sydney Trains, NSW Trains, Railcorp, Transport Cleaning Services (TCS) require all Contingent Workers to have higher levels of insurance than the Scheme standard. Suppliers agree to hold and maintain the following minimum insurance policies or such insurances at the levels specified:
 - (i) Professional Indemnity insurance with an indemnity of at least \$20 million in respect of each claim for the period of cover
 - (ii) Public Liability insurance with an indemnity of at least \$20 million in respect of each claim for the period of cover
 - (i) NSW State Emergency Services, category M requires minimum Public Liability of \$10 million in respect of each claim for the period of cover
 - (j) Home Care Service of NSW, category N, requires minimum Public Liability of \$10 million in respect of each claim for the period of cover.
- 4.1.3 The Supplier must provide the Principal Representative with certificates of currency proving the currency of the insurance policies affected by it.

5. Applications for Prequalification

- 5.1.1 In applying for Scheme membership, the Applicant agrees that it accepts the Rules.
- 5.1.2 Applications must be complete and in the form prescribed in Schedule 1.
- 5.1.3 Applications must be delivered in accordance with the delivery instructions set out in the Application form prescribed in Schedule 1.
- 5.1.4 Only those Applications which fully satisfy all requirements set out in these Rules and the form prescribed in Schedule 1 will be considered by the Department.
- 5.1.5 Applicants agree that, if granted admission to the Scheme, the terms and conditions of any engagement will be those of the Customer Order at Schedule 2 and agree that it is not necessary to sign the Standard Form of Agreement for each or any engagement.

6. Supplier Fees

- 6.1.1 Suppliers agree to the following fees:
 - (a) For the first 12 months the Contingent Worker is contracted - A maximum of 7.05% of Contingent Worker Normal Time Pay Rate (Normal Time Base Rate plus superannuation) and:
 - (i) Floor Price is fixed at \$3.00 per hour for all Normal Time Pay Rates less than \$42.56 per hour;
 - (ii) Ceiling Price is fixed at \$15.00 per hour for all Normal Time Pay Rates greater than \$212.76 per hour; and
 - (iii) Floor Price and Ceiling Price are only effective for the first 12 months the Contingent Worker is contracted; for any and all assignments longer than 12 months, clause 6.1.1(b) will apply;
 - (b) For assignments that are longer than 12 months (either via extension or original assignment, regardless of which prior contract/arrangement the Contingent Worker was placed under) – maximum 5.14% of Contingent Worker Normal Time Pay Rate (Normal Time Base Rate plus superannuation);
 - (i) No Floor Price will apply after the first 12 months: Supplier Fee will revert to 5.14% of Normal Time Pay Rates;
 - (c) For a Referred Contractor or transitioned/acquired Contingent Worker – maximum of 5.14% of Contingent Worker Normal Time Pay Rate applies. No Floor Price will apply.
 - (i) A Contingent Worker who is recruited without the involvement of Contractor Central, where implemented, will be considered a Referred Contractor and a maximum of 5.14% of Contingent Worker Normal Time Pay Rate will apply.
 - (d) Workers Compensation rates in NSW are a maximum of 1.00% and in the ACT are a maximum of 1.50% for all Categories other than:
 - (i) Category D – Industrial: Workers Compensation rate maximum of 8.00%
 - (ii) Category J – Transport: Workers Compensation rate to be determined by Transport
 - (iii) Category L – Other: Workers Compensation rate maximum of 4.00%
 - (iv) Category M – NSW State Emergency Services: Workers Compensation rate maximum of 8.00%
 - (v) Category N – Home Care Services: Workers Compensation rate maximum of 4.00%
 - (vi) Category D – ACT Industrial: Workers Compensation rate maximum of 12.00%
 - (e) Fluctuations in statutory prescribed costs (payroll tax and superannuation) will be passed on at cost to the Customer.

Table 1 shows calculation examples of Supplier Fees and also represents the Application of Floor Price and Ceiling Price limit for first 12 months.

Table 1		
Contingent Worker Normal Time Hourly Pay Rate (Base Rate + Superannuation)	Supplier Fee 7.05% of Pay Rate	
\$18.50	\$3.00	Fixed Floor Price
\$21.00	\$3.00	
\$25.00	\$3.00	
\$30.00	\$3.00	
\$40.00	\$3.00	
\$42.56	\$3.00	
\$42.57	\$3.01	7.05%
\$50.00	\$3.53	7.05%
\$60.00	\$4.23	7.05%
\$70.00	\$4.94	7.05%
\$80.00	\$5.64	7.05%
\$90.00	\$6.32	7.05%
\$100.00	\$7.05	7.05%
\$150.00	\$10.58	7.05%
\$200.00	\$14.10	7.05%
\$212.76	\$15.00	Fixed Ceiling Price
\$250.00	\$15.00	
\$300.00	\$15.00	

6.1.2 Time worked by Contingent Worker(s) over and above the agreed hours must have prior written approval from the Customer. Should prior written approval not be gained, payment for any extra hours worked will not be made;

In the event the Contingent Worker attracts overtime rates for Overtime Hours, the Supplier Fee will only ever be calculated on Normal Time Base Rate;

6.1.3 If a Contingent Worker commences employment with the Customer within 12 months of the original start date in that role, the Supplier will be entitled to charge the Customer the following temporary-to-permanent placement fee:

- (a) 0 – 90 calendar days: 7.05% of Salary Package
- (b) 91 – 180 calendar days: 5.25% of Salary Package
- (c) 181 – 270 calendar days: 3.50% of Salary Package
- (d) 271 – 365 calendar days: 1.75% of Salary Package
- (e) More than 365 calendar days: nil fee

6.1.4 The Supplier will not be entitled to payment of temporary-to-permanent placement fees if employment of the Contingent Worker is the result of a Merit, Recruitment and Selection process.

6.1.5 Supplier Fee will not be charged for any other entitlements or expenses (visa fees, PPE, relocation expenses, travel expenses, etc.). Any such costs must be agreed with the Customer prior to being incurred and must be invoiced to the Customer at cost.

6.1.6 The Supplier will not be entitled to payment of temporary-to-permanent placements fees if the Contingent Worker is a Referred Contractor.

6.1.7 Sub-contract arrangements are not allowed. The Supplier must engage the Contingent Worker directly; as a PAYG worker, ABN worker or via 457 Visa sponsorship.

6.1.8 In the case of rounding differences in the Vendor Management System (VMS) the VMS calculation will be the agreed value.

6.2 Overseas Contingent Worker(s) Sourced

6.2.1 Where Contingent Worker(s) are sourced from overseas, Pay Rates should be in line with current Australian market rates. No additional fees are allowed for Contingent Worker(s) sourced from overseas.

6.2.2 Suppliers should ensure that Contingent Workers have the necessary Australian immigration permissions to work in New South Wales to perform the hours and Category of work they are being recruited for. Suppliers sponsoring Contingent Workers for placement with the NSW Government should note the requirements and procedures for sponsoring a temporary employee, for periods up to four years. Information can be downloaded using the following link: <http://www.immi.gov.au/allforms/booklets/1154.pdf>

6.3 Relocations

6.3.1 Relocation fees of any kind are to be agreed by the Customer and the Supplier prior to the engagement of the Contingent Worker(s). All relocation fees shall be at cost to the Customer and a Customer may choose to use a NSW Government contract/s that will support the relocation effort.

7. Quality and Qualifications of Contingent Worker(s)

7.1.1 Suppliers are required to provide high quality Contingent Worker(s) to meet the needs of Customers. Suppliers must monitor ongoing suitability and performance of the Contingent Worker(s), taking prompt and appropriate action to address any issues.

7.1.2 Skill level and requirements will be determined at the time of the Customer providing the Supplier with the specifications for Contingent Worker(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.

7.1.3 Customers may also specify capability requirements for certain Categories of Contingent Worker(s), for example capabilities from the Skills Framework for the Information Age (SFIA) for Contingent Worker(s) in Information and Technology roles.

7.1.4 It is a requirement that (where practicable) Suppliers provide a maximum of three (3) Screened Contingent Workers as standard practice.

7.1.5 The Supplier must ensure that the Contingent Workers being provided to the Customer hold the relevant licences / certificates of competency (NB: licences are specific to the type of work being performed) to perform the work the Contingent Workers are engaged for and the Supplier must ensure that the Contingent Worker(s) is / are properly trained. The Supplier must also provide appropriate personal protective equipment for Contingent Workers (where appropriate).

8. Prequalification Process

8.1.1 The Department will determine the membership of the panel to be formed under the Scheme.

8.1.2 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 Schedule 1 and in accordance with these Rules.

8.1.3 Applications may be made at any time during the life of the Scheme.

9. Evaluation Criteria

9.1.1 Applications can be made for prequalification onto the Scheme at all times during the term of the Scheme.

9.1.2 Applications will be assessed according to the following evaluation criteria:

- (a) acceptance of Rules, including acceptance of Supplier Fees, willingness to comply with system and data collection requirements;

- (b) demonstrated financial capability by providing the last 3 year's financial statements including, as a minimum, Profit and Loss statements and Balance Sheets.
- (c) Demonstrated Australian experience, satisfactory previous performance and Applicant referee reports; and
- (d) meeting appropriate insurance requirements.

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

- (a) ACN
- (b) ICAC
- (c) Company Directors

9.1.4 Those who do not meet clauses 9.1.2 and 9.1.3 will be invited to re-apply and will be assessed at the next periodical meeting of the Department.

10. Changes to Categories

10.1.1 The Department may change a Supplier's status under the Scheme to include additional Categories where:

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

10.1.2 The Department may change a Supplier's status under the Scheme if the Supplier has requested formally in writing withdrawal from a particular Category.

11. Notification of Outcome

11.1.1 The Department may accept an Application (with or without qualification) or reject the Application. Applicants will be notified in writing by the Office of the outcome of their Application.

12. Request for Review of the Decision

12.1.1 Should an Applicant believe that there are substantive grounds for the Department 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, Contingent Workforce
 Department of Finance, Services and Innovation
 Level 11, McKell Building
 2-24 Rawson Place
 SYDNEY NSW 2000

12.1.2 The Department will refer the matter to the Review Committee and inform the Supplier of the outcome via email.

13. Changes to Supplier Status

13.1.1 Suppliers must immediately inform the Office of any significant change in their financial capacity, capability, ownership status, contact details or address by writing with full details to:

Director, Contingent Workforce
 Department of Finance, Services and Innovation
 Level 11, McKell Building
 2-24 Rawson Place
 SYDNEY NSW 2000

or as otherwise directed by the Department.

13.1.2 The changes notified will be reviewed and assessed by the Department as per the Scheme Rules.

14. Performance Reporting Behaviour

- 14.1 **Supplier performance monitoring and reporting shall be conducted in accordance with the following principles:**
- (a) both the Customer and Supplier (the Parties) aim to achieve continuous performance improvement;
 - (b) performance reporting is the tool used to facilitate the identification and resolution of issues;
 - (c) performance reporting becoming the responsibility of both Parties;
 - (d) performance being on the agenda at regular formal meetings;
 - (e) performance issues being promptly addressed by the Parties concerned;
 - (f) performance issues being discussed openly with the Supplier to ensure that concerns (such as dissatisfaction with performance) do not come as a surprise when subsequently documented in any relevant Performance Report;
 - (g) assessment of the Supplier's performance should take account of individual behaviour when necessary to highlight performance problems for resolution; and
 - (h) 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.
- 14.2 **Management Information and Reporting**
- 14.2.1 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 Department at no additional cost to the NSW Government. Hard copy reports will also be provided to Customers, if requested.
- 14.2.2 Annexure 2 is a sample of the required reporting format which, as a minimum, must be provided by Suppliers by the 10th calendar day of every month. Other management reports may be required in addition to this minimum requirement.
- 14.2.3 Annexure 3 is a list of additional documents and reports which may be requested under the Scheme.
- 14.2.4 Failure to provide accurate and timely reporting may result in removal from the Scheme as outlined at Clause 18, 19 and 20 of the Scheme.
- 14.3 **Customer Service Quality**
- 14.3.1 Suppliers are required to provide high quality customer service suitable to the needs of the Customers of this Scheme and meet the KPIs as set out in Annexure 4. KPIs and customer service satisfaction shall be monitored by the Principal Representative and will inform decisions about continued participation in the Scheme.
- 14.3.2 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. Consultants must:
- (a) Confirm / verify when a Customer Order has been fulfilled (preferably via email), or where required by the Principal Representative, using a specified system such as a Vendor Management System;
 - (b) Facilitate, where applicable, procuring working with NSW Police criminal checks and Working with Children checks (refer to Clause 28.9 and 28.10), medical checks etc. prior to Contingent Worker(s) commencement; and
 - (c) Consult with Customers to determine suitability and performance of Contingent Worker(s) placed and resolve suitability and performance matters to the satisfaction of the Customer.
- 14.3.3 Suppliers should note that customer service will be measured and managed under this Scheme. Please refer to Annexure 4 – Key Performance Indicators.

