

Prequalification Scheme SCM2231: Employment Related Medical Services

Scheme Conditions

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Amendments to this document

Revision number	Date	Update description
1.0	14/03/16	Original Document
2.0	21/06/16	<p>Changes made to the following clauses (CNTRL + Click on the highlighted clause number to follow link to the relevant clause):</p> <ul style="list-style-type: none"> • Clause 5.1(a) 'Broad form of Public Liability Insurance' – revised requirement • Clause 5.1(b) 'Professional Indemnity Insurance' – deleting the words "Professional Indemnity Insurance must indemnify the Service Provider against any liability arising out of the conduct of its professional business under the Competition and Consumer Act 2010 (Cth) and the relevant State or Territory Fair Trading Acts". • Removal of Clause 5.3(f) 'policy excess' • Clause 25.4 – remove duplicate words 'Framework and compliance with clause 23 guidance' • Clause 27.1 to remove words "An Agency.....to the Scheme Manager' • New Clause 27.2 • Clause 27.4 delete reference to clause 27.4 to correct clause 27.3 • Clause 31.1 replace words 'participation in' with 'membership of' • New clause 31.3.
3.0	23/09/2021	<p>Changes made to the following clauses:</p> <ul style="list-style-type: none"> • Clause 2.3 Scheme expiry date amended • Removal of DFSI and replaced with NSW Treasury • Clause 14.1 amendments to paragraph and deletion of scheme invitation dates • Other changes to update clauses dealing with privacy, cybersecurity, insolvency, insurance and other contractual or practical matters.

1. Definitions and interpretation

- 1.1 Unless the context indicates otherwise, the following terms used in the Scheme Conditions have the meanings set out below:

ABN has the meaning given in the *A New Tax System (Australian Business Number) Act 1999* (Cth).

Agency Agreement means an agreement in the Standard Form of Agreement between an Agency and a Service Provider for the supply of Services (Schedule 1).

Agency Referral means a service request issued in the standard form (Form 1 in Schedule 4 Standard forms and templates) by an Agency.

Applicant means a business which has submitted an application for membership of the Scheme.

Application means a written application for membership of the Scheme in accordance with the Scheme Conditions.

Assessment Committee means those persons appointed by the PSC to consider Applications and carry out other functions specified in the Scheme Conditions.

Buy.nsw means the NSW Government online portal for procurement information, resources, tools and support for NSW government agencies and service providers.

Change of Control occurs in relation to a body corporate or business where:

- (a) a business that controls the body ceases to control the body; or
- (b) a business that does not control the body comes to control the body.

Fee Schedule means the fee schedule submitted by an Applicant with its Application to become a Service Provider.

Government Agency hereafter referred to as “Agency” means any of the following:

- (a) a government sector agency (*within the meaning of the Government Sector Employment Act 2013* (NSW));
- (b) a New South Wales Government agency;
- (c) any other public authority that is constituted by or under an Act or that exercises public functions for or on behalf of the State of New South Wales (other than a State owned corporation); or
- (d) any State owned corporation

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event, with respect to the Service Provider, means the occurrence of any one or more of the following:

- (a) insolvency of the Service Provider as defined under section 95A of the *Corporations Act 2001* (Cth);
- (b) an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provision liquidator or receiver, or receiver and manager, be appointed in respect of the Service Provider;
- (c) a liquidator or provision liquidator is appointed;
- (d) an administrator is appointed to it under sections 436A, 436B or 436C of the *Corporations Act*;
- (e) a controller (as defined in section 9 of the *Corporations Act*) is appointed to it or any of its assets;
- (f) a receiver is appointed to it or any of its assets
- (g) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (h) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (i) it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under Law (including under sections 459C(2) or 585 of the *Corporations Act*) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (j) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the *Corporations Act*;
- (k) a notice is issued under sections 601AA or 601AB of the *Corporations Act*;
- (l) a writ of execution is levied against it or a material part of its property;
- (m) it ceases to carry on business or threatens to do so; or
- (n) anything occurs under the Law of any jurisdiction which has a substantially similar effect to any of the events set out in the above clauses of this definition.
- (o)

Invitation Period means the period of time during which Applications for membership of the Scheme are invited as specified in clause 2.3 and 14.1 of these Scheme Conditions.

Laws means any legally binding law, legislation, statute, act, regulation, subordinate legislation, rule, by-law, order, proclamation, decree, ordinance, directive or code which is enacted, issued or promulgated from time to time in any relevant jurisdiction (including the Commonwealth or any State or Territory government) and any applicable common law and rule or principle of equity.

NSW eTendering means the online tendering system for NSW Government procurement, which allows applicants to download tender and prequalification

scheme documentation, manage the risks and upload responses, once they have registered.

Occupational Physician means a medical specialist in the field of occupational medicine who advises and focuses on the prevention, identification, management and treatment of illness, injury or disability related to the workplace.

Party in relation to an Agency Agreement means the Agency or the Service Provider that is a party to the Agency Agreement.

Performance Report means a report submitted by the Service Provider in accordance with clause 27 ('Performance reporting') of these Scheme Conditions.

Personnel of a party means all the officers, employees, agents and contractors of that party, and in the case of the Service Provider includes any sub-contractors who are required to undertake the provision of the services.

Privacy Laws means:

- (a) the *Privacy Act 1988* (Cth);
- (b) the *Privacy and Personal Information Protection Act 1998* (NSW);
- (c) the *Health Records and Information Privacy Act 2002* (NSW);
- (d) any legislation (to the extent that such legislation applies to an Agency or the Service Provider or any other recipient of Personal Information) from time to time in force in:
 - (i) any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
 - (ii) any other jurisdiction (to the extent that an Agency or any Personal Information or the Service Provider is subject to the laws of that jurisdiction),

affecting privacy or Personal Information, provided that the Service Provider ensures that it complies at all times with the Privacy Laws applicable in New South Wales; and
- (e) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraphs (a), (b), (c) and (d), as amended from time to time.

