



TECHNOLOGY SERVICES LIST RULES

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Part A: The List

1 Technology List Rules

1.1 Application of the Rules

The Rules apply to all entities who are included on the Tasmanian Government's Technology Services List (the **List**).

1.2 Content of the Rules

- (a) The Rules apply in the form published by the Department of Treasury and Finance at <www.tenders.tas.gov.au/OpenForBids/Details/5128> from time to time.
- (b) The Rules applicable to a Request will be the Rules in force when the Request is issued.
- (c) Version 2021-01 of the Rules will come into effect on 29 May 2021. Subsequent versions of the Rules will come into effect on the Issue Date shown on that version.
- (d) A Listed Supplier is responsible for ensuring that it is familiar with the Rules:
 - (i) when first applying to be included on the List; and
 - (ii) when responding to any Request.

2 Applying to join the List

2.1 Application

- (a) Applications by prospective Listed Suppliers must be made to the Department of Treasury and Finance in the form published by the Department of Treasury and Finance at <www.tenders.tas.gov.au/OpenForBids/Details/5128> from time to time.
- (b) Applications to join the List become the property of the Department of Treasury and Finance, and the prospective Listed Supplier licences the Department to reproduce the whole or any part of its application for the purposes of evaluation.
- (c) Prospective Listed Suppliers are not included on the List until their name is included on the List as published by the Department of Treasury and Finance at <www.tenders.tas.gov.au>.
- (d) Subject to clause 2.3, the Department of Treasury and Finance and a prospective Listed Supplier must hold the application by that prospective Listed Supplier to be included in the List in confidence, so far as the law allows, except if a Permitted Disclosure applies.
- (e) The prospective Listed Supplier acknowledges that its application and other information provided by it to the Department of Treasury and Finance may be subject to disclosure under the RTI Act.

2.2 Investigations

- (a) The Department of Treasury and Finance may conduct independent investigations regarding a prospective Listed Supplier and the information contained in its application. The Department may take into account any matters revealed as a result of such investigation in evaluating applications.
- (b) By submitting an application to be included in the List, a prospective Listed Supplier (including its directors, officers and any person referred to in its application) consents to such investigations being conducted. This may include:
 - (i) investigations into probity and security issues, commercial structure, business and credit history, prior contract compliance and performance and any criminal records or pending charges; and
 - (ii) interviews with any referees and research into any activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation.
- (c) The Department will be under no obligation to provide prospective Listed Suppliers with details of the results of its investigations.

2.3 Consent to disclosure

Listed Suppliers consent to:

- (a) disclosure of List Information by the Department of Treasury and Finance to Eligible Customers; and
- (b) publication of Public Information by the Department of Treasury and Finance at <www.purchasing.tas.gov.au>.

2.4 Acknowledgement by Listed Suppliers

Listed Suppliers acknowledge that inclusion on the List does not provide:

- (a) the Listed Supplier with any right to supply any products and/or services to any Customer; or
- (b) any assurance to the Listed Supplier that it will receive any Request.

2.5 Removal of Listed Suppliers

The Department of Treasury and Finance may, at its sole discretion, remove a Listed Supplier from the List:

- (a) if the Listed Supplier commits a breach of law considered by the Department of Treasury and Finance to be serious or breaches clauses 21.7 or 21.8 of the Rules;
- (b) if the Listed Supplier breaches any of its obligations under Part A, and the breach is not capable of being remedied;
- (c) if:
 - (i) the Listed Supplier breaches any of its obligations under Part A of the Rules;
 - (ii) the breach is capable of being remedied; and
 - (iii) the Listed Supplier fails to remedy the breach within the period (being a period of not less than five Business Days) specified by the Department of Treasury and Finance in a notice given to the Listed Supplier detailing the breach;

- (d) if the Listed Supplier commits more than four breaches of the Rules (including in respect of individual Procurement Processes, and irrespective of whether the breaches have been remedied or are capable of being remedied) within a period of 24 months;
- (e) if an Insolvency Event occurs, or the Department of Treasury and Finance reasonably considers that an Insolvency Event has occurred, in respect of the Listed Supplier; or
- (f) if the Listed Supplier ceases or threatens to cease carrying on business.

2.6 Suspension of Listed Suppliers

- (a) If the Department of Treasury and Finance, at its sole discretion, considers that any of paragraphs (a) to (f) of clause 2.5 (each a **Removal Event**) may apply in respect of a Listed Supplier, the Department may:
 - (i) suspend that Listed Supplier from the List; and
 - (ii) conduct independent investigations in relation to the potential Removal Event.
- (b) A Listed Supplier must cooperate with any investigation undertaken by the Department of Treasury and Finance under this clause 2.6.