15. Monitoring Performance

- 15.1.1 A Customer must submit a Performance Report in the form prescribed in Schedule 3 to the Prequalification Scheme: Contingent Workforce contract officer where:
- (a) the performance of, and the Services provided by, the Supplier are considered by the Customer to be unsatisfactory; or

- (b) the performance of the Contingent Worker(s) provided by the Supplier are considered by the Customer to be unsatisfactory.

15.1.2 The Performance Report is to be submitted at the completion or termination of the relevant engagement.

16. Poor Performance Reporting Process

16.1.1 The Customer will be responsible for the preparation of Performance Reports.

16.1.2 When a Performance Report is prepared, the Customer shall forward the original to the Contract Officer of the Prequalification Scheme: Contingent Workforce for entry into the Department's database.

16.1.3 The Prequalification Scheme: Contingent Workforce Contract Officer from the Department:

- (a) will forward the Report to the Supplier
- (b) may arrange a meeting between Supplier and the Customer to discuss and consider the Performance Report and liaise with both Parties to attempt to resolve the issue
 - (i) or in aggregate once a trend of similar performance issues is identified (excepting if the issue relates to potential suspension or removal from the Scheme) and reasons;
- (c) will determine the disagreement in consultation;
- (d) will look for consistent non-conformance types;
- (e) will notify the Supplier of its decision; and
- (f) will use the Performance Report to aggregate similar performance issues.

17. Dispute Resolution

17.1.1 For any dispute arising under this Agreement:

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

17.1.2 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.

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

18. Performance Management

18.1 NSW Procurement will manage the performance of Suppliers by:

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

18.2 Sanctions

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

18.3 Relationship Management

18.3.1 The Supplier must allocate an experienced and knowledgeable Relationship Manager as a single point of contact for the Principal Representative to appropriately address any performance management related matters raised by the Principal Representative and/or by Customers.

18.3.2 The Relationship Manager will also be required to attend regular meetings between the Supplier and the Principal Representative as required.

18.3.3 The Supplier's Relationship Manager must be able to fulfil all requirements as outlined at clauses 12 and 13 of the Rules. It should be noted that the Performance Reports noted in these clauses will assist the Department in evaluating KPI 7 (see Annexure 4).

19. Temporary Suspension from the Scheme

19.1.1 NSW Procurement may suspend a Supplier from the Scheme for up to three (3) months if it considers the Supplier has:

- (a) Not complied with the requirements of the Scheme Rules; or
- (b) Demonstrated unsatisfactory performance
- (c) Not complied with KPIs

19.1.2 Before a Supplier's membership on the Scheme is suspended under Clause 19.1.1, NSW Procurement 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 suspended.

19.1.3 NSW Procurement 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 NSW Procurement if and when the actions required to lift the suspension have been undertaken.

19.1.4 NSW Procurement will regularly review the status of Suppliers who have been suspended under clause 18.1. If the action taken by the Supplier is considered by NSW Procurement to be insufficient, the suspension period may be extended and the Supplier will be notified accordingly. NSW Procurement may revoke the suspension if it is satisfied that the Supplier has taken appropriate action to address the reasons for suspension.

20. Removal from the Scheme

20.1.1 NSW Procurement 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:

- (a) provided false or misleading information with their Application to the Scheme; or
- (b) breached any of the Scheme Conditions; or

- (c) failed to meet applicable financial requirements; or
 - (d) been the subject of substantiated reports of unsatisfactory performance for other Customers; or
 - (e) been determined by the Department as not suitable for future work; or
 - (f) provided unsatisfactory performance with contracts under the Scheme; or
 - (g) experienced a Material Adverse Event; or
 - (h) 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; or
 - (i) engaged or engages in activities that contravene or circumvent the requirements of the Scheme Guidelines for Customers, which may be downloaded at www.procurepoint.nsw.gov.au; or
 - (j) refused to supply Services to a Customer without reasonable grounds for such refusal; or
 - (k) breached the NSW Government Code of Practice for Procurement.
- 20.1.2 Before a Supplier's membership on the Scheme is revoked under section 20.1.1, NSW Procurement 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.
- 20.1.3 The Supplier may, at any time after the establishment of the relevant Scheme:
- (a) Discontinue its participation in that Scheme on 90 days' notice to NSW Procurement
 - (i) After a Supplier has discontinued its membership on the Scheme, Customer Orders will be transitioned as per Annexure 5.
- 20.1.4 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.
- 20.1.5 Survival
- (a) Clauses 3 and 29 survive a Supplier having discontinued its membership on the Scheme (for any reason) and the Supplier's participation in a Scheme.

21. Re-Application Process

- 21.1.1 Suppliers who are removed from the Scheme as per Clause 19 can re-apply for admittance to the Scheme after 12 months from the date of removal.
- 21.1.2 During the Removal Period, no new Customer Orders can be entered into.
- 21.1.3 Customer Orders that expire during the Removal Period will be dealt with as per Annexure 5.

22. Request for Review of Decision to Suspend or Revoke Membership

- 22.1.1 Where a Supplier considers that there are substantive grounds for the NSW Procurement 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, Contingent Workforce
 Department of Finance, Services and Innovation
 Level 11 McKell Building
 2-24 Rawson Place,
 SYDNEY NSW 2000

- 22.1.2 NSW Procurement will refer the matter to the Department for review and inform the Supplier of the outcome via email.

23. Disclaimer

- 23.1.1 NSW Procurement and the Department reserve the absolute discretion to:
- (a) accept an Application with or without limitations and/or conditions;

- (b) reject an Application; and
- (c) suspend or revoke a Supplier's membership to the Scheme.

23.1.2 In exercising their discretion, NSW Procurement and the Department or personally its members will not be held liable for any costs or damages incurred by the Supplier.

24. Termination

24.1.1 The Scheme can be terminated with 90 days' notice at the sole discretion of NSW Procurement by posting a Scheme Termination Notice on the NSW Government eTendering website.

25. Publicity

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

26. Review and Development of the Scheme

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

27. Compliance with Relevant Legislation and Standards

27.1.1 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 Act and/or regulation made under the Act.

28. Other obligations

28.1 Special Requirements

28.1.1 Suppliers under the Scheme are subject to the following conditions:

- (a) For each individual engagement for which the Supplier is selected, the Supplier shall enter into a Customer Order in the form set out in Schedule 2, including a statement of the fees to be charged for each individual engagement.
- (b) The Supplier may be required to meet with the Department at no charge on a few occasions each year to discuss relevant matters and provide a report on relevant issues.

28.2 Code of Practice for Procurement

28.2.1 Suppliers must adhere to the NSW Government Code of Practice for Procurement at all times.

28.2.2 Any breach of the NSW Government Code of Practice for Procurement may result in the termination of Customer Order(s) and/or removal from the Scheme.

28.3 NSW Buy

28.3.1 The Department will promote the existence of the Scheme on NSW Buy and provide links for Customers and Agencies to get more information about the Suppliers approved to be on the Scheme.

28.4 Records

28.4.1 The Supplier must keep and maintain all necessary records in relation to each Customer Order.

28.4.2 The Principal reserves the right to have a site inspection of the Supplier's premises or an audit of its records during the course of the Scheme for the purpose of evaluating compliance with the Scheme.

28.4.3 The Department may request additional information via email and/or the eTendering system. The Supplier must provide this information by the due date.

28.5 Key Personnel

28.5.1 The Supplier warrants that its personnel (including the Relationship Manager) engaged in the provision of the Services are appropriately qualified, competent and experienced and are aware of the requirements of the Scheme.

28.5.2 The Supplier must only employ such persons as are careful, skilled and experienced in the provision of the Services and the Supplier must, where applicable, hold or ensure appropriate personnel hold, all necessary certificates, licences, permits and authorities,

28.5.3 The Principal may object to and direct the Supplier to remove any of its personnel (including the Relationship Manager) who in his 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.

28.6 Service Level Agreements (SLA) with Customers

28.6.1 The Supplier will, under each Customer Order and at its own expense, meet the timeframes specified by Customers in the Customer Orders for the provision of Contingent Worker(s). In the event that a timeframe is not specified by the Customer, the Supplier must use its best endeavours to work to industry standard timeframes.

28.7 Marketing

28.7.1 Suppliers must follow agreed and appropriate Customer guidelines with respect to the marketing of Recruitment 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.

28.7.2 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; and
- (e) Facility for the Suppliers to market their Services on the NSWBuy system.

28.8 Value Added Services and Innovation

28.8.1 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.

28.8.2 Value-added Services which Suppliers may consider providing throughout the life of the Scheme may include but are not limited to:

- Offering technical assistance to Customers in the development of the job specifications;
- eRecruitment via the VMS;
- eRecruitment via the VMS and MSP;
- Consolidated invoicing.

28.9 NSW Police Checks

28.9.1 Some Government Agencies may require criminal background checks of Contingent Worker(s) for all or some of their roles. These checks will be requested and paid for by the customer. The Supplier will need to advise Contingent Worker(s) that they may be subject to a criminal background check and provide basic information for the check. Further information is available from: http://www.police.nsw.gov.au/about_us/structure/specialist_operations/forensic_services/criminal_records_section

NSW Police Headquarters
1 Charles St Parramatta
NSW 2150

T 02 8835 7888
F 02 8835 7193
E crs@police.nsw.gov.au
W www.police.nsw.gov.au

28.9.2 The Supplier must confirm the result of NSW Police Checks to the Customer.

28.10 Working with Children Checks

28.10.1 Some Customers may require a Working with Children Check to be made of Contingent Worker(s) proposed to be appointed. The Supplier, if requested, will be required to arrange Working with Children Checks prior to placing the Contingent Worker(s) into the assignment. These checks are to be made through an Approved Screening Agency at no cost to NSW Government. Further information is available from:

<http://www.kidsguardian.nsw.gov.au/working-with-children/working-with-children-check>

Office of the Children's Guardian
Suite 1, Level 13, 418A Elizabeth Street
Surry Hills NSW 2010

T 02 9286 7219
F 02 9286 7201
E check@kidsguardian.nsw.gov.au
W <http://kidsguardian.nsw.gov.au>

28.10.2 The Supplier must confirm the result of Working with Children Checks to the Customer.

28.11 Professional Associations

28.11.1 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.

28.11.2 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.

28.12 Rail Transport drug & alcohol policy

28.12.1 The drug and alcohol policy of a rail transport operator must include:

- (a) the objectives of the rail transport operator in relation to the management of alcohol and other drugs, and related issues, in connection with the safety of each of the operator's railway operations, and
- (b) without limiting paragraph (a), the following objectives:
 - (i) the establishment of measures to achieve a workplace culture that supports fitness for work;
 - (ii) the reduction of risks to safety, absenteeism and other effects in the workplace of the consumption or use of alcohol and other drugs; and
 - (iii) the manner in which the objectives are to be achieved.

28.12.2 The Rail Safety (Drug and Alcohol Testing) Regulation 2008 can be found at: <http://www.legislation.nsw.gov.au/maintop/view/inforce/subordleg+609+2008+cd+0+N>

28.13 Additional Online Systems

28.13.1 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 them.

28.14 Small and Medium Enterprises

28.14.1 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>)

28.14.2 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.

28.15 Savings Targets

- 28.15.1 The NSW Government is overhauling its system for purchasing goods and services. The objective of the reform program is to ensure that the NSW Government has a world class procurement system which delivers value for money, is aligned with business needs, leads to service delivery improvement and supports a competitive and innovative NSW economy.
- 28.15.2 In November 2012, the NSW Procurement Board issued the NSW Government's Strategic Directions Statement to outline its reform program over the next 12 to 18 months. The three overarching procurement reform objectives in the Strategic Directions Statement are value for money, delivering quality government services and alignment with business needs.
- 28.15.3 The Procurement Strategic Directions Statement recognises that an effective procurement system will deliver value for money for Government. Procurement activity needs to look at the total value derived by Government over the life of a contract/strategy.
- 28.15.4 The NSW Government committed to identifying sustainable procurement savings of over \$1 billion over a four year period. In addition to the above, respondents are encouraged to demonstrate how they will support Government in achieving this commitment through price reductions, increased discounts, improved efficiencies and other measures

28.16 Removal of Management Fee from State Contracts

- 28.16.1 The NSW Government's Strategic Directions Statement, Strategic Direction 2, is Simplification and Red Tape Reduction. A key way to deliver value for both suppliers and agencies is to simplify procurement practice and process and remove unnecessary red tape.
- 28.16.2 One of the measures already implemented to reduce red tape and simplify the process for industry is that Management fee under whole of government contracts (commonly 2.5%) has been abolished relieving onerous reporting, remittance, and auditing procedures which came at a cost to the Suppliers over and above the 2.5%.