Policies, Codes and Standards means:

- (a) all applicable Policies and associated requirements;
- (b) the other policies, codes, standards and guidelines and associated requirements specified in this Scheme condition and schedules;
- (c) any Policy Changes with which the Service Provider is or becomes required to comply

Procurement Board means a Board that has statutory power to issue board directions to Agencies on procuring goods and service and sets the whole-of-government approach to procurement

PSC means the NSW Public Service Commission and includes the Public Service Commissioner and any person authorised by the Public Service Commissioner to exercise the Commissioner's functions under the Scheme.

Referee Report means a report submitted by the Applicant as required by clause 14.2 in the form set out in Schedule 6 (Referee Report template for Applicants) of these Scheme Conditions.

Relationship Manager means the person nominated by the Service Provider as the single point of contact in Annexure 1 of the Agreement Details in the Agency Agreement.

Review Panel means the three-member independent medical assessment review panel engaged by the PSC in accordance with Schedule 2 (Description of Service requirements).

Scheme means the *Prequalification Scheme: Employment Related Medical Services*.

Scheme Conditions means this document and the Schedules to this document.

Schedule means a Schedule to this Agreement.

Security Incident means in relation to this Scheme Conditions:

- (a) any unauthorised (whether under these conditions or otherwise) or unlawful use of, loss of, access to, alteration of, or disclosure of Customer Data or Personal Information within the Service Provider or its Personnel's possession or control (including any data and information stored on the Service Providers equipment or in the facilities used by the Service Provider to carry out the Providers Activities, or any unauthorised or unlawful access to such equipment or facilities);
- (b) any notifiable data breach under the Privacy Laws;
- (c) any Denial of Service Attack;
- (d) the occurrence of circumstances indicating it is reasonably likely that any of the circumstances under paragraphs (a) to (c) have occurred;
- (e) any similar events relating to Customer Data or Personal Information which trigger, or are likely to trigger, contractual reporting obligations or legal reporting obligations to an Authority or which would require a response or action under this Agreement, at Law or under any of the Policies, Codes and Standards; or
- (f) any alleged or suspected occurrence of any of the above events or circumstances.

Scheme Duration means the period of time between the Scheme commencement and its expiry date as specified in clause 2.3, or, if the Scheme is terminated earlier in accordance with these Scheme Conditions, that earlier date.

Scheme Manager means the person nominated by the PSC to be the manager of the Scheme in clause 2.4 of these Scheme Conditions.

Service Provider or prequalified Service Provider means a business that is a member of the Scheme.

Services mean Tier One and Tier Two services covered by the Scheme.

Tier One services mean 'Tier One: Employment related medical assessment services' or core services to be provided under this Scheme as described in Schedule 2 (Description of Service requirements).

Tier Two services mean 'Tier Two: Other employment related medical services' or other employment related health and medical services as described in Schedule 2 (Description of Service requirements), which Service Providers may make available to Agencies under this Scheme.

1.2 Except where the context otherwise requires, a reference in these Scheme Conditions to:

- (a) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly or severally;
- (b) a word importing the singular includes a reference to a plural and vice versa;
- (c) a gender includes a reference to the other genders and each of them;
- (d) any person or company, includes the legal personal representative, successors in title and permitted assigns of such person or company as the circumstances may require including persons taking by way of novation, and, in the case of a trustee, includes a substituted or additional trustees;
- (e) any body which ceases to exist or is reconstituted, renamed or replaced refers to that body as reconstituted, renamed or replaced;
- (f) legislation (including delegated legislation) is a reference to that legislation as amended, consolidated, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) a day means a calendar day, unless otherwise stated;
- (h) a business day means any day which is not a Saturday, Sunday or gazetted as a public holiday in the State of New South Wales;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) the word "includes" and similar expressions are not used as, nor intended to be, interpreted as words of limitation;
- (k) money is a reference to Australian currency;
- (l) a person or persons, will be taken to include any natural or legal persons.
- (m) a reference to any authority, institute, association or body is:
 - (i) if that authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that authority, institute, association or body are transferred to another organisation, deemed to refer to the

reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and

- (ii) if that authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that authority, institute, association or body.

1.3 In these Scheme Conditions, unless the contrary intention appears:

- (a) Where any time limit falls on a Saturday, Sunday or public holiday in the State of NSW, then the time limit will be deemed to have expired at the end of the next business day.
- (b) Where a person is comprised of more than one person, each obligation of the person will bind those persons jointly and severally and will be enforceable against them jointly and severally.
- (c) No rule of construction operates to the detriment of a Party only because that Party was responsible for the preparation of the Scheme Conditions or any part of it.
- (d) Where there is a reference to the doing of anything by the Agency by giving notice, consent, direction or waiver, this may be done by any duly appointed officer, which includes an authorised representative of the Agency.

2. About the Scheme

2.1 The PSC, in conjunction with the NSW Treasury, has established the Scheme, under which prequalified Service Providers are able to provide impartial employment related medical assessment and health services to Agencies.

2.2 This document sets out the terms and conditions of the Scheme.

2.3 Scheme Duration:

Commences:	17/10/2016
Expires:	17/10/2026

Invitation periods, during which Applications for admission to the Scheme are invited, are set out in clause 14.1 of these Scheme Conditions.

2.4 The PSC has responsibility for management of the Scheme and all questions, or other matters, related to the operation of the Scheme should be directed to:

Scheme Manager
Employment Related Medical Services
Public Service Commission

GPO Box 3988 Sydney, NSW 2001
T: (02) 9272 6000
E: whs@psc.nsw.gov.au

2.5 In the future, the PSC may at its discretion transfer responsibility for management of the Scheme to another NSW Government agency.

