Delivering Community Services in Partnership

Purchase of Community Services By State Agencies

Process Terms and Conditions and Definitions (Request for Offers)

July 2024 Edition

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In the Request, unless the context otherwise requires, terms which are not otherwise defined but which have a defined meaning in the General Provisions, have the same meaning when used in the Request.

In the Request, unless the context otherwise requires:

Addendum means any addendum in relation to modifications or clarifications to the Request issued by the State Party pursuant to clause 7 which, by virtue of clause 7, are deemed to form part of the Request, and is available on Tenders WA (www.tenders.wa.gov.au).

Business Day means any day except a Saturday, Sunday or a public holiday in Perth, Western Australia.

Change in Control means a change in the person or persons who, directly or indirectly, ultimately Control the Respondent.

Claim means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity).

Closing Time means the date and time set out as the closing time on the front page of the Request.

Confidential Information means information in the Request or otherwise in connection with the Procurement Process that:

(a) is by its nature confidential; or

(b) is specified by the State Party to be confidential, including any information specified to be confidential in the Request; or

(c) the Respondent knows or ought to know is confidential.

Consequential Loss means indirect or special loss, loss not likely to arise naturally or in the usual course of things, the cost of capital or other financing costs, all loss of profit, income, business opportunity, goodwill or reputation, and any other loss or liability which would fall within the second limb of losses referred to in *Hadley v Baxendale* (1854) 9 Ex 341.

Control has the meaning given in the *Corporations Act* 2001 (Cth).

Director has the meaning given in the *Corporations Act* 2001 (Cth).

Disclosure Requirements means the requirements (if any) referred to as such in the Response Form.

Evaluation Criteria means the criteria for evaluation of Offers set out in the Request.

General Provisions means the Delivering Community Services in Partnership - General Provisions for the Purchase of Community Services by State Agencies – July 2024 Edition, published by the Western Australian Department of Finance at wa.gov.au.

Mandatory Requirements means the requirements (if any) referred to as such in the Response Form.

Offer means an offer lodged in response to the Request.

Offer Validity Period means the period specified as such in the Request, commencing from Closing Time.

Offered Service Payment means the proposed service payment specified in the Price Schedule.

Officer has the meaning given in the *Corporations Act* 2001 (Cth).

Preferred Respondent means a Respondent selected by the State Party as a, or the, preferred Respondent.

Price Schedule means the service pricing information submitted by the Respondent as part of its Offer.

Process Terms and Conditions means the terms and conditions for the Procurement Process set out in the Request (including, for the avoidance of doubt, in this Process Terms and Conditions Document).

Process Terms and Conditions Document means this document.

Procurement Process means the procurement process set out in the Request, or as varied by the State Party.

Qualitative Criteria means the criteria (if any) referred to as such in the Response Form.

Respondent means the entity named as the Respondent in the relevant Offer and where the context permits or requires reference to the Respondent includes the Respondent's Officers, agents, advisers, consultants, contractors, nominees, licensees and employees and volunteers used by the Respondent.

Response Form means the form, part or schedule so entitled in the Request.

Service Agreement means, depending upon context, the proposed formal contract between the State Party and the successful Respondent

as a consequence of the Request, and comprising of service agreement documents listed in clause 2.2 of the General Provisions.

Service Agreement Details means the service agreement details identified as such in the Request and for the avoidance of doubt includes the schedules to those service agreement details.

Service Requirement means the requirement for services the subject of the Request.

Site means the proposed site (if any) for the Service Requirement.

Specified Personnel means any individual named by the Respondent in responding to the Qualitative Criteria.

State means the State of Western Australia.

State Agency has the meaning given in the *Procurement Act 2020* (WA).

State Party has the meaning given in clause 3.1 and where the context permits or requires reference to the State Party includes the State Party's Officers, agents, advisers, consultants, contractors, nominees, licensees and employees.

State Party Representative means each person described as such in the Request or, if the State Party Representative has been replaced under clause 15.4, that replacement State Party Representative.