28.17 Right to Represent

- 28.17.1 In the case of a Contingent Worker being represented by more than one Supplier for a particular role, the Contingent Worker's choice of Supplier representation will be deferred to.

28.18 Disability Plan

- 28.18.1 The NSW Government has a strong commitment to improving employment opportunities for people with a disability. To that end, the government requires Suppliers to demonstrate how they encourage expressions of interest or applications from people with a disability.

29. Assignment or novation by Principal

- 29.1.1 The Principal may assign any of its rights under this Scheme, or may assign or novate its rights and obligations under this Scheme without the consent of the Supplier to any Department, government Agency or any other body created by or under legislation of the State of New South Wales for the purpose of administering the functions or discharging the role of the Principal.
- 29.1.2 The Supplier must execute all documents necessary to give effect to any novation or assignment permitted under this clause 29.

30. Assignment or novation by the Supplier

- 30.1.1 The Supplier must not assign its rights under this Scheme or purport to novate its rights and obligations under this Scheme without the prior written consent of the Principal Representative.

31. General

31.1 Remedies cumulative

- 31.1.1 The rights and remedies provided in these Rules or a Customer Order are in addition to other rights

31.2 Construction

- 31.2.1 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, these Rules or any part of it.

31.3 Governing law and jurisdiction

31.3.1 These Rules are 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.

31.4 No supplier / no employment / no partnership

31.4.1 The Supplier agrees that the Supplier and the Contingent Worker will not be taken to be, nor will it represent that it is, the employee, partner, officer and/or agent of the Agency

DICTIONARY

Definitions and interpretation

Acquisition means that one supplier purchases the business of another supplier including the employment relationship of the contingent workers.

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

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

Application means the form (Supplied by the Principal Representative) that is used to apply to join a Scheme, including all attachments and supporting materials provided with that form.

Award is a ruling handed down by a state industrial relations commission which grants all wage earners in one industry or occupation the same minimum conditions of employment and wages

Base Rate means the hourly rate paid to the Contingent Worker before the addition of superannuation.

Categories means the categories of Services available from Suppliers on the Contingent Workforce Scheme listed in the Master Services Schedule as amended from time to time.

Ceiling Price means the maximum Supplier Fee that can be charged

Confidential Information means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of a Customer Order relating to the business, technology or other affairs of the Discloser.

Consultants as per the Premier's Department Circular 2000-47, are defined as "A person or organisation engaged under contract on a temporary basis to provide recommendations or high level specialist or professional advice to assist decision-making by management. Generally it is the advisory nature of the work that differentiates a consultant from other contractors". The definition does not apply to casual or temporary staff employed or engaged by a NSW government organisation, and is distinct from the definition of 'contractor'. Consultants are also professionals used to deliver a specific project as defined in a statement of work.

Contingent Worker refers to a person employed by a Supplier and who works on a temporary basis for a Customer

Customer means a government Agency or an authorised public body including Eligible Customer who has placed a Customer Order for Services.

Customer Order means a valid order issued by a Customer for the Services described in Schedule 2.

Department means NSW Procurement, the NSW Department of Finance, Services and Innovation (DFSI), unless otherwise specified.

Eligible Customer 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>

Floor Price means the minimum Supplier Fee that may be charged

GST means the tax imposed by the GST Act and the related imposition Acts of the Commonwealth.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it has had a controller appointed, or is in liquidation, in provisional liquidation, under administration or wound up or has had a receiver appointed to any part of its property;
- (c) it is otherwise unable to pay its debts when they fall due.

Master Services means the Services listed in Schedule 4.

Material Adverse Event means where the Applicant or Supplier is subject to insolvency or an ICAC inquiry or legal proceedings

Merit, Recruitment and Selection Process is the current approach under the Government Sector Employment Act 2013 (GSE Act) to recruitment in the NSW Public Service. Under the NSW Public Service Commission (PSC) requirement, the full functionality of the iworkfor.nsw.gov.au (jobs.nsw) system must be used for the creation, approval, advertising and filling of all NSW Public Service roles. A job reference number is issued for the roles advertised on iworkfor.nsw.gov.au (jobs.nsw). This definition also applies to the NSW Health equivalent recruitment system.

Normal Time means the time usually worked during the normal span of working hours prescribed. For the purpose of calculation of Supplier Fees, it includes Penalty Rates

Ordering Process means the process agreed by the Principal Representative and the Supplier in relation to the placement of Orders.

Overtime Hours means hours worked outside the span of normal hours and each day stands alone for the purpose of calculating overtime payment.

Pay Rate means the Base Rate plus superannuation.

Penalty Rate means payment to the Contingent Worker for the working of shifts and is generally expressed as a percentage of Base Rate and will be treated as Normal Time Base Rate for the purpose of calculating Supplier Fee.

Performance Report means a report submitted in the prescribed form (Schedule 3 of the Rules).

Permanent refers to a person not employed by a Supplier and who is not paid by a Supplier. The term "permanent" is implied when a person is called a casual, temporary or cadet.

Principal means the Secretary, Department of Finance, Services and Innovation for and on behalf of the Crown in right of the State of New South Wales and includes duly authorised delegates including officers of NSW Procurement.

Principal Representative means the Director, Contingent Workforce, NSW Procurement who is duly authorised to take action on behalf of the Principal

Recruit or Recruitment is used in the context of sourcing Contingent Workers for this Prequalification Scheme.

Recruitment Organisation is a Supplier that provides the services of recruiting Contingent Workers, matched to a profile for open positions, on behalf of a Customer, for engagement by the Customer. The Recruitment Organisation is the employer of the Contingent Worker. A Consultant is not a Recruitment Organisation.

Referred Contractor means a Contingent Worker introduced to the Supplier for payroll purposes or as a result of an acquisition.

Relationship Manager means the single point of contact for the Department within the Supplier organisation

Removal Period means the time 12 month period from the date a Supplier was notified that it has been removed from the Scheme.

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

Review Committee means the committee established to review decisions made by the Department, the subject of an appeal by an Applicant or Supplier. The committee is composed of independent NSW Public Service officer(s).

Salary Package means the starting salary of a permanent role inclusive of base rate and superannuation.

Scheme means the Prequalification Scheme: Contingent Workforce administered by the Department, intended for use in more than one procurement of services from potential Suppliers that have been accepted by the Principal Representative for inclusion on that Scheme.

Scheme Termination Notice means a notice published on the NSW Government eTendering website issued by NWS Procurement advising of the intent to terminate the Scheme.

Services means the services that the Supplier may supply under a Customer Order under the Scheme, as requested by the Customer and is described in detail in a Customer Order.

Supplier means an Applicant that has been granted admission to the Contingent Workforce Prequalification Scheme. A Supplier of Contingent Workers is defined as a recruitment organisation that supplies additional people to perform the same types of tasks as permanent employees but for a limited period, working either on a part-time or full-time basis.

Supplier Fees means the relevant percentage amount calculated on the Contingent Worker Normal Time Pay Rate, which is payable to the Supplier

Taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties, but excluding GST) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them except if imposed on, or calculated having regard to, our net income.

SCHEDULE 1 – APPLICATION FORM

Note that all Applications must be submitted online via the “Supplier Application Form” link on the NSW Procurement website at <https://tenders.nsw.gov.au>

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

Applications may be submitted for:

- **Prequalification** for engagements of any value.

Enquiries are to be directed to contingentlabour@finance.nsw.gov.au

SCHEDULE 2 – CUSTOMER ORDER

Official Customer Order Placed Under the Contingent Workforce Prequalification Scheme

- 1 Go to <https://www.procurepoint.nsw.gov.au/before-you-supply/prequalification-schemes/contingent-workforce>
- 2 Search and click “Customer Order Form”

SCHEDULE 3 – SUPPLIER PERFORMANCE REPORT

Supplier Performance Report

PREQUALIFICATION SCHEME: CONTINGENT WORKFORCE

Under the Scheme Rules, all engaging Agencies are required to submit a Supplier Performance Report for each engagement where the performance of, and the Services provided by, the Supplier are considered by the Customer to be **unsatisfactory**.

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

Agencies can also submit a Supplier Performance Report for each engagement where the performance of, and the performance of, and the Services provided by, the Supplier are considered by the Customer to be satisfactory.

Agencies can provide the performance information by submitting this report to the Department via email to contingentlabour@finance.nsw.gov.au

- 1 Go to <http://www.procurepoint.nsw.gov.au/before-you-buy/prequalification-schemes-0/contingent-workforce>
- 2 Search and click “Supplier Performance Report”

SCHEDULE 4 – MASTER SERVICES

1. General Overview

1.1 Prequalification Scheme: Contingent Workforce

1.1.1 The Scheme is intended to:

- replace Contract 100;
- allow Government to engage suppliers with less red tape ;
- make it easier for Suppliers to do business the NSW Government, in particular small to medium enterprises and regional businesses;
- “open up” the contractual arrangements to more Suppliers;
- better leverage the available talent pool that industry can offer;
- preserve the Government’s position of leverage within the market place; and
- be respectful of associated risk

1.1.2 This Scheme will be managed by NSW Procurement and will leverage NSW Government buying power whilst opening up opportunities to small and medium enterprises, regional and boutique Suppliers. The Secretary, Department of Finance, Services and Innovation, will be the Principal of the Scheme. NSW Procurement, on behalf of the Principal, will manage this Scheme.

1.2 Services Required

1.2.1 Suppliers appointed to this Scheme will provide the following Services:

- Source Contingent Worker(s) whose qualifications match Customer job requirements, as required
- Where relevant use online and offline media in order to advertise Recruitment opportunities and ensure any such advertising complies with Section 2 of the Advertiser Code of Ethics of the Australian Association of National Advertisers and does not cause disrepute to the NSW Government
- Evaluate potential Contingent Worker(s) and cull resumes as required based on the Customer’s criteria
- Provide a shortlist report
- Conduct interviews and reference checks of Contingent Worker(s)
- Establish and maintain a register or database Contingent Workers, and where such register or database includes any data provided by or relating to the NSW Government Agency, ensure such database is managed in accordance with relevant privacy legislation and data protection regulations
- Where appropriate advertise positions and Recruit
- Reach agreement with the Customer on assigning any successful Contingent Worker(s), especially in terms of hours to be worked and at what hourly rate, for inclusion in the Customer Order
- Employ successful Contingent Worker(s) in accordance with the relevant New South Wales and Australian laws
- Assign successful Contingent Workers to Customers, following receipt of relevant Customer Orders;
- Payrolling Services; and
- Supply detailed sales data and reporting on a monthly basis to the Customer or as otherwise directed by the Principal Representative.

1.2.2 If requested, the Suppliers must provide the following Services:

- Bulk ordering / bulk Recruitment Services for Contingent Worker(s) under this Scheme ; and
- Payroll Services only with no requirements for sourcing of Contingent Worker(s), for example when a Customer identifies a Contingent Worker for a particular role

1.2.3 Customers will engage Contingent Worker(s) on an individual assignment basis with the scope of work for each assignment determined by the Customer and specified in the Customer Order. The scope of Categories is outlined in Annexure 6. Suppliers must use the role types as provided by the Department in Annexure 6 and no variations by the Supplier to this list is allowed.

1.2.4 Suppliers will notify the hiring manager if the Contingent Worker has received a severance or redundancy payment in the public sector during the preceding 12 months. See Annexure 9.

1.3 Excluded

1.3.1 It should be noted that the Master Services of the Scheme and the Rules mean that Independent Contractors, Trusts and Sole Traders will not qualify to be part of this Scheme.

1.3.2 Consortiums, including third party arrangements unless as outlined in clause 6.1.7, will not qualify to be part of this Scheme. Sub-contract organisations are encouraged to apply for prequalification in their own right.

1.3.3 Consultants are not considered to be part of the contingent labour workforce.

2. Sourcing and Retention Capability

2.1 Retention within Government

2.1.1 Suppliers should ensure continuity of service from the Contingent Worker(s) during the Scheme and should endeavour to ensure placed Contingent Worker(s) remain available for the duration of the Customer Order.