- 2.6 If this occurs, the Scheme will continue to be in force and all references to the PSC in its capacity as Scheme Manager are to be read as references to the NSW Government agency to which responsibility has been transferred.

3. Amendments to the Scheme

- 3.1 The PSC will monitor the operation of the Scheme to assess if the objectives of the Scheme are being met. Any variations to the Scheme Conditions will be made at the PSC's absolute discretion and the Scheme Conditions, as amended, must be complied with by the Service Providers.

Scheme requirements

4. Services

- 4.1 Services covered by the Scheme comprise the following two tiers:
- (a) Tier One: Employment related medical assessment services (core).
 - (b) Tier Two: Other employment related medical services (optional).
- 4.2 All Service Providers must deliver the full scope of Tier One services which are core services to be provided in accordance Schedule 2 (Description of Service requirements) and those service standards set out in Schedule 3 (Service levels and key performance reporting).
- 4.3 The following are Tier One services (core):

4.3.1 Medical assessments

The Service Provider's role is to provide medical assessments required to assist an Agency to determine an employee's fitness for duty by establishing the following:

- if the employee has an injury or health condition;
- what impacts (if any) the injury or health condition has on the employee's ability to undertake the inherent requirements of their role in the short, medium and long term; and
- what actions (if any) may be appropriate to resolve any impact of the employee's injury or health condition on their ability to perform the inherent requirements of their role and support them to remain in the workforce.

4.3.2 Administrative support to the Review Panel.

An employee may request a review of a medical assessment if they disagree with the assessment outcome or recommendation. Any request for review under this clause 4.3.2 must be made in accordance with the criteria set by the PSC in Schedule 2 (Description of Service requirements).

The Service Provider's role is to administer requests for review of medical assessments that it has arranged. The Service Provider will:

- (a) process requests for review of medical assessment from employees, including assessing requests for review against the set criteria in

Schedule 2 (Description of Service requirements). Requests for review must be assessed, and the employee and Agency notified of the outcome and/or review date, within three (3) days after receipt by the Service Provider;

- (b) prepare and distribute all medical information that it receives, including any medical information which the medical assessor had access to but did not use, to all three (3) members of the Review Panel tasked with undertaking the review;
- (c) undertake post-review administration, including distribution of Review Panel correspondence to the employee and their Agency; and
- (d) manage questions, and requests for clarification, from the Review Panel.

4.3.3 Medical certificate validation

The Service Provider's role is to determine if a valid medical certificate has been provided by clarifying details with the issuing medical practitioner and to provide advice on whether the period of absence from work recommended by the medical practitioner is appropriate for the condition stated in the medical certificate.

4.3.4 Pre-employment and periodic health assessments

The Service Provider's role is to perform health assessments to determine if a potential or current Agency employee has the required level of health and fitness to safely fulfil inherent requirements and demands of their potential or current role.

4.4 Tier Two services (optional)

Provided that the service was nominated in the Service Provider's Application and the Service Provider has been prequalified to provide that specific Tier Two service, a Service Provider has the option of providing any of the following services covered by this Scheme:

- functional capacity assessment and advice services
- vaccinations;
- drug and alcohol testing; and
- employee health and wellbeing programs.

4.5 NSW Treasury will maintain and publish a list of prequalified Service Providers with a demonstrated track record in the provision of Services in both tiers on ProcurePoint.

5. Insurance

5.1 Subject to clause 22.9 a Service Provider must hold and maintain each of the following types of insurance:

- (a) **Broad form Public Liability Insurance (incorporating product and liability insurance)** in an amount not less than \$20 million in respect of any one occurrence, but limited in the annual aggregate to an amount not less than

\$20 million in respect of all Product Liability occurrences, happening within any one period of insurance, for the duration of the Service Provider's membership of the Scheme.

- (b) **Professional Indemnity Insurance** that covers Services the Service Provider has nominated to provide under the Scheme in the amount of not less than \$20 million in any one claim and in the aggregate in any one period of insurance, and for an additional period of seven (7) years after expiry or termination of this Scheme or of any Agency Agreement to which the Service Provider is a party, whichever is the longer.

The scope of the cover must include property damage, economic loss and death or bodily injury arising from or in connection with the conduct of professional business of delivering services covered by this Scheme.

However, a Service Provider who, instead of delivering any of the Services itself, subcontracts their delivery, need not hold a professional indemnity insurance policy that meets the above requirements so long as the Service Provider is able to demonstrate to the PSC's satisfaction that the Service Provider has appropriate mechanisms and/or processes in place to ensure that subcontractors delivering the Services hold and maintain professional indemnity insurance that meets the above requirements.

- (c) **Workers Compensation Insurance** in NSW as required by law. If the Service Provider is an "exempt employer" under *the Workers Compensation Act 1987* (NSW) it must provide appropriate documentary evidence that it is not required to take out a Workers Compensation Insurance policy.
- (d) Insurance that covers Losses that may be suffered as a result of a data security breach or the wrongful disclosure and use of Personal Information by the Service Provider or its Personnel.

5.2 The Service Provider acknowledges that clause 5.1 of these Scheme Conditions sets out the minimum levels of insurance required for membership of the Scheme, and that the PSC, NSW Treasury or an Agency may require a Service Provider to take out additional insurance at any time, including prior to an engagement to provide the Services in order to accommodate the risk and value of that particular engagement.