Tenders WA means the Western Australian Government electronic tender lodgement system maintained at www.tenders.wa.gov.au.

Term means the term of the Service Agreement.

Workshop means a workshop, interview, meeting, question and answer session or briefing between the State Party and one or more Respondents.

1.2 Interpretation

In the Request, unless the context otherwise requires:

(a) the singular includes the plural and vice versa;

(b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;

(c) a reference to a gender includes other genders;

(d) a reference to a person includes a State Agency, a public body, a company and an incorporated or unincorporated association or body of persons;

(e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;

(f) if the Respondent consists of a consortium of two or more persons whether by way of partnership or joint venture or otherwise, then:

(i) an obligation imposed on the Respondent under the Request binds each person who comprises the Respondent jointly and severally;

(ii) an Offer lodged by the Respondent is binding on those persons jointly and severally;

(iii) each person who comprises the Respondent agrees to do all things necessary to enable the obligations imposed on the Respondent under the Request to be undertaken; and

(iv) the act of one person who comprises the Respondent binds the other persons who comprise the Respondent;

(g) an agreement, representation or warranty on the part of or in favour of two or more persons binds, or is for the benefit of, them jointly and severally;

(h) no rule of interpretation applies to the disadvantage of the State Party on the basis that the State Party put forward the Process Terms and Conditions;

(i) "includes" in any form is not a word of limitation;

(j) the meaning of "or" will be that of the inclusive "or", meaning one, some or all of a number of possibilities;

(k) a reference to the Request or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the State Party or the Respondent;

(l) a reference to a document published at an electronic address is to the document as published at that electronic address on the date of first public issue of the Request;

(m) a reference to a clause, schedule, attachment or appendix is a reference to a clause, schedule, attachment or appendix to the Request;

(n) all the provisions in any schedule, attachment or appendix to the Request are incorporated in, and form and are to be read as part of, the Request and bind the State Party and the Respondent;

(o) headings are included for convenience only and do not affect the interpretation of the Request;

(p) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;

(q) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;

(r) a reference to writing includes any means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;

(s) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;

(t) a reference to a month is to a calendar month and a reference to a year is to a calendar year;

(u) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;

(v) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;

(w) a reference to a monetary amount means that amount in Australian currency; and

(x) a reference to time means the time observed by the general community from time to time in Perth, Western Australia.

1.3 Exclusions

If any of the Process Terms and Conditions purports to exclude liability for a particular matter, such exclusion only operates to the extent permitted by law.

1.4 Status of this document

This Process Terms and Conditions Document is deemed to be incorporated in, and to form and to be read as part of, the Request and to bind the State Party and the Respondent.

2. RESPONDENT'S PARTICIPATION IN PROCUREMENT PROCESS

By lodging an Offer, the Respondent agrees:

(a) to comply with the Request (including the Process Terms and Conditions) for the duration of the Procurement Process; and

(b) that it participates in the Procurement Process at its own cost and risk.

3. GENERAL

3.1 State Party

(a) Subject to clause 3.1(b), in the Request, unless the context otherwise requires, "State Party" means the issuing agency referred to on the front page of the Request.

(b) If the State Party is a body corporate created by or existing under statute, then in this Process Terms and Conditions Document:

(i) a reference to any loss, cost or expense incurred by the "State Party" is a reference to such loss, cost or expense incurred by either or both of the issuing agency referred to in clause 3.1(a) and the State; and

(ii) a release, or limitation of liability or responsibility, in favour of or for the benefit of the "State Party" is deemed to be in favour of or for the benefit of both the issuing agency referred to in clause 3.1(a) and the State.