2.2 Benefits of Working for NSW Government

2.2.1 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:

- flexible working conditions;
- variety of roles and opportunities across the NSW Government;
- opportunity to gain competence in working in a government environment;
- experience working in a broad, diverse and large organisation
- longer placement periods on average; and
- opportunities to contribute to the development of the State.

3. Geographical Coverage

3.1.1 Contingent Worker(s) are likely to be required in the following locations:

- Australian Capital Territory
- Northern Territory
- Queensland
- South Australia
- Tasmania
- Victoria
- Western Australia
- Central West
- Far West
- Hunter
- Illawarra
- Mid North Coast
- Murray
- Murrumbidgee
- North Western
- Northern
- Richmond Tweed
- South Eastern
- Sydney

3.1.2 Suppliers will nominate to service at least one of the following areas:

- The whole of New South Wales; or
- A single region; or
- Any combination of regions.

4. Performance Management

4.1 Contract Management and Monitoring

4.1.1 The Supplier will comply with the Principal Representative's performance monitoring program and during the course of the Scheme the Supplier's performance will be monitored and assessed in line with the Key Performance Indicators outlined in Annexure 4.

4.1.2 Annexure 4 outlines the performance standards and definitions against which Suppliers will be monitored and assessed. The KPIs may be modified by the Principal Representative during the term of the Scheme to meet business requirements and the Supplier will be required to comply with the KPIs at no additional cost to the NSW Government.

4.2 Customer Order

4.2.1 The Customer Order shall be developed by the Customer and specify, as a minimum, the information contained in Schedule 2 of the Scheme. No assignment of a Contingent Worker(s) to a Customer is to occur without receipt of a Customer Order from the Customer. No invoice will be paid unless it includes the Customer Order number. The Customer Order number may be the same number as the Purchase Order.

4.3 Purchase Order

4.3.1 No assignment of a Contingent Worker(s) to a Customer is to occur without receipt of a Purchase Order from the Customer. No invoice will be paid unless it includes the Purchase Order number. The Purchase Order number may be the same number as the Customer Order number.

4.4 Invoice Quality

4.4.1 Suppliers must maintain a high level of accuracy of invoices which are correctly rendered and issued with minimal corrections / amendments. Suppliers must ensure that invoices are submitted in the format and within the timeframes requested by Customers. Incorrectly rendered invoices may be rejected and returned for adjustment/amendment at no cost to the NSW Government.

4.5 Electronic Data Exchange

4.5.1 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.

Annexure 1 - Performance Standards and Definitions

The Performance Standards are summarised in the following table:

No	Supplier obligation	Performance Standard
1	Management/operational meetings	The Supplier must attend scheduled meetings unless otherwise determined by the Principal Representative. 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.
2	Reports	All reports must be provided on time in accordance with the Scheme's requirements and to a standard satisfactory to the Principal Representative.
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	All proposed replacements for Key Supplier Representatives are to be: (a) notified to the Principal Representative as soon as possible; and (b) suitably qualified and experienced as reasonably determined by the Principal Representative
7	Compliance	The Supplier must comply with the terms of the Scheme and the Principal'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.

Unless otherwise stated, the Supplier must provide reports on its performance in accordance with Annexure 2.

Annexure 2 - Reporting Format

Required by 10th calendar day of each month for the previous month's activity

- 1 Go to <http://www.procurepoint.nsw.gov.au/before-you-buy/prequalification-schemes-0/contingent-workforce>
- 2 Search and click "Supplier Reporting Template"

Annexure 3 - Additional Documents and Reports Required

The following table lists documents and reports which may be required by Customers and/or the Principal Representative under this Scheme.

Report / Document Type	Indicative Content	Due Date
Timesheets Note: If the Customer elects to use the Government nominated VMS once implemented, time sheeting will occur through the VMS	The time sheet must include provision for daily entries under the following headings: <ul style="list-style-type: none"> • Assignment • Supplier's Contingent Worker(s) name • Actual standard hours worked (start and finish times) • Days absent from the assignment and reason • Supervisor's comments and signature. 	At the end of each week
Assignment Report Note: If the Customer elects to use the Government nominated VMS once implemented the need for reporting to be generated will be minimised.	An assignment report listing the following information: <ul style="list-style-type: none"> • Customer • Job Reference/Unique Code • Contingent Worker(s) Category • Location of Assignment • Hourly Pay Rate • Hourly Charge Rate • Total hours charged • Total amount charged 	Quarterly or as requested by the Customer
Quarterly Report Note: If the Customer elects to use the Government nominated VMS once implemented the need for reporting to be generated will be minimised.	A summary for the reporting period, including the following information: <ul style="list-style-type: none"> • the Services provided; • the amounts invoiced under the Scheme and the level of invoicing accuracy; • any problems encountered / assignments unable to be filled and the actions taken to resolve those problems and prevent re-occurrence; • updates and issues relating to the future delivery of the Services; • tasks or jobs not completed in accordance with the Contract; • timelines not met; and • a summary of the Supplier's compliance with the Scheme, detailing all instances where a breach has occurred, and actions taken to remedy the breach and prevent re-occurrence; • A summary of marketing and sales activities, new Customers and other information over the reporting period. 	Quarterly or as requested by the Customer
Other Reports	Such content as is required to be reported by the Supplier on the reasonable request of the Principal Representative in respect of the Services or the Scheme.	Within a week of request by the Principal Representative.
Presentations	Such presentations to key stakeholders / customers as are agreed by the Supplier and the Principal Representative.	As agreed by the Supplier and the Principal Representative.

Annexure 4 - Key Performance Indicators (KPI)

Note that failure to meet the following KPIs could result in removal from the Scheme as detailed in Clause 18, 19 and 20 of the Rules.

KPI #1 - Monthly	Online Ordering
Reason	Assist the Department to achieve all orders online following the implementation of the vendor management system (VMS) by each Agency. This will assist the NSW Government in achieving its targets and assist the Supplier in reducing internal costs.
Reporting Method	Not required prior to the implementation of VMS To be reported via the VMS once implemented
Benchmark	90% of all orders online within the first 6 month implementation per Agency
Variable	Benchmark to increase as target is reached in order to achieve target of 100%
KPI #2 - Monthly	Response Times
Reason	To ensure that all Contingent Worker(s) positions are suitably filled within the agreed response time from the time the Customer Order is issued.
Reporting Method	<ul style="list-style-type: none"> • Not required prior to the implementation of VMS unless requested by Customer • To be reported via the VMS once implemented
Benchmark	98% = 100%
Variable	For each day delay or part thereof for each Contingent Worker Assignment, there will be a 5% deduction from 100%
KPI #3 - Monthly	Job Receipt
Reason	To ensure receipt of acknowledgement for all jobs issued to the Supplier
Reporting Method	<ul style="list-style-type: none"> • Not required prior to the implementation of VMS unless requested by Customer • To be reported via the VMS once implemented
Benchmark	95% = 100%
Variable	Each job not acknowledged will result in a 5% deduction from 100%.
KPI #4 - Monthly	References
Reason	To ensure that all Contingent Worker(s) are reference checked prior to referral
Reporting Method	<ul style="list-style-type: none"> • Not required prior to the implementation of VMS unless requested by Customer • To be reported via the VMS once implemented
Benchmark	All suitable candidate reference checked = 100%
Variable	One error = 90% Two errors = 80% Should the score reach 70% default will be 0%
KPI #5 - Monthly	Invoicing
Reason	To ensure all invoices are accurate at time of issue
Benchmark	98% = 100%
Variable	One error or one day late – 95% Two errors or two days late – 90% Any combination of the above – 85% Should the score achieved reach 70% or less, the default score will be 0%
KPI #6 – Annually	Customer Satisfaction
Reason	Ensuring that satisfaction to Customer Orders remains equal to or above acceptable levels.
Reporting Method	NSW Procurement to conduct annual hiring manager satisfaction survey Performance Reports
Benchmark	75% Satisfaction Any poor* Performance Reports as per Schedule 3 of the Rules
Variable	Any 5 poor reports may result in removal from the Scheme

KPI #7 – Monthly	Reporting
Reason	To assist the Department gain visibility and transparency of the contingent workforce across the sector
Reporting Method	<ul style="list-style-type: none"> • Monthly report must be submitted to contingentlabour@finance.nsw.gov.au by the 10th calendar day of each month. Should the 10th of the month fall on a non-business day the report is due on the previous business day • Monthly report must be submitted on the reporting template provided. Template can be downloaded from the eTender website • Nil reports must be submitted if applicable • Agency reports will not be required once the VMS is implemented
Benchmark	100% receipt of reports on time
Variable	One day late = 90% Two days late = 80% Three days late = 70% A consistent score of less than 100% may result in removal from the Scheme

* Poor is defined as any Performance Reports received in a six month period where;

- An Agency has not recommended the Supplier for any future work; or
- Supplier has scored four or more Unsatisfactory or Marginal Ratings.

Annexure 5 - Code of Conduct including Transition/Acquisition

Transition/Acquisition arrangements

1. Suppliers acknowledge that circumstances may arise when a Customer wishes to change Supplier. Where one Supplier seeks to transition Contingent Worker(s) from a Supplier currently providing the Contingent Worker(s) (original Supplier) in response to Customer requirements, the transition-seeking Supplier should give written notice to the original Supplier, the Customer and DFSI requesting to effect a transition of Contingent worker(s) from the original Supplier in response to Customer requirements.
2. Suppliers acknowledge that circumstances may arise where another Supplier wishes to acquire/sell their business or part thereof, including the employment relationship with the Contingent Workers. Both prequalified Suppliers are obliged to provide 30 days written notice to the Principal prior to the date of transition/acquisition.
3. In making transition/acquisition arrangements, Suppliers must give due consideration to the interests of the Customer, the Contingent Worker(s), the other Supplier and DFS.
4. Once the relevant notifications have been made, Suppliers must act expeditiously and will ensure that the transition/acquisition occurs within one calendar month.
5. The Suppliers must use reasonable endeavours to ensure that transition/acquisition arrangements are managed in a professional manner and are designed to minimise disruption to the Customer, the Contingent Worker(s), the other Supplier and the Department. It is expected that the transition/acquisition arrangements would include:
 - 5.1. Arrangements necessary for the orderly continuation of business;
 - 5.2. Both Suppliers will ensure that each identifies and give effect to any relevant contractual or other legal obligations contained in the Scheme;
 - 5.3. Ensure that the transition/acquisition of Contingent Worker(s) is orderly: the original Supplier to be first to inform its Contingent Worker(s) of the circumstances that have led to the transition/acquisition request; the original Supplier should notify its Contingent Worker(s) promptly upon receipt of a transition/acquisition request of circumstances that may be likely to result in change, termination or redundancy in the workplace;
 - 5.4. Acting promptly and in accordance with good commercial and industrial practice;
 - 5.5. Taking steps to ensure that Contingent Worker(s) are properly informed of matters relevant to their decision to transition or not.
6. Supplier Fee for Contingent Worker(s) who have been transitioned/acquired are fixed at 5.14% of Normal Time Pay Rate.

Principles to observe

The Suppliers will make the transition/acquisition arrangements in accordance with the following principles:

Honest dealings

1. Suppliers must not knowingly:
 - 1.1. make false statement of material fact;
 - 1.2. fail to disclose a material fact;
 - 1.3. make representation as to future matters without having reasonable grounds for making it;
 - 1.4. Suppliers who place job advertisements must take care that the advertisements accurately describe what, if any, jobs are available and that all information given about a job before or at an interview with Contingent Worker(s) is accurate and not misleading; and

- 1.5. All fees, charges and Services provided must be explicitly and fully disclosed to Customers prior to the acceptance of an assignment, or prior to any work being undertaken for a Customer.

Privacy

1. Suppliers must take reasonable steps to maintain the confidentiality and privacy of information obtained in the course of their professional practice.
2. Suppliers must take reasonable steps to ascertain the extent to which any information they collect may be confidential.

Respect for Laws

1. Suppliers must comply with all legal, statutory and government requirements.
2. Suppliers will not engage in any form of collusive practices.
3. Suppliers shall take reasonable steps to ensure, so far as practicable, that all new employees, Contractors, Supplier Representatives and Contingent Worker(s) honour their legal obligations to their previous employers and principles.

