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DEFINITION AND INTERPRETATION

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 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.

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.

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Authorities - August 2011 Edition, published by the Western Australian Department of Finance at www.finance.wa.gov.au.

Mandatory requirements means the requirements (if any) referred to as such

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

• **Term** means the term of the Service Agreement.

• **Works**

- (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

- (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;
- (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 Public Authority; 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.

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

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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 obli

- (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.

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- (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.

COLLISION

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