# PART 4 – REQUEST CONDITIONS, DEFINITIONS & INTERPRETATION

### REQUEST CONDITIONS

### SUBMISSION OF OFFER

1. Any Offer which:
   1. is not submitted before the Closing Time;
   2. is incomplete at the Closing Time; or
   3. is not submitted in accordance with the provisions of:

clause (a) of Section 1 in Part A;

will be excluded from consideration, unless the Respondent can provide conclusive evidence of mishandling of the Offer.

1. For the purposes of this Request Condition, mishandling will only have occurred where:
   1. in the case of submission of the Offer by hand or by post under clause (a) of Section 1 in Part A, the Offer was received by the Contract Authority prior to the Closing Time but the Offer was not transferred by the Contract Authority to the tender box by the Closing Time; or
2. If the Respondent submits the Offer electronically, then the Respondent must ensure that the electronic copy of the Offer is Microsoft compatible.

The Offer must be received in full by the Contract Authority prior to the Closing Time. If the Respondent submits the Offer electronically, the Respondent agrees that:

* 1. 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 which the Contract Authority’s computer records that the Offer was received;
  2. if the electronic copy of the Offer contains a virus then, notwithstanding any disclaimer made by the Respondent in respect of viruses, the Respondent must pay to the Contract Authority all costs incurred by the Contract Authority and the Customer arising from, or in connection with, the virus;
  3. lodgement of large electronic files may take time and the Respondent must make its own assessment of the time required for full transmission of its Offer;
  4. neither the Contract Authority nor the Customer will be responsible in any way for any loss, damage or corruption of the electronic copy of the Offer;
  5. if the electronic copy of the Offer becomes corrupted, illegible or incomplete as a result of transmission, storage, encryption or decryption, then the Contract Authority may request the Respondent to provide another copy of the Offer either electronically or in hard copy or both;
  6. if the Contract Authority requests the provision of another copy of the Offer, then the Respondent must;
     1. provide the copy in the form or forms requested within the period specified by the Contract Authority;
     2. provide a statutory declaration that the copy is a true copy of the Offer which was electronically submitted by the Respondent and that no changes to the Offer have been made after the initial attempted electronic submission; and
     3. provide a copy of the electronic tender lodgement service receipt for the initial attempted electronic submission.

1. An offer is not assignable by the Respondent without prior written consent of the Contract Authority.
2. If an Offer is submitted by a consortium of two (2) or more persons either by way of joint venture, partnership or otherwise, those persons are bound by these Request Conditions jointly and severally.
3. An Offer is, upon submission, the absolute property of the Contract Authority and will not be returned to the Respondent. Nothing in this provision affects the intellectual property rights of the Respondent in the Offer, except that the Contract Authority may make such copies of the Offer as the Contract Authority requires for the proper evaluation of the Offer.

### CANCELLATION AND VARIATION

1. The Contract Authority reserves the right, at any time and from time to time, to cancel, vary, supplement, supersede or replace this Request or any part of this Request.
2. If the Contract Authority cancels, varies, supplements, supersedes or replaces this Request, then;
   1. the Contract Authority will advise each Respondent that the Request has been cancelled, varied, supplemented, superseded or replaced; and
   2. the Respondent shall not have any recourse against the Contract Authority whatsoever including for claims for any costs or expenses incurred up to and including the date that the Request or any part of this Request is cancelled, varied, supplemented, superseded or replaced.

### CONTRACT AUTHORITY’S RIGHTS

1. The Contract Authority is not obliged to accept the Offer containing the lowest Offered Price.
2. The Contract Authority is under no obligation to accept any Offer and may reject any Offer or all Offers, in the Contract Authority’s discretion, including:
   1. (failure to comply with Request Conditions) if an Offer fails to comply with these Request Conditions;
   2. (failure to comply with requirements) if an Offer fails to comply with any of the requirements set out in Part B;
   3. (false or misleading) if an Offer contains information or representations that are false or misleading;
   4. (change of control) if anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Respondent to another person, including in respect of a Respondent which is a body corporate, if there is a change in control of the Respondent within the meaning of the Corporations Act 2001 (Cth);
   5. (change of consortium membership) in respect of a Respondent which consists of a consortium, if there is a change of membership of the consortium members; or
   6. (change of policy or commercial reasons) if the Contract Authority decides to cancel this Request due to changes of policy or for commercial reasons.
3. The Contract Authority may accept an Offer in whole or in part.
4. After the Closing Time, the Contract Authority may:
   1. request additional information from the Respondent in relation to the content of the Offer for the sole purpose of clarifying the Offer; and
   2. request information from the Respondent regarding the financial capacity of the Respondent,

and if so requested, the Respondent must promptly provide such information to the Contract Authority.

1. In evaluating an Offer, the Contract Authority may take into account any information regarding the Respondent that the Contract Authority has in its possession or receives from any source, including information about the past or current performance of the Respondent under any other contract, arrangement or dealing between the Respondent and a Public Authority.