2.7 Resignation from the List

- (a) A Listed Supplier may, at any time, resign from the List by giving notice in writing to the Department of Treasury and Finance, signed by a current Authorised Representative of the Listed Supplier, or otherwise notified in a form acceptable to the Department of Treasury and Finance.
- (b) A Listed Supplier's resignation from the List will not affect any contract the Listed Supplier may have previously entered into with a Customer arising out of a Procurement Process.

2.8 Discontinuation of the List

The Department of Treasury and Finance may discontinue the operation of the List by giving at least three months' notice to Listed Suppliers.

3 Obligations of Listed Suppliers

3.1 Updating information

- (a) Listed Suppliers must inform the Department of Treasury and Finance promptly in writing of any material change to its List Information.
- (b) The Department of Treasury and Finance may require Listed Suppliers to confirm in writing that there has been no material change to its List Information.
- (c) Any change to the Authorised Representatives of a Listed Supplier must be notified in writing, signed by a current Authorised Representative of the Listed Supplier, or otherwise notified in a form acceptable to the Department of Treasury and Finance.

3.2 Reporting

Listed Suppliers must liaise with, and report to, the Department of Treasury and Finance, as the Department reasonably requires, in respect of the Listed Supplier's inclusion on the List and participation in Procurement Processes.

3.3 Insurance

- (a) While a Listed Supplier is included on the List, the Listed Supplier must maintain the following insurance policies (each an **insurance policy**) with an insurer authorised to carry on insurance business in Australia:
 - (i) a public liability policy with a minimum sum insured of \$10 million; and
 - (ii) a professional indemnity policy with a minimum sum insured of \$1 million.
- (b) If directed, in writing, by the Department of Treasury and Finance, each insurance policy must be on terms and conditions reasonably required by the Department.
- (c) The Supplier must, if requested by the Department of Treasury and Finance, give to the Department evidence of the currency of each insurance policy and/or a copy of each insurance policy and each document issued by an insurer in relation to an insurance policy.

Part B: Procurement Processes for the List

4 Application to Procurement Processes

The Rules apply to any Procurement Process where the Request is issued by an Eligible Customer and states that:

- (a) the Rules apply; or
- (b) the procurement is being undertaken from the List.

5 General information concerning a Procurement Process

5.1 Enquiries about a Request and the procurement

- (a) All enquiries, and requests for clarification, about a Procurement Process should be directed to the Contact Officer.
- (b) The decision to respond to enquiries and requests for clarification, and the content and timing of any response to an enquiry or a request for clarification, is at the discretion of the Customer.
- (c) The Customer may, at its discretion, share responses (anonymised as to source and subject to any relevant confidentiality considerations) with other Invited Suppliers.
- (d) Subject to clause 5.1(a), unless authorised in writing by the Contact Officer, a Listed Supplier must not direct enquiries about a Request and/or the associated procurement to:

- (i) if the Customer is the Crown, any staff working in the Department named in the Request Document as responsible for the procurement; and
- (ii) in any other case, the Customer's staff.

5.2 Addendum

- (a) The Customer may, at its discretion, amend or clarify a Request Document at any time before the Closing Time for that Request, by issuing an Addendum.
- (b) No amendment or clarification of a Request Document will be recognised, unless it is in the form of an Addendum issued by the Customer. An Addendum issued by Customer becomes part of the Request Document.
- (c) An Addendum issued to an Invited Supplier's contact details recorded on the List will be deemed to have been received by the Invited Supplier.

5.3 Special Conditions

- (a) Special Conditions apply to the Procurement Process in addition to these Rules.
- (b) In the event of any inconsistency between Special Conditions and these Rules, these Rules shall prevail.
- (c) A Special Condition is taken not to be inconsistent with a provision of these Rules if the Special Conditions and these Rules are both capable of being complied with.

6 Industry briefing session

6.1 Application

This clause 6 applies to a Procurement Process if a Request Document states that an industry briefing session will be conducted.

6.2 Conduct of industry briefing session

The Customer will conduct an industry briefing session as set out in Part C of the Request Document.

The Customer may do all, or any, of the following:

- (a) change the date, time and/or venue for the industry briefing session by notice to Invited Suppliers;
- (b) limit the number of personnel who may attend the industry briefing session on behalf of an Invited Supplier;
- (c) cancel or suspend the industry briefing session;
- (d) convene a further industry briefing session at another date, time or location;
- (e) exclude any person from an industry briefing session who:
 - (i) did not pre-register to attend the industry briefing session in accordance with Part C of the Request Document; or
 - (ii) fails to comply with any reasonable direction given by the Customer at the industry briefing session.