3.2 Lodgement of Electronic Documents

If the Respondent lodges an Offer through Tenders WA or otherwise in electronic form, the Respondent agrees that:

(a) in respect of an Offer lodged through Tenders WA:

(i) receipt of the Offer will be determined by the date and time shown on the electronic tender lodgement service receipt issued or, if no receipt is issued, the date and time of receipt of the Offer as recorded in the Tenders WA data base; and

(ii) electronic lodgement of the Offer may take time and the Respondent must make its own assessment of the time required for full transmission of its Offer;

(b) in respect of an Offer lodged in hard copy and in electronic form, in the event that there is any discrepancy between the electronic copy of the Offer and the hard copy of the Offer lodged by the Respondent, the hard copy of the Offer will take precedence;

(c) if any files uploaded as part of the Offer contains a virus then, notwithstanding any disclaimer made by the Respondent in respect of viruses, the Respondent must pay to the State Party all costs incurred by the State Party arising from, or in connection with, the virus;

(d) the State Party will not be responsible in any way for any loss, damage or corruption of the electronic copy of the Offer;

(e) if the Offer becomes corrupted, illegible or incomplete as a result of transmission, storage, encryption or decryption, then the State Party may request the Respondent to provide another copy of the Offer either electronically or in hard copy or both; and

(f) if the State Party requests the provision of another copy of the Offer, then the Respondent must:

(i) provide the copy in the form or forms requested within the period specified by the State Party;

(ii) provide a statutory declaration that the copy is a true copy of the Offer which was originally submitted by the Respondent and that no changes to the Offer have been made; and

(iii) where the original copy of the Offer was lodged through Tenders WA, provide a copy of the Tenders WA receipt for the initial attempted electronic submission.

3.3 Late Lodgement

(a) Any Offer which is not lodged before the Closing Time will be excluded from consideration unless the Respondent can provide conclusive evidence of mishandling of its Offer.

(b) For the purposes of the Request, mishandling of an Offer will only have occurred where:

(i) the Offer was received by or on behalf of the State Party (whether by hand, by post or by facsimile) prior to the Closing Time, but the Offer was not transferred by or on behalf of the State Party to the tender box by the Closing Time; or

(ii) the Respondent attempted to lodge the Offer through Tenders WA but the Respondent was unable to do so due to a systems error experienced by Tenders WA.

4. STATE PARTY'S RIGHTS

4.1 Rights

The Respondent acknowledges and agrees that the State Party reserves the right at any time to:

(a) cancel, suspend or change the Request or any aspect of the Procurement Process or to take such other action as the State Party considers appropriate in relation to the Procurement Process or the Request;

(b) require additional information from the Respondent in which case the Respondent must provide such information within a reasonable time of the State Party's request;

(c) refuse to consider or evaluate the Respondent's Offer or terminate the Respondent's participation in the Procurement Process if:

(i) the Respondent breaches the Process Terms and Conditions; or

(ii) the Respondent's Offer is materially incomplete or fails to properly address or meet to the State's satisfaction the Evaluation Criteria or any other requirement contained in the Request; or

(iii) the Respondent fails to meet a direction or requirement of the State Party under the Request; or

(iv) the refusal or termination is in accordance with the requirements of the *Procurement Act 2020*, *Procurement (Debarment of Suppliers) Regulations 2021*, or any other written law;

(d) decline all Offers;

(e) in evaluating the Respondent's Offer have regard to:

(i) the State Party's knowledge of and previous experience and dealings with the Respondent;

(ii) without limiting clause 4.1(c)(i), information about the past or current performance of the Respondent under any other contract, arrangement or dealing between the Respondent and a State Agency; and

(iii) information concerning the Respondent which is in the public domain or which is obtained by the State Party through investigations;

(f) consider and accept any Offer that does not comply with the requirements of the Request, other than an Offer which:

(i) is not lodged before the Closing Time; or

(ii) fails to satisfy a Mandatory Requirement; or

(iii) fails to meet any requirement when the Request expressly states that an Offer which fails to fulfil or meet that requirement will be excluded from further consideration;

(g) change the identity of the entity or person entering into the Service Agreement on behalf of the State Party;

(h) allow a Respondent to undergo a Change in Control or other change in structure with or without notifying the other Respondents;

(i) publish the names of the Respondent and any Preferred Respondent; and

(j) waive any requirement or obligation under the Request.