Respect for Safety

1. Suppliers must act diligently in assessing work, health and safety risks for which they are statutorily responsible.
2. Suppliers must not knowingly subject Contingent Worker(s), Customers, Supplier Representatives and other Suppliers, to any significant safety risk without their informed consent.
3. Suppliers shall inform their Contingent worker(s) whenever they have reason to believe that any particular assignment may pose a health and safety risk.
4. Suppliers shall provide their Contingent Worker with the necessary safe systems of work, instruction or training and equipment necessary to manage any health and safety risks identified with the assignment for which the Contingent Worker has been engaged to undertake.
5. The Supplier must ensure that the Contingent Workers being provided to the Customer comply with all relevant safety procedures, policies and requirements of the Customer, as amended from time to time, including any specific requirements of the Customer for working in a hazardous environment.

Respect for Certainty of Engagement

1. Suppliers must ensure that Contingent Worker(s) are given details of their work conditions, the nature of the work to be undertaken, rates of pay and pay arrangements.
2. Suppliers must take reasonable steps to ensure that any material variations to the engagement of Contingent Worker(s) only occur with prior agreement of the Contingent Worker(s), Customer and other Supplier as the case may be.
3. Suppliers must take reasonable steps to ensure the certainty of their engagement:
 - 3.1. by a Customer to provide a Service – extending to such matters as
 - 3.1.1. position description and duties;
 - 3.1.2. inherent requirements of the position
 - 3.1.3. remuneration and conditions attaching to the position;
 - 3.1.4. any reference, background, or suitability check required by the Customer to be performed in respect of the position;
 - 3.1.5. disclosure of Customer;
 - 3.1.6. disclosure of Customer information, assessment or valuation;
 - 3.1.7. agreement regarding all relevant terms of business including any guarantee;
 - 3.2. by a Customer – extending to agreement regarding all matters relevant to the Supplier's representation of the Contingent Worker(s).

Annexure 6 - Role Types within Categories

The NSW Government intends using the ANZSCO/ABS-based Categories and role types where possible to ensure that data recording and reporting is consistent with the data collected for NSW public sector employees.

As a minimum, and to assist with classification and reporting of placements, the Scheme includes the Categories listed below:

- Category A – Administration
- Category B – Finance
- Category C – Specialist
- Category D – Industrial
- Category E – Professional
- Category F – Technical
- Category G – ICT Network and Equipment
- Category H – ICT Management, Implementation and Support
- Category I – ICT Applications, Databases and Systems
- Category J – Transport
- Category K – Education
- Category L – Other
- Category M – State Emergency Services
- Category N – Home Care Service of NSW

The list of role types within each Category is not exhaustive.

Additional Categories that may be added during the period of the Scheme will also be subject to the same terms and conditions of this Scheme.

Suppliers must use the role types as listed below, without any variation.

Category A – Administration

Administration Assistant
 Call or Contact Centre Team Leader
 Customer Service Officer
 Data Entry Operator
 Executive Assistant
 Office Support
 Receptionist / Switchboard Operator

Category B – Finance

Accountant / Management Accountant / Senior Accountant
 Auditor / Audit Manager / Auditor (Senior) / IT Auditor
 Business Analyst / Financial Analyst
 Credit Officer/Manager
 Finance Officer / Accounts Clerk / Bookkeeper
 Finance Specialist
 Financial Controller
 Financial Planner
 Investigator
 Payroll Officer / Manager

Category C – Specialist

Communications / Media / Promotion / Public Relations
 Contract / Procurement / Vendor (Officer or Manager)
 Distribution / Warehouse / Inventory (Officer or Manager)
 Field Officer
 Graphic Designer
 Human Resources / Training & Development / Trainers
 Lease (Administrator or Negotiator)
 Legal Support / Law Clerks / Paralegal
 Library / Archives / Record Management
 Logistics / Supply Chain (Officer or Manager)
 Marketing / Advertising (Officer, Manager or Specialist)
 Policy (Officer or Manager)
 Program (Officer, Manager or Director)
 Project (Officer, Manager or Analyst)
 Property Valuer / Conveyancer
 Security Specialist

Category D – Industrial

Apprentice
Arborist
Battery Fitter
Blacksmith/Boilermaker
Bricklayer
Bridge Worker
Building Inspector
Building Services Employee
Carpenter
Chef
Cleaner
Concrete Inspector
Concreteer
Crane, Hoist or Lift Operator
Crossing Supervisor
Driver /Truck Driver / Tow Truck Driver
Electrician
Fencer
Fitter
Gardener
Kitchen hand
Labourer - Various
Landscape Gardener
Leading Hand
Line Marker
Maintenance Handyman
Maintenance Patrolman
Maintenance Planner
Mechanic
Operators of Explosive-Powered Tools
Painter
Plant Operator
Plasterer
Plumber
Production Worker
Rigger
Road / Bridge Performance Tester
Road Traffic Controller
Road Worker
Roofer
Security Officer
Signwriter
Steersman
Stonemason
Storeman and Packer
Storeperson
Survey Field Hand
Team Leader
Timberperson
Track Worker / Labourer
Tradesperson's / Technician's Assistant
Transport Facility Worker
Waiter
Welder
Yardman

Category E - Professional

Archaeology and Heritage Advisor
 Architect
 Camera Enforcement Officer
 Chemist
 Engineer - Bridge /Chemical /Civil /Construction /Electrical /Electronic /Industrial /Mechanical /Maintenance /Traffic etc.
 Environmental Officer/Scientist
 Food Technologist
 Geographic Information Specialist
 Geologist
 Geophysicist
 Hydrologist
 Metallurgist
 OHS&R / Safety Compliance Officer/Manager
 Project Engineer
 Project Manager/Officer
 Project Planner/Cost Engineer
 Quality Assurance /Quality Control Manager
 Scientist
 Surveyor / Engineering Surveyor
 Town Planner
 Traffic and Transport Planner
 Urban and Regional Planner

Category F – Technical

Asset Officer/Manager
 Clerk of Works
 Control Room Supervisor
 Designer - Construction / Industrial
 Development Officer/Manager
 Documentation Officer
 Drafter
 Engineering Associate/Technician
 Estimator
 Facilities or Property Officer/Manager
 Inspector
 Installation & Maintenance Supervisor
 Interior Designer
 Property Acquisition Officer
 Signal Technician
 Site Supervisor
 Site/Works Supervisor
 Surveillance Officer / Steel Inspection - Bridges
 Surveyor's Assistant
 Technical Officer
 Technician - Engineering / Science / Laboratory / Processing

Category G – ICT Network and Equipment

Computer Network and Systems Engineer
 Data Network Engineer
 Hardware Technician
 Network Administrator
 Network Designer / Architect
 Network Security Consultant
 Network Support
 Network Technical Consultant
 Network/Operations Manager
 Novell Engineer / Specialist
 PABX Systems Technician
 Radio communications Technician
 Server Engineer
 Support and Test Engineers
 Support Technicians
 Telco / Voice / Communications Analyst
 Telecommunications Engineer / Field Engineer
 Telecommunications Network Engineer
 Telecommunications Technician
 VoIP Consultant
 WAN Specialist

Category H – ICT Management, Implementation and Support

Business Continuity Manager
 Business to Business Integration Specialist
 Change Management Specialist
 CIO
 Data Centre Facilities Supervisor
 Data Centre Support Analyst
 Desktop Support
 Documentation Specialist
 Help Desk Support / Manager
 ICT Business Analyst
 ICT Operations Manager
 ICT Strategy Planner / Consultant
 ICT Trainer
 IT Manager
 IT Specialist / ICT Consultant
 Project Coordinator / Project Manager / Program Manager
 Security Consultant/Specialist
 Technical Manager

Category I – ICT Applications, Databases and Systems

.Net Specialist
Analyst Programmer / Applications Developer
C# Specialist
Computer Operator
Data Modeler / Architect
Data Warehouse Technologist / Specialist / Developer
Database Administrator / Designer / Analyst
Email Technical Specialist
ERP/CRM Functional / Technical Consultant
Mercury Specialist
Microsoft Consultant
Multimedia Designer / Specialist
SAP Professionals
Siebel Specialist
Software Engineer
Solaris / Unix Administrator
Solution Architects /Designers
System Tester
Systems Administrator
Systems Analyst
Systems Architect/Designer
Technical Writer
Test Manager/Leader/Analyst
TSM Specialist
Web Site Content Manager
Web Site Designer/Consultant/Developer

Category J – Transport: note that increased insurance levels apply

Rail Specific and Technical – Rail Technical Project Management

Construction Manager
 Contract Officer Rail Infrastructure & Rollingstock
 Design Engineer
 Maintenance Planning Engineer
 Project Co-Ordinator
 Project Director Rail Infrastructure
 Project Director Rollingstock
 Project Engineer Rail Infrastructure
 Project Engineer Rollingstock
 Project Manager Rail Infrastructure
 Project Manager Rollingstock
 Project Officer Rail Infrastructure & Rollingstock
 Project Surveyor
 Site Manager
 Site Supervisor
 Technical Specialist
 Technical Support Officer

Rail Specific and Technical – Engineering

CAD Drafter
 Civil Engineer
 Design Engineer
 Engineer
 Engineering Advisor
 Engineering Manager
 Geospatial Officer
 Geotechnical Advisor
 Mechanical Engineer
 Project Design Engineer
 Project Engineer
 Quality Engineer
 Quality Surveyor
 Reliability Engineer
 Senior Engineer Consultant
 Signalling Engineer
 Systems Engineer

Rail Specific and Technical – Design and Architecture

Architect
 Designer
 Estimator
 Senior Architect
 Surveyor
 Town Planner

Rail Specific and Technical – Rail Infrastructure

Logistics Manager
 Maintenance Manager
 Operations Manager
 Process Engineer
 Quality Engineer
 Signalling Designer
 Signalling Engineer
 Signalling Supervisor
 Site Supervisor

Safety – Legal

Compliance Manager
 General Counsel
 Lawyer
 Legal Secretary
 Paralegal
 Solicitor

Category K– Education

Canteen Assistant
 Child Care Assistant
 Examination Supervisor
 Lecturer
 Sports Coach – all sports
 Teacher Support – all disciplines
 Tutor – Academic / Music

Category L – Other

Access control
 Car park attendant
 Corporate host
 Disability Care Workers
 Event staff / manager
 Queue management
 Ticket seller / box office
 Traffic controller
 Turnstile operator
 Usher

Category M –State Emergency Services

Arborist
 Debris removal
 Elevated Work Platform Contractor
 Mulching of vegetation
 Stump grinding
 Tree lopping service
 Tree removal

Category N – Home Care Service of NSW

Care Worker for Domestic Assistance - standard
 Care Worker for Domestic Assistance - specialised
 Care Worker for Personal Care - standard
 Care Worker for Personal Care - specialised
 Care Worker for In home respite - standard
 Care Worker for In home respite - specialised
 Care Worker for Social Support - standard
 Care Worker for Social Support – specialised

Annexure 7 - Additional Conditions (Transport Cluster)

AC.1. Operation of Additional Conditions

AC1.1 The conditions provided below set out additional conditions to the Scheme. The Customer and the Supplier agree to comply with these additional conditions. For the purpose of this Annexure 7 only, Customer means NSW Trains, Rail Corporation New South Wales (Railcorp), Roads and Maritime Services (RMS), State Transit Authority (STA), Sydney Trains, Transport Cleaning Services (TCS), Transport for NSW (TfNSW), and such other Public Transport Agencies or subsidiary corporations of a Transport Authority, nominated in a Customer Order.

AC.2 Quality and Qualifications of Contingent Workers

AC2.1 Any Contingent Worker to be provided to the Customer must be authorised by the Customer in writing prior to the Contingent Worker commencing any work for the Customer.

AC2.2 The Customer may specify the relevant licences or certificates of competency it requires Contingent Workers to hold in accordance with clauses 7.1.5, 28.5.1 and 28.5.2 of the Scheme.

AC2.3 The Supplier must ensure that the Contingent Workers being provided to the Customer comply with all relevant safety procedures, policies and requirements of the Customer, as amended from time to time, including any specific requirements of the Customer for working in a hazardous environment. A copy of the relevant policies and procedures are available at Attachment 1 to this Annexure.

AC2.4 The Supplier must ensure that the Contingent Workers comply with the Customer's Code of Conduct, as amended from time to time. A current version of this code of conduct is available at Attachment 1 to this Annexure

AC.2.5 The Supplier must ensure that the Contingent Workers comply with the ICT Service Access and Usage Policy, as amended from time to time. A current version of this code of conduct is available at Attachment 1 to this Annexure.

AC.2.6 The Customer may require the Contingent Workers to submit to a pre-employment medical screening. If required, the Supplier must ensure that the Contingent Workers submit to such testing.