Unless the Customer otherwise agrees, persons attending the industry briefing session will not be permitted to take photographs at, or to record electronically any part of, the industry briefing session.

6.3 Use of information provided at industry briefing session

The industry briefing session will be conducted for the sole purpose of providing further background information about the Procurement Process. Except to the extent confirmed by an Addendum issued by the Customer, Invited Suppliers must not rely upon information provided at an industry briefing session in connection with:

- (a) the Procurement Process or preparing a Request Response; or
- (b) if an Invited Supplier becomes the supplier for the Deliverables:
 - (i) entering into or negotiating a contract with the Customer;
 - (ii) the delivery of the Deliverables; or
 - (iii) any activity or work under that contract.

7 Site Inspections

7.1 No right to inspect sites relevant to delivery of Deliverables

An Invited Supplier must not inspect a site or sites relevant to the delivery of Deliverables, except in accordance with a site inspection (**Site Inspection**) arranged by the Invited Supplier with the Contact Officer. The Customer may refuse to allow Site Inspections.

7.2 Conduct of Site Inspections

The Customer may at its discretion do any of the following:

- (a) arrange or hold one or more Site Inspections;
- (b) limit the number of personnel who may attend a Site Inspection on behalf of an Invited Supplier;
- (c) cancel or suspend a Site Inspection;
- (d) exclude any person from attending a Site Inspection who:
 - (i) did not pre-register with the Contact Officer to attend the Site Inspection; or
 - (ii) fails to comply with any reasonable direction given by the person conducting the Site Inspection on behalf of the Customer.

Unless the Customer otherwise agrees, persons attending a Site Inspection will not be permitted to take photographs at, or to record electronically, any part of the site or sites to which the inspection relates.

7.3 Use of information provided at a Site Inspection

Except to the extent confirmed by an Addendum issued by the Customer, Invited Suppliers must not rely upon information provided at a Site Inspection by the Customer, or any person acting on behalf of the Customer in connection with:

- (a) the Procurement Process or preparing a Request Response; or
- (b) if an Invited Supplier becomes the supplier for the Deliverables:
 - (i) entering into or negotiating a contract with the Customer;
 - (ii) the delivery of the Deliverables; or
 - (iii) any activity or work under that contract.

Part D: Contract terms and conditions for delivery of Deliverables

8 Contract

8.1 Contract terms and conditions

- (a) The successful Invited Supplier (if any) for a Procurement Process will be required to enter into a contract (the **Contract**) with the Customer for the delivery of the Deliverables.
- (b) The form of the Contract will be the form nominated in Part C of the Request Document.
- (c) Subject to clause 8.1(e), if the Contract is a Comprehensive Contract, the Contract will comprise:
 - (i) the Tasmanian Government's 'Tasmanian Technology Contract Conditions – Comprehensive Conditions: Version 2021-01' (the **TTCC Comprehensive Conditions**);
 - (ii) a completed version of the Comprehensive Contract Details included in Attachment 2 of the Request Document (the **Comprehensive Contract Details**);
 - (iii) any document which the Comprehensive Contract Details state is to form part of the Contract;
 - (iv) if a Tasmanian Industry Participation Plan is required by Part C of the Request Document, that plan as agreed between the Customer and the successful Invited Supplier; and
 - (v) any other documents which the Customer and the successful Invited Supplier agree should form part of the Contract.
- (d) Subject to clause 8.1(e), if the Contract is a General Contract, the Contract will comprise:
 - (i) the Tasmanian Government's 'Tasmanian Technology Contract Conditions – General Conditions: Version 2021-01' (the **TTCC General Conditions**);
 - (ii) a completed version of the General Contract Details included in Attachment 2 of the Request Document; and
 - (iii) any other documents which the Customer and the successful Invited Supplier agree should form part of the Contract, including any other documents described in clause 1.3 of the TTCC General Conditions.
- (e) The documents referred to in clause 8.1(c) or 8.1(d) will be amended, varied or supplemented by, as necessary, to give effect to:
 - (i) any Addenda issued by the Customer during the Procurement Process;
 - (ii) the Request Response lodged by the successful Invited Supplier;
 - (iii) clarifications provided by the successful Invited Supplier during evaluation; and
 - (iv) the outcome of negotiations between the Customer and the successful Invited Supplier in relation to the terms and conditions to be included in the Contract.