The State Party is not required to give reasons for the exercise of any of the State Party's rights in accordance with this clause.

4.2 Preferred Respondent

The Respondent acknowledges and agrees that:

(a) the State Party may select, but is not obliged to select, one or more Respondents as a Preferred Respondent;

(b) the selection of a Preferred Respondent does not constitute an acceptance of the Offer submitted by the Preferred Respondent or otherwise confer any rights on a Preferred Respondent and is without prejudice to the right of the State Party to decline to enter into the Service Agreement, or to enter into the Service Agreement with the Respondent or a competing Respondent;

(c) the State Party may:

(i) choose to negotiate any aspect of a Preferred Respondent's Offer; or

(ii) request a Preferred Respondent to provide a performance guarantee, a bank guarantee or some other form of security in connection with the Service Agreement on terms and conditions acceptable to the State Party; and

(d) the State Party may at any time and for any reason terminate or suspend any negotiations with a Preferred Respondent and, without limiting its rights under the Process Terms and Conditions, accept that Respondent's original Offer, or commence negotiations with any other Respondent or appoint any other Respondent as a Preferred Respondent.

4.3 State Party's Discretion

(a) Whenever the State Party (including when acting through the State Party Representative) has any rights or powers under the Request, including the provision of consents and approvals, the State Party:

(i) may exercise its right or power in its sole and absolute discretion;

(ii) is not obliged to give reasons; and

(iii) may impose such conditions as it determines.

(b) The Respondent agrees that any failure by it to comply with or perform a condition specified by the State Party will constitute a breach of the Procurement Process.

5. LEGAL RELATIONSHIP

The State Party and the Respondent acknowledge and agree that:

(a) the Request does not constitute an offer to enter into the Service Agreement;

(b) the Request constitutes the entire agreement of the parties in respect of the Procurement Process;

(c) to the maximum extent permitted at law any obligations and liabilities which may otherwise be implied or imposed on the State Party and the Respondent under contract or otherwise at law, in equity, by statute or otherwise are excluded;

(d) subject to clause 5(f) only, neither party is liable to the other in respect of any Consequential Loss arising out of or in connection with a breach of the Request or the Procurement Process generally;

(e) subject to clause 5(f) only, and without limiting clause 5(d), to the maximum extent permitted at law:

(i) the liability of the State Party to the Respondent arising out of or in connection with a breach by the State Party of the Request or the Procurement Process generally is limited to the reasonable legal and other professional costs (excluding internal costs) directly incurred by the Respondent in preparing and submitting its Offer; and

(ii) the liability of the Respondent to the State Party arising out of or in connection with a breach by the Respondent of the Request or the Procurement Process generally is limited to the reasonable legal and other professional costs (excluding internal costs) directly incurred by the State Party in conducting the Procurement Process; and

(f) the limitations in clauses 5(d) and 5(e) do not apply to a breach of clause 11 or the operation of clause 15.1.

6. INFORMATION FROM THE STATE PARTY

No statement or representation made by or on behalf of the State Party (whether at a Workshop or otherwise) may be relied upon by the Respondent unless the statement or representation is confirmed in writing.

7. ADDENDA

7.1 Issue of Addenda

The Respondent agrees that:

(a) at any time during the Procurement Process the State Party may, for any reason (but without being obliged to do so), amend the Request by issuing an Addendum to the Request;

(b) any Addenda issued shall be deemed to be incorporated in, and to form and to be read as part of, the Request;

(c) the State Party will not be liable for any costs, losses, expenses or damages incurred by the Respondent as a consequence of any such Addenda;

(d) the Respondent must prepare its Offer to take into account and reflect the content of any Addendum; and

(e) prior to the Closing Time the Respondent must log on to Tenders WA [www.tenders.wa.gov.au] to ensure that prior to submitting its Offer it has examined and understood each Addendum in respect of the request as by submitting its Offer it will be deemed to have examined and understood each Addendum.