5.3 The Service Provider must hold and make available for inspection, on request, by the PSC, NSW Treasury or the Agency with whom the Service Provider has an Agency Agreement a certificate of currency and copy of each required insurance policy being a copy (which may include reasonably redacted policy provision or summarised policy terms where disclosure of the full policy terms is restricted by confidentiality obligation owned by the Service Provider to third parties) which specifies the following:

- (i) name of insured in the Service Provider's legal business name with an Australian Company Number (ACN), if relevant, and ABN;
- (ii) policy number;
- (iii) expiry date;
- (iv) name of the insurer;
- (v) level of cover;

- (vi) summary of the cover provided;
 - (vii) jurisdictional and territorial limits; and
 - (viii) signature and/or stamp of Insurer (as appropriate).
- 5.4 All policies of insurance must be effected with an insurer rated 'A' or better by AM Best or an equivalent rating organisation.
- 5.5 Service Providers must ensure that current insurance policies and the certificates of currency evidencing those policies specified in clause 5.1 are uploaded onto NSW eTendering for the duration of their membership of the Scheme. Where details change, Service Providers must update their information on NSW eTendering as soon as possible.

6. Fees for Services

- 6.1 The Fee Schedule contains the maximum prices for the Services included in the schedule. The Agency may negotiate directly a lesser fee and/or bulk rates for Services with the Service Provider.
- 6.2 The fees specified in the Fee Schedule should remain fixed for twelve (12) months from the date that the Service Provider becomes a member of the Scheme.
- 6.3 Excluding any variation in price agreed under clause 9.3 ('Price for variation') of Schedule 1 (Standard Form of Agreement), a Service Provider may apply to the PSC to vary any fee specified in the Fee Schedule only once in any twelve (12) month period. An application for variation in fees must be in writing and supported by satisfactory evidence of any related increase in cost to the Service Provider.
- 6.4 The PSC has sole discretion to approve, reject, or seek further evidence in support of any application for a fee variation.
- 6.5 The Service Provider will be notified by the PSC in writing of the outcome of any application for a fee variation.
- 6.6 The Service Provider may only apply the new fees for Services supplied after the new fees are approved by the PSC.
- 6.7 Travel expenses for the Service Provider's Personnel, where travel is required, must be agreed to in writing by the Agency before travel occurs. The Service Provider must provide an indicative cost for travel expenses and invoice the Agency at cost.

7. Record keeping

- 7.1 The Service Provider must keep and maintain records and accounts, including all supporting material as defined in clause 4.10 ('Records') of Schedule 1 (Standard Form of Agreement) in relation to the Scheme and any Agency engagements of the Service Provider for Services.

8. Confidentiality

- 8.1 Disclosure of information:
- (a) The Service Provider must keep information confidential.
 - (b) The Service Provider must not disclose or make public any information or material acquired or produced in connection with any engagement of the Service Provider by an Agency under the Scheme, without prior written approval of that Agency, except for the purpose of the Service Provider exercising its rights or performing its obligations under that engagement.
 - (c) Despite clause 8.1(a), the Agency may make available to any other Agency, information and materials concerning or relating to the Service Provider or its performance in any engagement under the Scheme.
 - (d) The PSC, NSW Treasury and Agencies may disclose information in connection with the Scheme as required by the *Government Information (Public Access) Act 2009* (NSW) (or any other similar Laws), the [NSW Government Procurement Policy Framework](#), and any other lawful requirement.
 - (e) The Service Provider must not issue any press release or make any public statement regarding the Service Provider's activities under this Scheme without the prior written consent of the Agency, except as required by Law.
 - (f) This clause 8 does not preclude the Service Provider from disclosing any information (including Confidential Information) of the Service Provider to the extent that this Scheme Conditions otherwise permits the disclosure of such information.

9. Notification requirement

- 9.1 A Service Provider must notify the PSC and any Agency with which it has an Agency Agreement or which has issued an Agency Referral to it, within two (2) business days of any event which affects, or may affect, the Service Provider's compliance with the Scheme Conditions or that may be material to the Service Provider's prequalification status. This includes but is not limited to:
- (a) any cancellation of an insurance policy or reduction of limit of coverage below that required by clause 5.1 of these Scheme Conditions or by the Agency Agreement;
 - (b) change of ownership;
 - (c) if the Service Provider becomes aware that there has been a Security Incident
 - (d) change of Control, or change of management, financial capacity, contact details or address;
 - (e) changes in financial status and Insolvency Event; and
 - (f) becoming the subject to any proceedings described in clause 14.7.
- 9.2 The PSC may act in its absolute discretion in response to a notification under clause 9.1, including by suspending or revoking the Service Provider's membership of the Scheme.

10. Communication

- 10.1 Unless notified otherwise in writing, all communication by the PSC and/or NSW Treasury with a Service Provider will be sent to the person and at the address/email nominated in the Service Provider's Application.

11. Publicity

- 11.1 A Service Provider must not advertise, promote or publicise in any form their membership of the Scheme without the prior written consent of the PSC.

12. NSW Procurement Board Policy Framework

- 12.1 A Service Provider must adhere at all times to the following, to the extent they are relevant:
- (a) [NSW Government Procurement Policy Framework](#); and
 - (b) [NSW Government Procurement: Small and Medium Enterprises and Regional Policy Framework](#).
- 12.2 These documents are available at buy.nsw.gov.au/policy-library . A Service Provider must also comply with any other policies notified to them by the PSC, NSW Treasury and the Agency.
- 12.3 Any breach of clause 12.1 or 12.2 by a Service Provider may result in:
- (a) termination of an Agency Agreement to which the Service Provider is a party; and/or
 - (b) suspension or revocation of the Service Provider's membership of the Scheme.

Applying for prequalification

13. Eligibility

- 13.1 The following are eligible to make an Application:
- (a) a registered (public or proprietary limited) Australian company;
 - (b) a foreign (overseas) company registered in Australia; or
 - (c) individuals trading as a partnership.
- 13.2 The following are not eligible to make an Application:
- (a) sole traders;
 - (b) a group of companies or consortium that is not, of itself, a legal entity; or
 - (c) trusts.
- 13.3 The Applicant's legal business name must be provided in full in the Application and, with the business associated ACN and/or ABN.
- 13.4 The Applicant must have capacity to contract with an Agency.
- 13.5 Applications submitted by a business with a partnership structure must be properly executed by a partner with authority to bind the partnership.