AC.2.7 The Supplier must ensure that the Contingent Workers:

- (a) comply with any policies or procedures of the Customer (including its Code of Conduct), as amended from time to time, regarding an alcohol and drug free workplace;
- (b) be drug and alcohol free; and
- (c) submit to a drug and alcohol test, as may be required by the Customer from time to time.

A link to the current version of the drug and alcohol policy is available at Attachment 1 to this Annexure

AC.2.8 Where appropriate, Suppliers must provide appropriate protective equipment

AC.2.9 If a Contingent Worker fails to comply with any of clauses AC.2.3, AC.2.4, AC.2.5, AC2.6 or AC.2.7 above, the Customer may, in addition to any other rights it may have under the Scheme:

- (a) terminate the Customer Order by written notice without compensation of any kind to the Supplier; and /or
- (b) require that the Supplier immediately replace the relevant Contingent Worker with another Contingent Worker of equivalent skill and experience and for the same or lower cost to the Customer for the duration of the relevant Customer Order.

The Supplier agrees that the Contingent Worker/s in question will not be supplied to the Customer for any future Customer Orders unless otherwise agreed by the Customer in writing.

AC.2.10 If the Customer:

- (a) considers a Contingent Worker's performance to be unsatisfactory,
- (b) a Contingent Worker engages in any misconduct or fraudulent activity,
- (c) a check (as described in clause AC10) is found to have an unsatisfactory result,
- (d) any undertakings by the Supplier in relation to any required licences or checks (as described in clause AC10) are found to be invalid

then

- (a) the Customer may in addition to any other rights it may have under the Scheme:
 - (i) terminate the Customer Order by written notice without compensation of any kind to the Supplier; and /or
 - (ii) require that the Supplier immediately replace the relevant Contingent Worker with another Contingent Worker of equivalent skill and experience and for the same or lower cost to the Customer for the duration of the relevant Customer Order.

AC.3 Unavailability of Contingent Workers

AC.3.1 If the Supplier is unable to provide Contingent Workers for any reason, the Supplier must, as soon as possible:

- (a) arrange, at its own cost, for the supply of alternative Contingent Workers equally as qualified and appropriate; and
- (b) obtain the Customer's authorisation for the replacement Contingent Workers.

Any additional cost in arranging the alternative Contingent Workers is to be borne by the Supplier and in no event will the Customer be required to pay any rate for alternative Contingent Workers that exceeds the rate specified for the Contingent Workers in SCHEDULE 2 – CUSTOMER ORDER of the Scheme.

AC.4 Payment

AC.4.1 Further to clauses 6.1.4 and 6.1.5 of the Scheme, the Customer will also not be required to pay the Supplier any additional amounts in respect of:

- (a) break periods, including lunch breaks;
- (b) travelling time;
- (c) time not spent providing the Services;
- (d) leave of any kind;
- (e) amount not specified in a Customer Order;
- (f) overtime, penalty, weekend or any other rates of a similar nature; or
- (g) any other allowances, loadings or penalties that may be payable under an award, if any are applicable.

AC.4.2 All claims for payment made by the Supplier shall be in the form of a tax invoice. A claim for payment must be lodged with the Customer every month (depending on supplier system requirements this may be the same date each month or a particular day in the month), in respect of Services provided for the previous month, and shall be substantiated by an itemised account. The

Supplier shall provide any further details in regard to the account that are reasonably requested by the Customer, including consolidated monthly invoicing on behalf of its branches/business units. Only one invoice per Customer Order may be submitted to the Customer per month.

AC.4.3 The Supplier must at the end of each week submit a copy of all timesheets to the Customer. The timesheets must be in such format as the Customer may require, be certified by the Supplier regarding the Services claimed to have been performed including provision for daily entries, and contain the following:

- (a) the Customer Order number and description of Service;
- (b) name of Contingent Worker/s;
- (c) start and finish times worked by the Contingent Worker/s;
- (d) days absent by the Contingent Worker/s and reasons for the absence; and
- (e) the Customer's supervisor's name and signature.

AC.5 Insurance (Sydney Trains only)

AC.5.1 The Supplier must obtain and thereafter maintain at its own cost the following insurances for the duration of its membership of the Scheme:

- (a) professional indemnity insurance in accordance with clause 4.1.2(a) of the Scheme and continue to maintain such insurance for a period of 7 years after the end of its membership of the Scheme.

AC.5.2 All insurances which the Supplier is required to effect under this Customer Order:

- (a) must be effected with insurers with a rating of no less than A- (Standard and Poors)/A3 (Moody's)/A – (Fitch) or as otherwise approved by the Customer in writing; and
- (b) must contain a term which requires the insurer to give the Customer 30 Business Days written notice prior to:
 - (i) the insurer giving the Supplier a notice of cancellation;
 - (ii) the insurer cancelling the relevant policy at the request of the Supplier; or
 - (iii) the Supplier allowing the relevant policy to expire.

AC.5.3 The obligation set out in clause 4.1.3 of the Scheme also applies to the insurances required under this clause AC5 and, upon written request by the Customer at any other time, the Supplier must provide to the Customer:

- (a) certificates of currency in respect of each insurance policy required by this Customer Order; and
- (b) such other details as to each insurance policy as the Customer may reasonably require.

AC.5.4 If any default is made by the Supplier in effecting or maintaining an insurance policy required by this Customer Order or if any such insurance policy becomes void or voidable, the Customer may (but is not obliged to) effect or maintain said insurance policy and pay the premium. The reasonable costs incurred by the Customer in connection with taking such action will be recoverable from the Supplier by any means at the Customer's discretion including as a reduction in, or setoff against, payments otherwise payable by the Customer to the Supplier.

AC.5.5 The Supplier must:

- (a) make and diligently prosecute any claim it may have under any insurance policy required by this Customer Order, including providing all documents, evidence and other information requested by the relevant insurer(s);

- (b) not do or permit or omit to do, anything which prejudices the insurances required by this Customer Order;
- (c) rectify anything which might, if not rectified, prejudice any insurance policy required by this Customer Order;
- (d) reinstate any insurance policy required by this Customer Order if it lapses;
- (e) not cancel, vary or allow any insurance policy required by this Customer Order to lapse;
- (f) immediately notify the Customer of any fact or circumstance or change in circumstances which may prejudice any insurance policy required by this Customer Order;
- (g) comply at all times with the terms of each insurance policy required by this Customer Order; and
- (h) ensure that all insurances required under this Customer Order do not include exclusions in relation to rail or rail related activities.

AC.6 Variations

- AC.6.1 The Customer may direct a variation to a Customer Order at any time and the Supplier must comply with a direction made by the Customer in accordance with this clause AC6.1.
- AC.6.2 Before directing a variation to the Customer Order, the Customer may request the Supplier to provide a written estimate of the time, cost and any other material implications of a proposed variation. The Supplier must provide this written estimate within a reasonable time nominated by the Customer.
- AC.6.3 The Customer shall reasonably determine the value of the variation to the Customer Order. The parties acknowledge and agree that in no event will any rates in a Customer Order for a variation involving the substitution of personnel exceed the rates specified in SCHEDULE 2 – CUSTOMER ORDER of the Scheme.
- AC.6.4 The Supplier shall have no entitlement to claim and shall not be paid for the subject of a variation direction made by the Customer unless the Customer directs the variation in writing in accordance with clause AC6.1.

AC.7 Termination

Termination for breach

- AC.7.1 The Customer may terminate a Customer Order, by written notice to the Supplier effective immediately:
- (a) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Supplier including, but not limited to, corrupt conduct or collusive pricing;
 - (b) where the Supplier has been involved with any fraudulent activity;
 - (c) where the Supplier commits a substantial breach of the Customer Order that is not capable of remedy;
 - (d) where the Supplier commits a substantial breach of the Customer Order in a manner that is capable of remedy and does not remedy the breach within 7 days of receiving a notice from the Customer requiring it to do so, or such further time as the Customer may reasonably allow;
 - (e) where the Supplier assigns its rights and/or obligations, or subcontracts the Customer Order otherwise than in accordance with the Customer Order;
 - (f) in the case of the Supplier's insolvency;

- (g) where the Supplier has been temporarily suspended from the Scheme in accordance with clause 18 or clause 19 or removed from the Scheme in accordance with clause 20; or
- (h) where the Supplier, or any Contingent Workers, has breached the Customer's Code of Conduct;
- (i) where the Supplier, or any Contingent Workers, has breached the Customer's Drug and Alcohol Policy;
- (j) Where, in TfNSW's opinion (acting reasonably) that the Contingent Worker's performance is unsatisfactory.

AC.7.2 If the Customer terminates a Customer Order in accordance with clause AC7.1 above, the Customer:

- (a) may procure from any other source a reasonably similar alternative to the Services suitable to the Customer and the Supplier shall be liable to the Customer for any reasonable extra expense incurred together with any loss sustained by the Customer;
- (b) shall be liable under the Customer Order to pay only for the Services delivered and accepted by the Customer or performed to the satisfaction of the Customer, in accordance with the Customer Order;
- (c) may recover from the Supplier the amount of any loss or damage suffered by the Customer as a result of the termination; and /or
- (d) will be entitled to recover from the Supplier any costs associated with transitioning to another supplier in accordance with Annexure 5 - Code of Conduct including .

Termination for Convenience

AC.7.3 The Customer may terminate any Customer Order in whole or in part for its convenience by giving 7 days' written notice ("Notice") with effect from the date stated in the Notice, and without the need to provide reasons.

AC.7.4 If the Customer terminates a Customer Order in accordance with clause AC7.3, the Customer:

- (a) shall be liable under the Customer Order to pay only for the Services delivered and accepted by the Customer or performed to the satisfaction of the Customer, in accordance with the Customer Order up to the date of termination; and
- (b) will not be liable to the Supplier for any other claim or amount suffered by the Supplier in respect of termination of the Customer Order, including in respect of any consequential loss or loss of profits.

Recovery from Supplier

AC.7.5 If the Customer terminates this Customer Order for any reason the Customer may recover from the Supplier in an appropriate court the balance of any monies remaining unpaid as a debt due and payable by the Supplier to the Customer. This clause will survive the termination of the Customer Order.

AC.7.6 Any termination by the Customer is without prejudice to any accrued rights or remedies of the Customer under the Customer Order or the Scheme.

Effect of termination

AC.7.7 If the Customer terminates a Customer Order for any reason, the Supplier agrees that it will, if requested:

- (a) arrange, as soon as possible after the request, for the transition of its Contingent Workers to another Supplier;

- (b) otherwise comply with Annexure 5 - Code of Conduct including of the Scheme (except, in relation to paragraph 3 of Annexure 5 - Code of Conduct including , the Supplier agrees that it will ensure the transition occurs as soon as possible after the request for a transition); and
- (c) not enforce any provisions, or pursue any action, restraining the Contingent Workers from working for the Customer, either directly or indirectly, after the termination of the Customer Order.

AC.8 ICAC named persons

AC.8.1 The Supplier warrants that that no person listed at <http://www.icac.nsw.gov.au/investigations/past-investigations> will do anything in connection with the works or services, whether as a Contingent Worker or otherwise.

AC.9 Ariba Supplier Network (Sydney and NSW Trains only)

AC.9.1 The Supplier acknowledges that:

- (a) where required, the Customer may conduct business with Suppliers electronically, including exchanging data to create purchase orders, purchase order acknowledgments and invoices;
- (b) as at the date of this Scheme, the Customer uses the Ariba Spend Management TM platform for data exchange with its Suppliers; and
- (c) if the Supplier is requested by the Customer to register as a Supplier on the Ariba Supplier Network TM it will do so and that any costs incurred are not recoverable from the Customer.

AC.10 NSW Police and Other Checks and Clearances Required by Law

AC.10.1 The Supplier must arrange for police records checks, working with children checks or any other checks and clearances required by law (**Checks**) as required by the Customer.

AC.10.2 These Checks are to be confirmed as part of the provision of candidates details to the Customer.

AC.10.3 For Police Checks only:

- (a) if a Contingent Worker has commenced to provide services under a Customer Order before the Supplier has confirmed the results of a NSW Police Check to the Customer in respect of that Contingent Worker then the Contingent Worker is deemed to be "recommended only" to the assignment under the Customer Order (**Assignment**).

AC.10.4 If, in the opinion of the Customer (acting reasonably), the result of the NSW Police Check is adverse then:-

- (a) the Customer may elect to request the Supplier to immediately replace the relevant Contingent Worker and AC 2.9 shall apply; and
- (b) the Customer may direct the relevant Contingent Worker to immediately cease performing the Assignment and leave the Customer's premises.