7.2 REQUEST ONLY AMENDED OR SUPPLEMENTED BY ADDENDA

The Respondent agrees that the Request may only be amended or supplemented by Addenda issued under clause 7.1.

8. PROTOCOL FOR ENQUIRIES, CLARIFICATION QUESTIONS ETC.

8.1 Disclosure of Information

(a) Subject to clause 8.1(b), the State Party reserves the right to disclose:

(i) enquiries or clarification questions made or asked by the Respondent; and

(ii) information provided by the State Party to the Respondent,

to other Respondents in any manner the State Party considers appropriate, including circulating written enquiries or clarification questions of a general nature, together with the State Party's response, to the Respondent and all competing Respondents.

(b) If the Respondent is of the view that an enquiry or clarification question it proposes to make or ask (whether during a Workshop or otherwise) is not of a general nature, but relates to proprietary aspects of its Offer, the Respondent must identify that enquiry or question as such when making or asking it. If, in the opinion of the State Party:

(i) the enquiry or question is not proprietary, the State Party Representative will advise the Respondent who has the option to withdraw the enquiry or question. If the Respondent continues to request a response to that question, the enquiry or question and the State Party's response may be disclosed to all competing Respondents in accordance with clause 8.1(a) above; or

(ii) the enquiry or question does relate to proprietary aspects of the Respondent's Offer, the State Party's response to the question will be provided to the Respondent only (and will not be circulated to any competing Respondents).

8.2 State Party Requests Clarification

The State Party may, but is not obliged to:

(a) request that the Respondent provide written clarification in respect of any aspect of its Offer; or

(b) conduct Workshops with the Respondent, either alone or with other Respondents, to discuss the Request or the relevant Respondent's Offer or prospective Offer or to otherwise request clarification or other information.

9. RESPONDENT'S REPRESENTATIONS AND WARRANTIES

By lodging an Offer the Respondent represents and warrants that:

(a) its Offer and any subsequent information submitted to the State Party pursuant to the Request:

(i) are based on its own independent assessment and investigations, interpretations, deductions, information and determinations;

(ii) are complete and accurate; and

(iii) take into account all information relevant to the risks, contingencies and other circumstances having an effect on its Offer which is obtainable by the making of reasonable enquiries, which enquiries the Respondent has made.

(b) it has examined and understood the Request, the Process Terms and Conditions Document, the General Provisions and any other information available to the Respondent in respect to the Request;

(c) it has not paid or received and will not pay or receive any secret commission in respect of the Request;

(d) it has not entered and will not enter into any unlawful arrangement with any other person in respect of the Request; and it has not sought and will not seek to influence any decision in respect of the Request by improper means.

10. STATUS OF REQUEST, OFFER AND RESPONDENT

10.1 Material Changes in Circumstances or Status of Respondent

(a) The Respondent must notify the State Party promptly in writing, providing details:

(i) of any material change:

B. to any of the information contained in its Offer; or

C. to any additional information submitted to the State Party pursuant to the Request; or

(ii) of any event which may affect or have a material impact on its financial position or capacity; or

(iii) of any circumstances which may affect the truth, completeness or accuracy of any of the information provided in, or in connection with, the Request; or

(iv) if, after lodgement of its Offer:

A. there is a change in the structure of the Respondent or there is otherwise a Change in Control; or

B. in respect of a Respondent which consists of a consortium, there is a change of membership of the consortium.

(b) Upon receipt of any written notification pursuant to clauses 10.1 (a) (i) – (iv), the State Party reserves the right to assess the change and terminate the Respondent's further participation in the

Procurement Process, or to invite the Respondent to amend its Offer accordingly.

10.2 No Amendment

(a) The Respondent may not amend an Offer (unless invited or requested to do so by the State Party) after the Closing Time.