14. Other Application requirements

- 14.1 Applications may only be made online via NSW eTendering during the Scheme Invitation Periods.

The Scheme manager at its discretion may notify invitation periods.

- 14.2 An Applicant must provide, in the form set out in Schedule 6 (Referee Report template for Applicants), three (3) referee reports for Tier One services and at least three (3) referee reports relating to each Tier Two services (if any) nominated by the Applicant in its Application.
- 14.3 In its Application, an Applicant must provide a Fee Schedule (including hourly fees) for Tier One services and for the Tier Two services (if any), nominated by the Applicant in the Application.
- 14.4 Pricing for Services in the Fee Schedule should include all:
- (a) applicable levies, duties, taxes (excluding GST), insurances, packaging, imposts, overheads and profits, excluding GST; and
 - (b) labour, materials, plant and equipment necessary to perform the Services.
- 14.5 Hourly fees specified in the Fee Schedule in an Application will be taken into account by the Assessment Committee in its consideration of the Application. Agencies may also take the hourly fees specified in an Application into account when selecting a Service Provider for work.
- 14.6 An Applicant who does not intend to deliver any of the Services itself but instead intends to subcontract their delivery and who therefore does not hold a professional indemnity insurance policy specifically covering those Services must demonstrate that, if admitted to the Scheme, it will immediately upon being admitted ensure that any of its subcontractors delivering the Services hold and maintain professional indemnity insurance for the period required by clause 5 ('Insurance'), or by any Agency Agreement under which the Services are to be delivered, whichever is the longer.
- 14.7 An Applicant must declare in its Application if, to the best of its knowledge, it is or ever has been:
- (a) the subject of proceedings or investigations commenced by the Independent Commission Against Corruption or similar public body against the Applicant; or
 - (b) prosecuted for, or convicted of, any breach of work health and safety legislation, environmental protection legislation, industrial relations legislation, or competition or consumer legislation, or any other law breach of which would be relevant and material to the Applicant's supply of the Services under the Scheme.
- 14.8 An Applicant must cooperate with any financial assessment required by the Assessment Committee, and costs of such assessment must be paid by the Applicant.
- 14.9 In its Application the Applicant must provide either a letter or statement prepared by an independent accountant which expressly states the financial solvency of the business. The letter or statement must have been prepared within the last twelve (12) months. The Applicant must advise the PSC in its Application of any Insolvency Event in respect of the Applicant in the twelve (12) months preceding the date of submission of its Application.
- 14.10 By lodging an Application, the Applicant agrees to provide the Assessment Committee, the PSC and NSW Treasury with the necessary authority to enable searches and enquiries to be carried out in connection with the Application in respect

to the Service Provider's financial solvency, and its capacity and capability to deliver the nominated Services.

- 14.11 An Applicant acknowledges that it is not entitled at law or equity to recover any costs or expenses associated with or incurred in respect of its submission of an Application.
- 14.12 Unless notified otherwise in writing, all communication with an Applicant in connection with its Application will be sent to the person and at the address/email nominated in the Application.

15. Confidentiality

15.1 Information submitted with an Application:

- (a) will be treated as confidential unless otherwise required by law;
- (b) may be subject to investigation, reference checking, searches, interview, enquiries, and confirmation and an Applicant is taken, by having made an Application, to have authorised any such action; and
- (c) may be disclosed in accordance with the *Government Information (Public Access) Act 2009* (NSW) and under any other lawful requirement.

16. Evaluation of Applications

- 16.1 Applications will be assessed during Invitation Periods by the Assessment Committee. The Assessment Committee will consider each Application against the Scheme Conditions, including the evaluation criteria in clause 16.2.
- 16.2 An Applicant may be recommended for membership of the Scheme if the Assessment Committee determines that the Applicant meets the requirements of these Scheme Conditions and:
- (a) demonstrates experience, capability and capacity to provide fair and objective Tier One (core) services and any nominated Tier Two (optional) services;
 - (b) offers competitive pricing of core services;
 - (c) demonstrates business and financial sustainability;
 - (d) has not become bankrupt or insolvent within the meaning of section 95A of the Corporations Act or under any bankruptcy, insolvency or analogous law;
 - (e) meets account management and governance requirements; and
 - (f) agrees to be bound by the Scheme Conditions.
- 16.3 An Applicant may be contacted by the Assessment Committee if further information is required or to clarify information provided in the Application. An Applicant may also be invited to meet with the Assessment Committee to discuss its Application.
- 16.4 All Applications which have been assessed by the Assessment Committee and referred to the PSC will include a recommendation as to whether the Applicant should be granted membership to the Scheme.

- 16.5 The PSC may, at its sole discretion, grant or refuse an Application that has been assessed by the Assessment Committee.

17. Notification of outcome

- 17.1 The Assessment Committee will notify each Applicant, via NSW eTendering, if their Application has been either granted or refused by the PSC.

18. Request for review

- 18.1 The Applicant may make a written request, providing full details of the reasons for the request, for a review of the decision to grant or refuse Scheme membership.
- 18.2 The Assessment Committee will inform the Applicant in writing of the outcome of the written request.
- 18.3 An unsuccessful Applicant may re-apply for membership of the Scheme in the next Scheme Invitation Period.

19. Disclaimer

- 19.1 The PSC reserves absolute discretion to:
- (a) grant an Application for membership of the Scheme with or without limitations and/or conditions; or
 - (b) refuse an Application.