8.2 Contract formation

- (a) No contractual relationship or other obligation arises between the Customer and an Invited Supplier, for the delivery of the Deliverables, until the Customer and the successful Invited Supplier formally exchange signed counterparts of the Contract. This clause applies despite any oral or written advice to an Invited Supplier that its Request Response is successful or has been, or will be, accepted.
- (b) If the successful Invited Supplier fails to duly execute and exchange the Contract with the Customer within 20 Business Days of the date the Customer gives a copy of the Contract to the successful Invited Supplier, the Customer may unilaterally (and without penalty or any obligation to pay compensation) cancel its award of the Contract to that Invited Supplier. The Customer may then negotiate to enter into a Contract with next highest ranked Invited Supplier who is considered capable of delivering the Deliverables.

8.3 TTCC Conditions availability

A copy of the TTCC Comprehensive Conditions, the TTCC General Conditions and all associated documents can be downloaded at <www.purchasing.tas.gov.au> or copies can be obtained from the Contact Officer.

8.4 References to successful Invited Supplier

For the purposes of these Rules, a reference to the 'successful Invited Supplier' refers to the Invited Supplier who:

- (a) lodged the Request Response that achieves the highest score against the evaluation criteria in Part B of Attachment 5 of the Request Document; and
- (b) is assessed by the Customer as being fully capable of undertaking the delivery of the Deliverables in accordance with the Contract.

8.5 Execution by Authorised Representatives

The successful Invited Supplier will be bound by any Contract executed by an Authorised Representative on behalf of the successful Invited Supplier.

Part E: Lodgement of responses, evaluation and complaints**9 Closing time for lodgement of Request Responses**

The Closing Time for the lodgement of Request Responses is shown in Part C of the Request Document. In accordance with clause 21.3(a)(v), the Customer may extend the Closing Time.

10 Lodgement of a Request Response**10.1 Method of lodgement**

An Invited Supplier must lodge a Request Response using the Tasmanian Government's Tender website at <www.tenders.tas.gov.au> (the **Electronic Tender System**). A Request Response that is received by the Customer other than through the Electronic Tender System may be excluded from evaluation.

10.2 Electronic lodgement requirements

- (a) An Invited Supplier must lodge the Request Response using a format and the naming conventions set out in the following table. Failure to comply with the format or the naming conventions may result in the Request Response not uploading successfully.

Format requirements:	Rich Text Format (RTF); Adobe Acrobat - Portable Document Format (PDF); Microsoft Word (DOC); Microsoft Excel (XLS); or Image Files (JPG, GIFF, TIFF).
Naming conventions:	File names must be in English. File names that contain a space, must have an underscore in the space's place (" _ "). File names must contain the Unique reference ID (shown on page 1 of the Request Document), the name of the document and the Invited Supplier's name.

- (b) A single submission of combined file sizes for a Request Response lodged using the Electronic Tender System must not exceed 500 megabytes (500Mb), with each individual file to be less than one hundred megabytes (100Mb). If a Request Response exceeds the specified file size limits, the Invited Supplier must:
- (i) lodge the Request Response in separate parts not exceeding the file size limit, with each part to be clearly identified as part of the Request Response;
 - (ii) lodge the Request Response as a compressed (zip) file not exceeding the file size limit; or
 - (iii) lodge the Request Response in another way permitted by the Request Document.
- (c) The Electronic Tender System will not allow a Request Response to be lodged after the Closing Time. Lodging a Request Response using the Electronic Tender System must, therefore, be completed by the Closing Time.
- (d) If an Invited Supplier has problems using the Electronic Tender System, the Invited Supplier must notify the Contact Officer of this before the Closing Time.
- (e) An Invited Supplier using, or attempting to use, the Electronic Tender System to lodge a Request Response:
- (i) acknowledges that:
 - (A) the Customer does not warrant that unauthorised access to information and data transmitted via the internet will not occur; and
 - (B) if the Electronic Tender System is affected by System Failure, it may not be possible to successfully lodge a Request Response using the Electronic Tender System; and
 - (ii) releases the Customer, and its personnel from, and indemnifies each of them against, all claims in connection with:
 - (A) any unauthorised access to information, or data, transmitted via the internet as part of a Request Response; or

- (B) any System Failure that prevents or delays the Invited Supplier lodging a Request Response using the Electronic Tender System.
- (f) Lodgement (or the attempted lodgement) of a Request Response, using the Electronic Tender System, is at the Invited Supplier's sole risk.
- (g) An Invited Supplier lodging a Request Response using the Electronic Tender System warrants that it has taken reasonable steps to ensure that the Request Response is free from Harmful Code. The Customer, at its discretion, may reject a Request Response found to contain Harmful Code.