(b) Without limiting the State Party's rights to invite or request the Respondent or a competing Respondent to amend its Offer, the Respondent acknowledges that the State Party reserves the right to:

(i) require the Respondent or a competing Respondent to withdraw any part of its Offer which specifies or results in a departure from the requirements set out in the Request at any time (including prior to the appointment of any Preferred Respondent); and

(ii) allow the Respondent or a competing Respondent to correct patent typographical or arithmetic errors in an Offer at any time (including prior to the appointment of any Preferred Respondent),

without allowing or requiring any other Respondent to do so.

10.3 No Requirements to Return

(a) The Respondent agrees that:

(i) each Offer is the absolute property of the State Party; and

(ii) the State Party will not be required to return the Respondent's Offer or any documents, materials, articles or information lodged by the Respondent as part of, or in support of the Offer.

(b) The Respondent agrees to grant the State Party an irrevocable, perpetual, royalty free, non-exclusive licence to disclose, copy, use, adapt, modify, sublicense or reproduce the whole or any portion of the Respondent's Offer for the purposes of evaluation and clarification of the Respondent's Offer and in respect of a Preferred Respondent for the finalisation of the Service Agreement.

11. CONFIDENTIALITY AND DISCLOSURE BY RESPONDENT

11.1 Confidential Information

(a) The Respondent must keep Confidential Information confidential. The Respondent must not disclose, use, reproduce or distribute to any person the Confidential Information except:

(i) where necessary (and only to the extent necessary) for the purpose of preparing and lodging an Offer and otherwise participating in the Procurement Process; or

(ii) as authorised in writing by the State Party; or

(iii) to the extent that the Confidential Information is public knowledge (other than because of a breach of this clause by the Respondent); or

(iv) as required by any law, judicial or parliamentary body or governmental agency; or

(v) when required (and only to the extent required) to the Respondent's professional advisers, and the Respondent must ensure that such professional advisers are bound by the confidentiality obligations imposed on the Respondent under this clause 11.1(a).

(b) The Respondent must immediately notify the State Party if it becomes aware of a suspected or actual unauthorised disclosure, copying or use of the Confidential Information.

(c) The Respondent must ensure that each person to whom it discloses the Confidential Information (except a person to whom disclosure is legally required) including any Officers, agents, advisers, consultants, contractors, nominees, licensees, employees and volunteers of the Respondent, complies with the obligations in clauses 11.1(a) and 11.1(b).

11.2 Survives Termination

The obligations in clause 11.1 are continuing obligations and survive expiration or termination of the Respondent's participation in the Procurement Process.

12. STATE PARTY'S PUBLIC DISCLOSURE AND FREEDOM OF INFORMATION

12.1 State Party's Public Disclosure Obligations

The Respondent agrees to:

(a) the disclosure by any person to the State Party of information concerning the Respondent's Offer, or the Respondent, for the purpose of the State Party exercising its rights set out in the Request or at law;

(b) the State Party disclosing any aspect of the Respondent's Offer or any other information provided by the Respondent to the State Party during the Procurement Process to enable the State Party to meet public disclosure obligations the State Party may have:

(i) under any current or future legislation; or

(ii) under any current or future policy of the State or the State Party; or

(iii) in the course of official duties of the Minister responsible for the State Party; or

(iv) to satisfy requirements of parliamentary accountability; or

(v) under annual reporting obligations of the State Party; or

(vi) to satisfy any other recognised public requirement; and

(c) the State Party publicly disclosing information in relation to the Procurement Process, the Request or the details of the Respondent, including the terms and conditions of the Service Agreement.

12.2 Freedom of Information Act and Other Legislation

(a) The Respondent acknowledges that the *Freedom of Information Act 1992* (**FOI Act**) applies to the information provided by the Respondent in its Offer or as otherwise submitted by the Respondent to the State Party pursuant to the Request.

(b) The Respondent agrees and acknowledges that the powers and responsibilities of the Auditor General for the State under the *Financial Management Act 2006* and the *Auditor General Act 2006* are not limited or otherwise affected by the Request.