20. Applicant's acknowledgement

- 20.1 Compliance with Scheme Conditions

By lodging an Application an Applicant agrees:

- (a) to the processing and determination of its Application as set out in the Scheme Conditions;
- (b) if its Application is granted, to comply with the Scheme Conditions and that its supply of Services under the Scheme will be subject to the terms and conditions in Schedule 1: Standard Form of Agreement (subject to any subsequent modification of them under and in accordance with the Scheme Conditions); and
- (c) that neither the Public Service Commissioner, nor the PSC nor any member of the Assessment Committee is personally liable for any costs or damages incurred by the Applicant in connection with the Application or as a result of the exercise of the PSC's or Committee's discretion.

- 20.2 No guarantee of work

An Applicant acknowledges that acceptance to the Scheme does not guarantee that:

- (a) the Applicant will remain a member of the Scheme for the duration of the Scheme;
- (b) the Applicant will receive opportunities to tender for (including submit a quote or proposal for or express interest in) the supply of Services under the Scheme; or
- (c) an engagement of for any kind or any quantity of services will be offered to the Applicant.

Once prequalified

21. Preparation

- 21.1 An Applicant who is granted Scheme membership agrees to do all things professionally prudent and necessary to prepare for the provision of the Services, as set out in Schedule 2 (Description of Service requirements).
- 21.2 An Applicant must be prepared to provide Services within six (6) weeks from the date of the NSW eTendering notification of their grant of Scheme membership.
- 21.3 Failure to comply with this clause may result in suspension or removal from the Scheme as detailed in clauses 28 or 29 of these Scheme Conditions.

22. Provision of Services

- 22.1 Service Providers must provide a summary of the Service Provider's stated capability and experience for [buy.nsw](https://www.buy.nsw.gov.au), to assist Agencies in determining a Service Provider's suitability for a specific engagement.
- 22.2 Agencies may engage a Service Provider by issuing a completed Agency Referral (Form 1: Agency Referral for Medical Services form).
- 22.3 Each Agency Referral issued to a Service Provider will be considered a separate and distinct service engagement.
- 22.4 If an engagement is for the bulk supply of Services (such as an ongoing arrangement for referral of employees for medical assessments, periodic health assessments or pre-employment health assessments), the Agency and Service Provider may enter into an Agency Agreement using the Standard Form of Agreement prescribed in Schedule 1 of the Scheme Conditions.
- 22.5 The standard terms in the Agency Agreement must not be varied for the purpose of a particular engagement unless there are exceptional circumstances which warrant such variation and the variation is agreed between the Agency and Service Provider. Any such variation must not be inconsistent with the Scheme Conditions.
- 22.6 Before supplying Services to an Agency under the Scheme, a Service Provider must provide the Agency with the Service Provider's ABN in accordance with Australian Taxation Office requirements.
- 22.7 The legal business name of the Service Provider with its ACN (if applicable) and ABN, as supplied in its Application, must always be used by the Service Provider in accordance with Australian Securities and Investment Commission requirements when doing business under the Scheme.
- 22.8 The fees to be charged for each individual engagement for which the Service Provider is selected must be agreed to by the Service Provider and the Agency prior to commencement of supply of Services concerned.
- 22.9 The minimum level of insurance cover required under clause 5 ('Insurance') reflects only a reasonable and readily available level of cover that Service Providers are reasonably expected to acquire at the time of prequalification. However, this level of

cover should not be assumed to be the appropriate level required for every engagement. The adequacy of insurance coverage to meet the risk and any monetary limit that is set for the nature of an engagement must be determined having regard to the particular engagement, and the required minimum level of cover reviewed and verified at the time the Service Provider is engaged.

- 22.10 The Service Provider must perform the Services in a diligent manner and to the standard of skill and care expected of a Service Provider qualified, competent and experienced in the provision of the Services.
- 22.11 The Service Provider may be required to meet with the PSC or NSW Treasury from time to time to discuss matters, and provide a report on issues relevant to the Scheme.
- 22.12 The Service Provider must perform the Services in accordance with the terms and conditions of the Scheme Conditions, the Agency Agreement and the relevant Agency Referral forming part of the Agency Agreement.
- 22.13 In the event of any ambiguity, discrepancy or inconsistency in interpreting any term or terms of an Agency Referral, the Agency Agreement and the Scheme Conditions, the order of priority in the interpretation will be:
 - a) Scheme Conditions;
 - b) Agency Agreement; and
 - c) Agency Referral.

23. Reporting

- 23.1 The Service Provider must provide reports in the manner set out in Schedule 7 (Service Provider six-monthly reporting template).
- 23.2 The reports must be sent to the Scheme Manager at the Public Service Commission at whs@psc.nsw.gov.au by the second Friday of January and July each year.

Reporting period	Month report due annually
July - December	January
January - June	July

- 23.3 The Service Provider may also be required to provide reports to an Agency as may be specified in an Agency Agreement.

24. Access

- 24.1 The PSC, NSW Treasury and Agencies reserve the right to inspect the Service Provider's premises or to undertake an audit of its records done during the course of the Scheme for the purpose of evaluating compliance with the Scheme Conditions.
- 24.2 The Service Provider must provide access to the site/s of its operations and to its records relating to its service delivery under this Scheme within three (3) weeks of any request by the PSC, NSW Treasury or relevant Agency.