### SELECTION OF PREFERRED RESPONDENT

1. The Contract Authority may select, but is not obliged to select, one or more Respondents as a preferred Respondent.
2. Selection as a preferred Respondent does not confer any rights on a preferred Respondent and these Request Conditions, including clause 1.3 in this Section 1, continue to apply until such time as a Contract is awarded or the Request is terminated.
3. The Respondent agrees that, if it is selected as a preferred Respondent, then:
   1. its Offer will remain open for acceptance by the Contract Authority at any time prior to the expiry of the Offer Validity Period;
   2. the Contract Authority may choose to negotiate any aspect of the Offer, the Specification, any Special Condition and any General Condition; and
   3. the Contract Authority may request the Respondent to provide a performance guarantee, a bank guarantee or some other form of security on terms and conditions acceptable to the Contract Authority.
4. At any time during the negotiations either the Contract Authority or a preferred Respondent may terminate the negotiations for any reason.
5. If the Contract Authority does terminate negotiations, the Contract Authority may:
   1. accept the Respondent’s original Offer; or
   2. select and then negotiate with any other Respondent as a preferred Respondent in accordance with this clause 1.4; or
   3. terminate this Request.

### CONTRACT AUTHORITY’S DISCRETION

Whenever the consent of the Contract Authority is required under this Request, that consent may be given or withheld by the Contract Authority in the Contract Authority’s absolute discretion and may be given subject to such conditions as the Contract Authority may determine.

### AGREEMENT WITH THESE REQUEST CONDITIONS

In submitting an Offer, the Respondent is deemed to have read and agreed to these Request Conditions.

### EFFECT OF REQUEST CONDITIONS

The Respondent agrees that:

1. this Request, including these Request Conditions, confers obligations only on the part of the Respondent and does not confer any rights in favour of the Respondent;
2. the Request Conditions are for the benefit of the Contract Authority;
3. in respect of this Request and in doing anything in connection with this Request, such activities and associated decisions are not reviewable or subject to remedies available under administrative law;
4. this clause 1.7 may be pleaded by the Contract Authority as a bar to any action, suit, claim, demand or proceeding brought by the Respondent against the Contract Authority relating to, or arising from, this Request including these Request Conditions; and
5. without limiting the effect of clauses 1.7 (a), (b), (c) and (d) in this Section 1, the maximum liability of the Contract Authority to the Respondent arising from, or in relation to, this Request is the amount of ten dollars.

### AGREEMENT BY RESPONDENT

In submitting an Offer, the Respondent agrees that:

1. (information true and correct) all information in its Offer and all Offer Information is true and correct;
2. (relies on own enquiries) it relies entirely on its own enquiries in relation to all matters in respect of this Request, these Request Conditions and the General Conditions;
3. (understood Request) it has examined and understood this Request, each addendum issued under this Request, these Request Conditions, the General Conditions and any other information available to the Respondent in respect of this Request;
4. (made reasonable enquiries) it has examined 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;
5. (does not rely on warranties) it does not rely on any warranty or representation of the Contract Authority, the Customer or any person actually or ostensibly acting on behalf of the Contract Authority or the Customer;
6. (no secret commission) it has not paid or received and will not pay or receive any secret commission in respect of this Request;
7. (no Collusion) it has not colluded and will not collude with any other person in respect of this Request;
8. (no inflation or deflation of Offered Price) its Offered Price is not inflated or deflated to advantage another Respondent;
9. (no unlawful arrangement) it has not entered and will not enter into any unlawful arrangement with any other person in respect of this Request;
10. (no improper influence) it has not sought and will not seek to influence any decision in respect of this Request by improper means; and
11. (own cost and expenses) it will pay its own costs and expenses in connection with:
    1. the preparation and submission of its Offer; and
    2. any discussions, enquiries or negotiations with, or provision or consideration of further information to, the Contract Authority, whether before or after the submission of any Offer,

irrespective of whether its Offer is accepted or not.

### WITHDRAWAL OF OFFER

The Respondent may withdraw its Offer at any time prior to acceptance of its Offer, by notifying the Contract Authority in writing.

### OFFER VALIDITY

1. Unless the Respondent withdraws its Offer under clause 1.9 of this Part C, the Respondent agrees that its Offer will remain open for acceptance by the Contract Authority for the Offer Validity Period.
2. The Offer Validity Period may be extended or further extended by the Contract Authority by advising each Respondent in writing at any time or times.

### CONFLICT OF INTEREST

1. The Respondent must, prior to any acceptance of its Offer by the Contract Authority, disclose to the Contract Authority any information that is or might be relevant to determining whether an actual, potential or perceived conflict of interest exists or might exist in relation to this Request or the performance of the Contract (if awarded) by the Respondent.
2. The Contract Authority may, in its discretion, accept or reject the Respondent’s Offer if the Contract Authority considers that the Respondent has, or could reasonably be considered to have, an actual, potential or perceived conflict of interest in relation to this Request or the performance of the Contract (if awarded) by the Respondent.

### NO BRIBE, INDUCEMENT OR OFFER OF EMPLOYMENT

1. The Respondent must not, without the prior written consent of the Contract Authority, directly or indirectly approach or communicate with any officer or employee of the Contract Authority or the Customer having any connection or involvement with this Request, with respect to:
   1. an offer of employment; or
   2. availability of employment,

with the Respondent or any related entity.

1. The Respondent must not directly or indirectly offer a bribe, gift or inducement to any officer or employee of the Contract Authority or the Customer in connection with this Request.