(c) The Respondent releases the State Party from all liability whatsoever for any loss, injury, damage, liability, costs or

expense resulting from the disclosure of its Offer or information, other than the Respondent's Offer, submitted by the Respondent in response to, or in connection with, the Request, under this clause by the State Party.

13. PROBITY

13.1 Inducement

The Respondent must not offer any incentive to, or otherwise attempt to, influence any of the persons who are either directly or indirectly involved in the Procurement Process, or in the awarding of any subsequent contract. Without limiting the generality of this obligation, the Respondent must not:

(a) without the prior written consent of the State Party, directly or indirectly approach or communicate with any officer or employee of the State Party or the State having any connection or involvement with the Request, with respect to:

(i) an offer of employment; or

(ii) availability of employment,

with the Respondent or any related entity; or

(b) directly or indirectly offer a bribe, gift or inducement to any officer or employee of the State Party or the State in connection with the Request.

13.2 Probity Checks

Without limiting the State Party's rights pursuant to clause 4.1, the Respondent consents to the State Party undertaking probity checks in respect of the Respondent which may include:

(a) investigations into organisational structure, business and credit history;

(b) prior contract compliance in respect of other supplies of services;

(c) police checks or any checks for any criminal records or pending charges; and

(d) research into any relevant activity that is, or might reasonably be expected to be, the subject of regulatory investigation.

13.3 Conflict of Interest

The Respondent must:

(a) disclose in the Offer submitted by the Respondent any circumstances, arrangements or understandings which constitute, or may reasonably be perceived to constitute, an actual or potential conflict of interest with either the Respondent's obligations under the Request or the performance of the Service Agreement (if awarded) by the Respondent;

(b) provide details of its proposed strategy for managing any actual, potential or perceived conflict of interest disclosed in its Offer pursuant to clause 13.3(a);

(c) not place itself in a position which may, or will give rise to a conflict of interest, or a potential conflict of interest during the Procurement Process; and

(d) otherwise notify the State Party promptly in writing upon becoming aware of any actual or perceived circumstances, arrangements or understandings which constitute, or may reasonably be considered to constitute, an actual or potential conflict of interest with the Respondent's obligations under the Request (including in respect to the Service Agreement).

To the extent that the State Party directs the Respondent to take particular action in respect to a conflict of interest, the Respondent must comply with such a direction. If the Respondent is unable or unwilling to comply with any such direction, the State Party may exclude the Respondent from further participation in the Procurement Process.

14. COLLUSION

The Respondent must not engage in any collusive tendering, anti-competitive conduct or any other similar conduct with any competing Respondent or other person in relation to the Procurement Process.

15. MISCELLANEOUS

15.1 Site Inspections

(a) The State Party Representative may give permission for the Respondent to attend the Site.

(b) The Respondent must comply with any protocols, procedures or requirements notified by the State Party prior to or during any inspection.

(c) The Respondent releases the State Party from any Claim or liability that the Respondent may have arising out of or relating to any Site inspection, to the extent caused by an act or omission including any negligence, of the Respondent.

(d) The Respondent indemnifies the State Party from and against any costs, losses, expenses or damages incurred by the State Party arising out of or relating to any Site inspection to the extent caused by an act or omission, including any negligence, of the Respondent.

15.2 Waiver

(a) Subject to the express provisions of the Request, if the State Party fails or delays in exercising or enforcing any right or remedy under the Request, it will not preclude or amount to a waiver of any further exercise or enforcement of that right or remedy, or of any other right or remedy under the Request or provided by law.

(b) If the State Party fails or delays in exercising or enforcing any right or remedy under a similar document to the Request against any member of a competing Respondent, the Respondent will not have or make any Claim against the State Party in respect of such failure or delay.

15.3 Actions of State Party

Any matter which may be done by the State Party may be done by an authorised officer of the State Party (which includes the State Party Representative).

15.4 Replacement of State Party Representative

The State Party may, at any time and from time to time, replace one or more of the persons listed as the State Party Representative.

END OF PROCESS TERMS AND CONDITIONS DOCUMENT