25. Performance management

- 25.1 The Service Provider must meet the service levels listed in Schedule 3 (Service levels and key performance reporting). If different service levels are specified in an Agency Agreement the Service Provider must, in relation to that Agreement, meet those different service levels.
- 25.2 When a Service Provider is engaged to supply Services to an Agency, the Service Provider must nominate a suitably experienced and knowledgeable Relationship Manager as a single point of contact for the Agency representative to appropriately address any performance management related matters raised by the Agency representative and/or by the Agency.
- 25.3 While engaged by an Agency to provide Services, the Service Provider must attend regular meetings with an Agency representative as required by the Agency and, if applicable, as set out in the Agency Agreement.
- 25.4 The PSC will manage the performance of the Service Provider by:
- (a) monitoring performance on tendering, financial capability, compliance with the NSW Government Procurement Policy set out in clause 12.1, and reports on performance outputs and outcomes under clause 23 ('Reporting');
 - (b) applying sanctions, such as temporary suspension from the Scheme, where performance is determined to be unsatisfactory;
 - (c) revoking a Service Provider's prequalification, following due consideration of the circumstances, where performance is determined to be unsatisfactory; and
 - (d) providing the opportunity for a Service Provider to request a review of the decisions referred to in paragraphs (b) and (c) above.
- 25.5 Failure by a Service Provider to comply with a requirement of this clause may result in suspension or revocation of the Service Provider's prequalification as set out in these Scheme Conditions.

26. Performance monitoring

- 26.1 Performance monitoring will be conducted in accordance with the following principles:
- (a) the mutual objective of achieving continuous performance improvement;
 - (b) the use of performance reporting as a means to facilitate the identification and resolution of any issues;
 - (c) open, proactive and objective performance monitoring and periodic formal reporting by the representatives of both parties to enable an assessment of service delivery against agreed service levels;
 - (d) performance reporting being the responsibility of all parties;
 - (e) performance being considered at regular formal meetings between all parties;
 - (f) performance issues being promptly addressed by the parties concerned in a proper, regular and timely manner;
 - (g) performance issues being discussed openly with the Service Provider to ensure that concerns (such as dissatisfaction with performance) do not constitute an unexpected contingency when subsequently documented in the relevant Performance Report;

- (h) objective statements or documents consistent with and supporting the performance rating should be used to provide the basis for the ratings recorded in a performance report;
- (i) the assessment of the performance of the Service Provider should take account of individual behaviour when necessary to highlight performance problems for resolution; and
- (j) a constructive 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.

27. Performance reporting

- 27.1 An Agency must submit a Performance Report on a Service Provider to the PSC in the form prescribed in Schedule 5 (Agency report on Service Provider performance) if the Agency considers that:
- (a) the Service Provider has breached the Scheme Conditions;
 - (b) the performance of Services by the Service Provider is, or has been, unsatisfactory; and/or
 - (c) a critical aspect of the performance of the Service Provider is, or was, unsatisfactory.
- 27.2 As soon as practicable after a Performance Report is prepared, the Agency must provide a copy of the Performance Report to the Service Provider and to the Scheme Manager.
- 27.3 If the Service Provider disagrees with the Performance Report, the Agency and the Service Provider should attempt to resolve the disagreement in the first instance. Following an unsuccessful attempt to resolve a disagreement, the Service Provider may refer the Performance Report, with written reasons for the disagreement, to the Scheme Manager for consideration.
- 27.4 Where a Performance Report is referred to the Scheme Manager under clause 27.3, the Scheme Manager may:
- (a) arrange a meeting between Service Provider and the Agency to discuss and consider the Performance Report and reasons for disagreement;
 - (b) make a decision based on information collected from the Service Provider and Agency;
 - (c) amend the Performance Report; and/or
 - (d) notify the Service Provider of its decision with respect to the Performance Report.

28. Suspension

- 28.1 The PSC may suspend a Service Provider's membership of the Scheme for a period of up to three (3) months if:
- (a) it considers that the Service Provider has not complied with the Scheme Conditions;
 - (b) it considers that the Service Provider has demonstrated unsatisfactory performance in the supply of any Services under the Scheme; or

- (c) the Service Provider has notified the PSC of the occurrence of any of the events set out in clause 9.1, and the PSC considers that the Service Provider's Scheme membership should be suspended.
- 28.2 If a Service Provider's membership of the Scheme is suspended under clause 28.1, the PSC will assess whether the Service Provider continues to meet the Scheme Conditions, including consideration of the evaluation criteria in clause 16.2.
- 28.3 If the PSC determines that a Service Provider whose membership has been suspended under clause 28.1 continues to meet the Scheme Conditions, including the evaluation criteria in clause 16.2, the suspension will be lifted.
- 28.4 Before a Service Provider's membership is suspended under clause 28.1, the Scheme Manager will advise the Service Provider in writing of the matters prompting the proposed action and will provide the Service Provider with an opportunity to provide reasons as to why its membership should not be suspended.
- 28.5 If a Service Provider's membership is suspended under clause 28.1 the Scheme Manager will advise the Service Provider of the reasons for the suspension and of any actions by the Service Provider required for the suspension to be lifted. A Service Provider whose membership has been suspended must inform the Scheme Manager if and when the actions required to lift the suspension have been undertaken.
- 28.6 The PSC will review the status of any Service Provider whose membership has been suspended under clause 28.1 at the completion of the suspension period. If action taken by the Service Provider is considered by the PSC to be insufficient, the PSC may revoke the Service Provider's Scheme membership, or extend the suspension period, and the Service Provider will be notified accordingly. The PSC may revoke the suspension if it is satisfied that the Service Provider has taken appropriate action to address the reasons for the suspension.
- 28.7 A Service Provider whose membership has been suspended under clause 28.1 must complete the supply of Services under any Agency Referral issued to it or Agency Agreement to which it is a party at the time of the suspension, if required by the Agency concerned. The Service Provider must not accept any further Agency Referrals or enter into any new Agency Agreements unless and until the suspension has been revoked.
- 28.8 If a suspension under this clause 28 is instructed by the PSC as a result of any breach by the Service Provider, the Service Provider's failure or delay in carrying out any of its obligations, such suspension will be without any liability to the PSC and the Service Provider will not be entitled to make any Claim against the PSC arising out of, or in connection with, the suspension.