AC.11 Code of Conduct compliance

AC.11.1 Suppliers agree to actively manage Contingent Worker compliance awareness of, and adherence to, the cluster Code of Conduct and other relevant cluster / agency policies that relate to the role performed

AC.12 Employee/Employer relationship

AC.12.1 The Supplier acknowledges and agrees, unless expressly provided for in these Additional Conditions, that:-

- (a) The Supplier remains at all times the employer of the Contingent Worker; and
- (b) No relationship of employer and employee is created, or intended to be created, when a Customer places a Customer Order in respect of a Contingent Worker and the Contingent Worker provides services under that order, and undertakes any training related to either role or the Agency.

AC.12.2 The supplier acknowledges that feedback on Contingent Worker performance is to be made directly to the Supplier for their action.

AC.13 SAP ERP implementation

AC.13.1 The Supplier acknowledges that the Customer is progressively implementing SAP ERP across the transport cluster. This means that:

- (a) where required, the Customer may conduct business with Suppliers electronically, including exchanging data to create purchase orders, purchase order acknowledgments and invoices;
- (b) the Customer will commence use of the SAP ERP platform for data exchange with its Suppliers
- (c) Suppliers may be required to accept recipient created tax invoice (RCTI) and use a SAP based Cross-Application Time sheet System (CATS) for contractor timesheet entry and approval in preference to the Supplier's timesheet system.

AC.14 Data

AC14.1 Suppliers will be asked to provide contractor personal data in a prescribed format that will include but not limited to Name, Address and evidence of qualifications, licences etc.

AC.15 Transfer between the Transport Cluster Agencies

AC.15.1 Supplier fees for Contingent Worker(s) who have been transferred between the cluster agencies are to be fixed at 5.14%.

AC.16 Selection of Candidates

AC.16.1 As much as practical, Suppliers are to review candidate's history to determine suitability for the work. For example, if a candidate has been removed from a transport cluster position, then they should not be recommended without also outlining the history.

AC.17 Additional Reporting

AC.17.1 Suppliers may be asked to provide additional reports such as benchmarking the top cluster roles against other government agencies and similar size organisations

AC.18 Policy Changes

AC18.1 In line with current procurement practice and in line with NSW Procurement rules, the following practices for labour hire engagements will apply:

- (a) Below 150k or where a role will last greater than 3 months but less than 6 months, one supplier can be approached but a minimum of three candidates resumes to be sought
- (b) Below 150k or where a role will last greater than 6 months, three suppliers to be approached with three candidates resumes to be sought by the suppliers

- (c) Above 150k three suppliers to be approached with three candidates resumes to be sought by each supplier

AC 18.2 A labour hire engagement may result in the need for related 'flow-on' work. Transport agencies should anticipate the potential for further engagements prior to seeking initial quotations.

Whether or not advance notice is given, a service provider who has initially provided a labour hire contractor may have their contract extended for further work provided the following criteria are met:

- (a) Satisfactory performance.
- (b) Demonstrated knowledge and expertise developed during the first engagement.
- (c) Value for money for additional related engagements.

The total value of the first and related flow-on engagements must not exceed \$500,000 (including GST) or three (3) times the original approved budget, whichever is the lesser.

Where flow-on engagements are likely to exceed \$500,000 (including GST) or need to be extended more than three (3) times the original budget; three (3) service providers must be approached with three (3) candidate resumes to be sought by each service provider unless exceptional circumstances can be demonstrated.

Where there are exceptional circumstances, these must be approved by an authorised person at the relevant Transport agency in line with the relevant delegations.

AC.19 SAP ERP Vendor Master Data

AC.19.1 Vendor Master Data is used to facilitate the sourcing events and payment process within ERP. It is important that Suppliers ensure their Vendor Master Data is current and therefore required to provide updated vendor information to tss.vendors@transport.nsw.gov.au

AC.20 Training

AC.20.1 Contractors may be required from time to time to undertake training specific to their role or agency.

Policy Links

Transport

<http://www.transport.nsw.gov.au/about-us>

<http://www.transport.nsw.gov.au/content/policy-documents>

Sydney Trains

www.transport.nsw.gov.au/sydneytrains/commercial/contractors.

RMS

<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/tenders-contracts/contractor-health-safety-information/whs-policies.html>

State Transit Authority

<http://www.statetransit.info/tenders-and-contracts>

Annexure 8 – State Emergency Services

1. Definitions

1.1 Arborist

1.1.1 An arborist is a professional in the practice of arboriculture - the cultivation, management and study of individual trees. This practice includes the pruning, felling and removal of trees. For the purpose of this definition, professional means possessing the appropriate training and qualifications in the practice of all arborist activities, including all relevant equipment including but not limited to chainsaws, ladders, and elevated work platforms.

1.2 Tree Operations

1.2.1 Any work performed or required to be performed in the operational response to the NSW State Emergency Service (NSW SES) core combat role of rendering safe any tree that, due to the effects of storm are affecting or threatening to affect, people or property in the state of NSW

1.3 Services to be offered

1.3.1 Services may include:

- Felling dangerous trees
- Tree removal
- Tree work in the vicinity of power lines
- Wood chipping
- Stump grinding
- Arboriculture Reports and Consulting
- Contract climbing and work at heights
- Debris removal

1.4 Availability

- 24 hour/7 day call out provision
- Flexible working hours

1.5 Training and qualifications

- AHC20510 Certificate II in Arboriculture and
- AHC30810 Certificate III in Arboriculture

1.6 Equipment

1.6.1 Suppliers must have their own:

- Current Procedure/Register for undertaking daily equipment safety checks.
- Current equipment inspection, maintenance and repair schedule.
- Current induction training procedure and records for all equipment.
- First Aid kit meeting Work Cover requirements fully stocked and available in each vehicle

1.7 Liability

1.7.1 The Supplier agrees to indemnify the Principal from and against any liability including:

- liability for personal injuries, incurred by us
- loss of or damage to property
- loss or expense incurred by the Principal in dealing with any claim against the Principal including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by us

arising from:

- a) any act or omission by the Supplier, the Supplier's officers, employees, agents or subcontractors in connection with this Scheme where there was fault on the part of the person whose conduct gave rise to that liability, loss or damage, or loss or expense
- b) any breach by the Supplier of the Supplier's obligations or warranties under this Scheme
- c) any use or disclosure by the Supplier, the Supplier's officers, employees, agents or subcontractors of personal information held or controlled in connection with this Scheme
- d) any use by the Principal of Intellectual Property, including any claims by third parties about the ownership or right to use the Intellectual Property or
- e) any failure by the Supplier to pay remuneration payable to relevant employees.

In this clause "fault" includes negligent, unlawful or wilful conduct

1.7.2 The Supplier's liability to indemnify the Principal under clause 1.7.1 will be reduced proportionately to the extent that any negligent act or omission by the Principal contributed to the relevant liability, loss or damage, or loss or expense.

1.7.3 The Principal's right to be indemnified under this clause 1.7 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Principal are not entitled to be compensated in excess of the amount of the relevant liability, loss or damage, or loss or expense.

1.7.4 This clause survives expiration or termination of this Scheme.

Annexure 9 – Re-engagement of Public Sector Employees

Employment in Public Service and other government sector agencies

Division 1 General provisions

Repayment of severance or redundancy payments for non-executives on re-employment in public sector: section 88 (3)

- (1) A government sector employee who receives a severance or redundancy payment because of a cessation of employment is not to be employed in the public sector during the period to which the payment relates unless arrangements have been made for a refund of the proportionate amount of the payment.
- (2) The proportionate amount of a payment to be refunded is to be calculated on the basis of the number of weeks (if any) that remain as part of the period to which the payment relates.
- (3) In this clause:
 - a. **employment** of a former government sector employee in the public sector includes:
 - (i) engagement of the former employee as a consultant or contractor to the employer, and
 - (ii) engagement of the former employee through a labour hire arrangement with the employer, and
 - (iii) engagement of a company or partnership that provides the Services of the former employee to the employer.
 - b. **public sector** means the government sector, the service of a State owned corporation (or a subsidiary), any service excluded by section 5 of the Act or a statutory office.
- (4) This clause does not apply to Public Service senior executives.

Note. See section 41 (3) of the Act and clause 39 of its Regulation.

Annexure 10 – Home Care Service of NSW

1. Supplier's Obligations

- 1.1. The Supplier must perform the Services expeditiously and in a diligent and professional manner in accordance with the Scheme.
- 1.2. The Supplier must notify the Principal immediately in writing of any problems or issues which prevent or have an impact on the performance of Service under this Scheme which may include matters relating to workplace health and safety and environmental management or industrial relations.
- 1.3. Upon reasonable notice, the Supplier agrees to consult with and/or meet with the Principal to enable the Principal to inspect, discuss or assess the provision of the Services or the Supplier's compliance with this Scheme.
- 1.4. The Supplier must obtain all approvals, licenses and permits which are necessary to enable the Supplier to provide the Services.
- 1.5. The Supplier warrants that all personnel engaged in the performance of the Services are appropriately qualified, competent and experienced.
- 1.6. The Supplier or the Supplier's employees must not accept any payment or other benefit in money or in kind from any person for work done on the Principal's behalf.
- 1.7. The Supplier must not incur any additional cost to provide the Services without the Principal's prior written approval. Any additional cost incurred without the Principal's consent will be the Supplier's responsibility.
- 1.8. If the Supplier is responsible for damage to the Principal's property or the property of a client, then the Supplier must pay the costs of repairing and making good such damage, together with any consequential losses, costs or expenses incurred due to the damage.
- 1.9. If there are Contingent workers listed and they are unable to perform the Services due to illness, other incapacity or resignation from employment, the Supplier must notify the Principal immediately. If requested by us, the Supplier must provide replacement Contingent Workers at the earliest opportunity, and the Principal must approve these Contingent Workers in writing.
- 1.10. The Supplier must provide:
 - 1.10.1. all necessary training, including training in the use of equipment, for workers to safely carry out the work for which they are engaged and
 - 1.10.2. all tools or equipment, including personal protective equipment such as gloves, goggles and face masks required by workers to safely undertake the work for which they are engaged.
- 1.11. Both the Supplier and the Principal must give 7 calendar days' notice when transferring a client's Services under a Service Order Form back to us.
- 1.12. The Supplier must report to the NSW Ombudsman all serious incidents involving abuse or neglect of people with disability in supported group accommodation including boarding houses and centre based respite centres. The Supplier must notify the Ombudsman within 30 days of becoming aware of the incident.

2. The Principal's Materials

- 2.1. The Principal's Materials means any document, information or material the Principal provide to the Supplier, which may or may not include Confidential Information.
- 2.2. The Supplier accepts all responsibility for securing and protecting all of The Principal's Materials
- 2.3. The Supplier must ensure The Principal's Materials are used, copied, supplied or reproduced only for the purposes of this Scheme unless the Supplier have the Principal's prior written approval to do otherwise.

- 2.4. Upon expiration or termination of this Scheme the Supplier must return to the Principal any of The Principal's Materials in the Supplier's possession or control as soon as practicable.
- 2.5. Any new material created by the Supplier in the performance of the Services under this Scheme is the property of the State of New South Wales.

3. Protection Of Personal Information

This clause applies only where the Supplier deals with personal information for the purpose of providing the Services.

In respect of the provision of the Services, the Supplier agrees:

- 3.1. to only use or disclose personal information obtained during the course of providing the Services for the purposes of this Scheme
- 3.2. not to do any act or engage in any practice that would breach an Information Protection Principle (IPP) contained in Part 2 of the Privacy and Personal Information Protection Act 1998, which if done or engaged in by an Agency, would be a breach of that IPP
- 3.3. to carry out and discharge the obligations contained in the IPPs as if the Supplier were a public sector Agency under that Act
- 3.4. to notify individuals whose personal information the Supplier holds that complaints about the Supplier's acts or practices may be investigated by the Privacy Commissioner who has power to award compensation in appropriate circumstances
- 3.5. to immediately notify the Principal if the Supplier becomes aware of a breach or possible breach of any of the obligations in this clause 3
- 3.6. to comply with any directions issued by the Principal or the Privacy Commissioner with respect to privacy
- 3.7. to comply with any other relevant law regarding privacy of personal or health information and
- 3.8. to ensure any employee who is required to deal with personal information for the purposes of this Scheme is made aware of the Supplier's obligations set out in this clause.

The provisions of this clause 3 survive termination or expiration of this Scheme.