Removal from Scheme

29. Revocation of Scheme membership

- 29.1 In addition to revocation under clause 28.6, the PSC may revoke a Service Provider's membership if the PSC considers that a Service Provider:
- (a) has breached the Scheme Conditions;

- (b) has failed to meet financial requirements of the Scheme;
 - (c) is unsuitable for Scheme membership on the basis of unsatisfactory performance of Services;
 - (d) has experienced an adverse change in capacity or capability; or
 - (e) has been convicted of any breach of its obligations under work health and safety legislation, environmental protection legislation, industrial relations legislation, competition and consumer legislation, or any other laws being a conviction, which warrants revocation of the Service Provider's prequalification; or
 - (f) is unsuitable for future work.
- 29.2 Before a Service Provider's membership is revoked under this clause, the PSC will advise the Service Provider of the matters prompting the proposed action and will provide the Service Provider with an opportunity to provide reasons as to why the revocations should not occur.
- 29.3 If a Service Provider's membership is revoked, clause 31 ('Discontinuation of Scheme membership') applies as if the references in that clause to discontinuation of membership were references to revocation of membership.

30. Review of decision

- 30.1 If a Service Provider considers that there are substantive grounds for the PSC to reconsider any of its decisions under clause 28 ('Suspension') or 29 ('Revocation of Scheme membership'), the Service Provider may request, a review of the decision, providing full details of the reasons for the request for review to:

Scheme Manager
Scheme: Employment Related Medical Services
Public Service Commission
GPO Box 3988 Sydney, NSW 2001
E: whs@psc.nsw.gov.au

- 30.2 The PSC will inform the Service Provider of the outcome of the review as soon as practicable.

31. Discontinuation of Scheme membership

- 31.1 The Service Provider may, at any time after the establishment of the Scheme, discontinue its membership of the Scheme upon the provision of ninety (90) days' written notice to the Scheme Manager at the PSC.
- 31.2 On the date that the Service Provider discontinues its membership of the Scheme the Service Provider's prequalification ceases and the Service Provider agrees:
- (a) not to enter into any new Agency Agreements or accept any new Agency Referrals under the Scheme;
 - (b) that any Agency Agreement to which it is a party or Agency Referral that has already been issued to it prior to the date of discontinuation will be fulfilled in accordance with its terms, unless the Agency, at its own option and without liability, terminates or cancels the Agency Agreement or Agency Referral; and
 - (c) that if requested by the Agency, the Service Provider will work with the Agency in good faith during an agreed transitional period.

31.3 Clause 8 ('Confidentiality') will survive a Service Provider's discontinuation of its membership of the Scheme.

32. Transfer of Scheme membership

- 32.1 Membership of this Scheme cannot be assigned or transferred by a Service Provider.
- 32.2 A Service Provider must, in writing, advise the Scheme Manager of any Change of Control of the Service Provider's business.
- 32.3 Any purchaser of a Service Provider's business will have the opportunity to apply in its own right to be a member of the Scheme. Such Applications may be assessed by the Assessment Committee outside the nominated Invitation Periods.

Other Requirements

33. Privacy

33.1 Protection and use of Personal Information

- (a) If the Service Provider or its personnel if the Service Provider or its Personnel obtains access to, or collects, uses, holds, controls, manages or otherwise processes, any Personal Information in connection with this Scheme (regardless of whether or not that Personal Information forms part of the Customer Data), the Service Provider must (and must ensure that its Personnel):**
- (i) comply with all Privacy Laws, as though it were a person subject to those Privacy Laws;
 - (ii) only use that Personal Information for the sole purpose of carrying out Service Provider's Activities
 - (iii) not disclose the Personal Information to any other person without the Agency's prior written consent, which may be given in respect of classes or categories of subcontractors or types of subcontracted activities and made subject to any applicable conditions;
 - (iv) not transfer the Personal Information outside New South Wales, Australia or access it, or allow it to be accessed, from outside New South Wales, Australia unless permitted by the Agency and subject to the Service Provider's and its Personnel's compliance with the Data Location Conditions;
 - (v) protect the Personal Information from unauthorised access, use, disclosure, modification and other misuse and in accordance with the security requirements under this Agreement;
 - (vi) if the Service Provider becomes aware that there has been an actual, alleged or suspected Security Incident involving Personal Information:
 - (a) must comply with any reasonable direction (including as to timeframes) from the Agency with respect to that breach (which may include, for example, notifying any affected individuals of the breach of privacy);and
 - (b) take all reasonable steps to prevent such breach from recurring; and

- (c) notify the Agency as soon as reasonably possible if Service Provider is approached by any privacy commissioner or other Authority concerning any Personal Information.

34. Work health and safety

- (a) the Service provider must comply and ensure its Personnel comply, with the WHS Legislation (including any obligations under the WHS Legislation to consult, co-operate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
- (b) ensure that it does not do anything or fail to do anything that would cause the Agency to be in breach of the WHS legislation;
- (c) comply with any additional work health and safety requirements as otherwise reasonably required by the Agency from time to time.

Schedules

Schedule 1: Standard Form of Agreement (Agency Agreement)

Schedule 2: Description of Service requirements

Schedule 3: Service levels and key performance reporting

Schedule 4: Standard forms and templates

- Form 1 – Agency Referral for Medical Services
- Form 2 – Employee Acknowledgment
- Form 3 – Privacy and Consent to Release Medical Information
- Form 4 – Request for Review of Medical Assessment
- Template 1 – Review Panel letter – Time extension
- Template 2 – Case summary and meeting report
- Template 3 – Review Panel letter - Outcome
- Template 4 – Review Panel letter - Further assessment
- Information sheet – Employee information: Medical Assessment

Schedule 5: Agency report on Service Provider performance

Schedule 6: Referee Report template for Applicants

Schedule 7: Service Provider six-monthly reporting template