4. Conflict Of Interest

- 4.1. The Supplier warrants that no conflict of interest exists or is likely to arise in the performance of the Services.
- 4.2. The Supplier must notify the Principal in writing immediately if the Supplier becomes aware of the existence, or possibility, of a conflict of interest. If the conflict of interest is not resolved to the Principal's reasonable satisfaction the Principal may terminate this Scheme immediately by written notice to the Supplier without prejudice to any accrued rights or remedies otherwise available to us.

5. Indemnity

- 5.1. The Supplier agrees to indemnify the Principal from and against any liability including:
 - 5.1.1. liability for personal injuries, incurred by us
 - 5.1.2. loss of or damage to property
 - 5.1.3. loss or expense incurred by the Principal in dealing with any claim against the Principal including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by us

arising from:

- f) any act or omission by the Supplier, the Supplier's officers, employees, agents or subcontractors in connection with this Scheme where there was fault on the part of the person whose conduct gave rise to that liability, loss or damage, or loss or expense
- g) any breach by the Supplier of the Supplier's obligations or warranties under this Scheme

- h) any use or disclosure by the Supplier, the Supplier's officers, employees, agents or subcontractors of personal information held or controlled in connection with this Scheme
- i) any use by the Principal of Intellectual Property, including any claims by third parties about the ownership or right to use the Intellectual Property or
- j) any failure by the Supplier to pay remuneration payable to relevant employees.

In this clause "fault" includes negligent, unlawful or wilful conduct

- 5.2. Where the Services are provided by the Supplier as the Principal's sub-contractor under a funding agreement with the Commonwealth of Australia, then the indemnity in clause 5.1 extends to the Commonwealth of Australia in addition to us.
- 5.3. The Supplier's liability to indemnify the Principal under clause 5.1 will be reduced proportionately to the extent that any negligent act or omission by the Principal contributed to the relevant liability, loss or damage, or loss or expense.
- 5.4. The Principal's right to be indemnified under this clause 5 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Principal are not entitled to be compensated in excess of the amount of the relevant liability, loss or damage, or loss or expense.
- 5.5. This clause survives expiration or termination of this Scheme.

6. Pricing

- 6.1. Service description, geographical coverage and associated pricing as per http://www.adhc.nsw.gov.au/sp/tenders_and_contracts
- 6.2. Any and all activity occurring under Category N must refer to the Rates, Coverage and Invoicing information sheet and the Rates and Coverage form at http://www.adhc.nsw.gov.au/sp/tenders_and_contracts

7. Police Checks

- 7.1. The Supplier must arrange that any person employed or engaged in connection with the Services has in place a current national criminal record check, to be updated every 3 years, together with any checks required under the Children and Young Persons (Care & Protection Act) 1998 and the Disability Inclusion Act 2014 that do not preclude them from working in aged care, disability, and where relevant, in child-related work. Evidence of relevant checks must be provided to the Principal on request.
- 7.2. Staff members and volunteers who have been citizens or permanent residents of a country other than Australia since turning 16 years of age must make a statutory declaration before starting work, stating that they have never:
 - a) been convicted of murder or sexual assault; or
 - b) been convicted of, and sentenced to imprisonment for, any other form of assault.
- 7.3. This statutory declaration is in addition to a current national police certificate, as this reports only those convictions recorded in Australian jurisdictions.
- 7.4. If any person employed or engaged in connection with the Services including volunteers have been convicted of an offence outside Australia, they must make a statutory declaration declaring those offences

The cost of all checks to be borne by the Supplier.

8. Keeping Of Records

- 8.1. The Supplier must maintain accurate records of Services delivered and proof of Service delivery. The evidence should be independent of information provided by the staff members who delivered the Services. Where the proof is by client signature, the client signature is required against each instance of Service delivered.

- 8.2. The Supplier must keep proper accounts, records and time sheets in accordance with the accounting principles generally applied in commercial practice in respect of the Supplier's charges, fees and billing payable pursuant to this Scheme.
- 8.3. The Supplier must give the Principal access to, or copies of, any information which may be reasonably required to enable any claim to be substantiated and verified, within a reasonable time of the Principal's request.

9. Emergency protocol

- 9.1. If a service provider's staff member arrives to deliver an ordered service in office hours and the client is not home or appears to be home but does not answer the phone or door or allow the worker in, the staff member must immediately contact their Agency to report the issue. The Agency is required to contact the Home Care client's branch to report the failed service delivery attempt as soon as possible during normal business hours (8.30am - 4.30pm Mon-Fri)
- 9.2. If the ordered service is to be delivered outside of Home Care office hours and the client does not answer the door, the service provider should:
 - a) Consult the clients' care plan and follow any individualised emergency plan listed
 - b) Follow the Supplier's emergency protocol
 - c) Refer to procedures listed in the Home Care Service of NSW Emergency Procedures Fact Sheet found at http://www.adhc.nsw.gov.au/sp/tenders_and_contracts
- 9.3. Service provider contact number for clients
 - a) When an ordered service is to be delivered out of office hours, on weekends or public holidays, the Supplier is to give the client a contact telephone number. This purpose of this number is to enable the client to contact the Supplier in the event that a worker does not turn up to deliver the service

Annexure 11 – ACT Government

1. Operation of Additional Conditions

- 1.1. The following conditions set out additional obligations to be imposed upon Suppliers where the Scheme operates in the Australian Capital Territory. For the purposes of this Annexure 11 only, Customer means the Australian Capital Territory, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) represented by the Chief Minister, Treasury and Economic Development Directorate. The Customer and each Supplier providing Services under the ACT Cluster agree to comply with these additional conditions.

2. Supplier Pre-employment Obligations

Working permissions

- 2.1. Suppliers should ensure that Contingent Workers have the necessary Australian immigration permissions to work in the Australian Capital Territory to perform the hours and Category of work they are being recruited for. Suppliers sponsoring Contingent Workers for placement with the Customer should note the requirements and procedures for sponsoring a temporary employee, for periods up to four years.

Pre-employment checks

- 2.2. Some directorates of the Customer may require criminal background checks of Contingent Worker(s) for all or some of their roles. These checks will be requested from Australian Federal Police (AFP) by the Customer's Shared Services Human Resources. The Supplier will need to advise Contingent Worker(s) that they may be subject to an AFP National Police Check and provide basic information for the check. The cost of these checks, if any, should be passed through at no cost to the Customer. The Supplier must confirm the result of the AFP National Police Check to the Customer. Further information is available from:

<https://www.afp.gov.au/what-we-do/services/criminal-records/national-police-checks>

Working with Children Checks

- 2.3. Some directorates of the Customer may require a Working with Vulnerable People (WWVP) registration for Contingent Worker(s) proposed to be appointed. The Supplier, if requested, will be required to arrange WWVP registration prior to placing the Contingent Worker(s) into the assignment. These checks are to be made through Access Canberra at no cost to the Customer. The Supplier must confirm the result of the WWVP registration to the Customer. Further information is available from:

[https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1804/~/-/working-with-vulnerable-people-\(wwvp\)-registration](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1804/~/-/working-with-vulnerable-people-(wwvp)-registration)

3. Privacy

- 3.1. For the purposes of this clause 3, the following definitions apply:

- (a) **Personal Information** means information or an opinion about an individual or an individual who is reasonably identifiable:
- (iii) whether the information is true or not; and
 - (iv) whether the information or opinion is recording in a material form or not;
- (b) **TPPs** means the Territory Privacy Principles provided for in section 13 and Schedule 1 of the *Information Privacy Act 2014* (ACT); and
- (c) **TPP Code** means a code of practice about information privacy which, having regard to sections 21(1) and (3) of the *Information Privacy Act 2014* (ACT), binds an agency that engages with the Supplier for provision of the Scheme.

- 3.2. In respect of any Personal Information held in connection with the Scheme, the Supplier must:

- (d) comply with the TPPs and any applicable TPP Code as if it were a public sector agency under the *Information Privacy Act 2014* (ACT) and must not (and ensure that any worker engaged by

the Contractor under the Scheme does not) act or engage in a practice that breaches a TPP or a TPP Code;

- (e) not act in any way or engage in any practice that would cause the Customer to be in breach of the *Information Privacy Act 2014* (ACT), the TPPs or any applicable TPP Code; and
- (f) co-operate with any reasonable requests or directions of the Customer arising directly from, or in connection with, the exercise of the functions of the information privacy commissioner under the *Information Privacy Act 2014* (ACT).

3.3. A complaint alleging an interference with the privacy of an individual in respect of any Services performed by the Supplier (**Complaint**) will be handled by the Customer in accordance with the following procedures, unless otherwise provided for in a TPP privacy policy made under TPP 1.3 which applies to a Customer agency as relevant to the Scheme:

- (g) if the Customer receives a Complaint it will immediately notify the Supplier of only those details of the Complaint necessary to minimise any breach or prevent further breaches of this clause 3;
- (h) if the Supplier receives a Complaint it must immediately notify the Customer of the nature of the Complaint but will only release Personal Information to the Customer concerning the complainant with that person's consent; and
- (i) after the Customer has given or been given notice under paragraphs (a) or (b), it will keep the Supplier informed of all progress with the Complaint concerning the actions of the Supplier.

3.4. This clause 3 survives the expiration or earlier termination of the Supplier's relationship with the Customer under the Scheme.

4. Freedom of information

4.1. The Customer may disclose certain information in connection with the Scheme in accordance with the *Freedom of Information Act 2015* (ACT).

4.2. Where the Customer has received a request for access to a document created by, or in the possession of, the Supplier or any contingent worker that relates to the performance of the Scheme, the Customer may at any time by written notice require the Supplier to provide the document to the Customer and the Supplier must, at no additional cost to the Supplier, promptly comply with the notice.

4.3. 4.

5. Confidential Text

5.1 In this clause 5, **Confidential Text** means any text of the Scheme that, for the purposes of the *Government Procurement Act 2001* (ACT), either the Customer or the Supplier proposes should not be published and which is specified below in the Customer Order.

5.2 In giving effect to the principles of open and accountable government, the Customer may disclose documents and information unless it has otherwise agreed, or is otherwise required under law, to keep the information confidential. In accordance with those principles, the Customer Order may be a notifiable contract under the *Government Procurement Act 2001* (ACT) and, if so, the Customer will be required to make the text of the Customer Order available to the public, including by publication on a public contracts register.

5.3 If the Customer Order states that it is a notifiable contract under the *Government Procurement Act 2001* (ACT) and specifies Confidential Text, the grounds on which the text is confidential will be specified in the Customer Order.

5.4 Except as provided in the Customer Order, the Customer must not disclose Confidential Text to any person without the written consent of the Supplier (which consent will not be unreasonably withheld) except to the extent that Confidential Text:

- (j) is required or authorised to be disclosed under law;
- (k) is reasonably necessary for the enforcement of criminal law;
- (l) is disclosed to the Customer's solicitors, auditors, insurers or advisers;
- (m) is generally available to the public;

- (n) is in the possession of the Customer without restriction in relation to disclosure before the date of receipt from the Supplier;
- (o) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
- (p) is disclosed to the ombudsman or for a purpose in relation to the protection of public revenue.

6. Code of Conduct

- 6.1. The Supplier acknowledges that the Customer has prescribed Values and Signature Behaviours under the ACT Public Service Code of Conduct (**Code of Conduct**) available at http://www.cmd.act.gov.au/__data/assets/pdf_file/0017/363230/codeofcond2012_2013edit_wtables.pdf. Although Contingent Workers will not be part of the Australian Capital Territory Public Service, the Customer seeks to ensure that all workers it engages and service delivery provided to the public is consistent with the Values and Signature Behaviours in the Code of Conduct.
- 6.2. The Supplier will ensure that Contingent Workers placed with the Customer are aware of and agree to abide by the Code of Conduct when engaged under the Scheme.
- 6.3. The Supplier acknowledges and will ensure that Contingent Workers are aware that Contingent Workers are not employed by the Customer. Notwithstanding the requirement to comply with the Code of Conduct, the participation of Contingent Workers in the Scheme does not in any way confer any entitlement of employment, benefit or advantage upon Contingent Workers in their provision of Services to the Customer.

7. Other policies

- 7.1. The Supplier acknowledges that the Customer may require Contingent Workers to comply with its workplace policies as applicable from time to time.
- 7.2. The Supplier agrees to ensure that its Contingent Workers agree to abide by any workplace policies of the Customer as notified to the Supplier from time to time.

8. Governing Law

- 8.1. The governing law for Services provided to the Customer in the Australian Capital Territory will be the laws of the Australian Capital Territory and the Supplier submits to the courts of that jurisdiction.