11 Request Response received after Closing Time

- (a) A Request Response that is received after the Closing Time will not be eligible for evaluation, or accepted, unless the Contact Officer is satisfied that:
 - (i) if the Procurement Process is a Covered Procurement, the sole reason for the Request Response being received after the Closing Time was because of mishandling by the Customer; or
 - (ii) if the Procurement Process is not a Covered Procurement, acceptance of the Request Response for evaluation will not compromise the integrity of the Procurement Process or provide an unfair advantage to the Invited Supplier who lodged that Request Response.
- (b) Mishandling does not include mishandling by a courier or mail service provider engaged by the Invited Supplier.
- (c) A Request Response received after the Closing Time and which is not eligible for evaluation, will be returned to the Invited Supplier unopened if sufficient address details are available to do so.

12 Request Responses generally

12.1 Information to be provided in Request Response

An Invited Supplier should in its Request Response:

- (a) provide all of the information and documents listed in Attachment 3 of the Request Document;
- (b) respond to each of the evaluation criteria in Part B of Attachment 5 of the Request Document;
- (c) certify:
 - (i) if the Invited Supplier's liability is limited under any scheme in force under any law relating to professional standards, the limit of the Invited Supplier's liability under that scheme; or
 - (ii) that the Invited Supplier's liability is not limited under any scheme in force under any law relating to professional standards; and
- (d) identify any parts of its Request Response, or the Contract, which the Invited Supplier considers should be kept confidential and the reasons for doing so.
(**IMPORTANT NOTE:** The Customer will only agree to parts of the Contract being

kept confidential in accordance with the Tasmanian Government's policy in relation to confidentiality – see clause 17.)

12.2 Format of Request Response

- (a) A Request Response should be lodged using the Tender Form in Attachment 4 of the Request Document.
- (b) An unnecessarily elaborate Request Response beyond what is sufficient to present a complete and effective submission is neither desired nor required. Elaborate art work and expensive visual and other presentation aids are not necessary.
- (c) Subject to clause 12.2(d), a Request Response must be in the English language and legible. A Request Response that is not in the English language and/or is illegible may be excluded from the evaluation process.
- (d) An attachment to the Request Response may be in a language other than English if the attachment is a document (or a copy of a document) issued by a third party in another country that does not have English as its official language.

12.3 Pricing

- (a) Unless otherwise required by the Tender Form or permitted by the Contract, prices must:
 - (i) be stated in Australian dollars;
 - (ii) be stated exclusive of GST; and
 - (iii) be inclusive of:
 - (A) all costs required to provide the Deliverables, including labour, materials, transport, freight, travel, overheads, out-of-pocket expenses, third party costs, profits and charges; and
 - (B) all other fees, duties (including customs duties), charges (including government charges) and taxes (other than GST) applicable to the Deliverables.

(IMPORTANT NOTE: The Contract will allow for the successful Invited Supplier to charge GST (where applicable) in respect of the Deliverables delivered in accordance with those conditions.)
- (b) Separate prices must be submitted for each item specified in the Tender Form. The failure to provide a price for all items specified in the Tender Form may result in a Request Response being excluded from the evaluation process.

12.4 Quantities

Unless otherwise specified, any quantities stated in a Request Document are indicative only, and are not guarantees as to the quantity of Deliverables that will be sourced from the successful Invited Supplier. Indicative quantities may be used for assessment purposes only.

12.5 Standing Offer Arrangement

If the Contract Details in Attachment 2 of the Request Document specify that the Contract is a Standing Offer Arrangement, the Customer:

- (a) will not be required to purchase any Deliverables, or any particular volume of Deliverables, from the successful Invited Supplier except as specified in an order

that the Customer gives to the successful Invited Supplier in accordance with the Contract; and

- (b) may purchase or acquire other products or services (of the same or a similar kind to the Deliverables) from any third person.

12.6 Invited Suppliers to inform themselves

An Invited Supplier must, at its own expense, inform itself of all costs, circumstances, matters, and things relating to, or affecting, its Request Response, the delivery of the Deliverables or the performance of the Contract. This includes:

- (a) compliance with all applicable laws;
- (b) the condition or accessibility of relevant site(s);
- (c) obtaining and considering any materials (including any documents or samples) referenced in the Request Document and relevant to the Request Response, the delivery of the Deliverables or the performance of the Contract; and
- (d) satisfying itself as to the correctness and sufficiency of the Request Document.

12.7 Costs

- (a) An Invited Supplier is responsible for all costs in connection with the preparation or submission of its Request Response, providing any clarification in relation to its Request Response and/or negotiating or entering into any Contract with the Customer.
- (b) The Customer will not be liable for any cost, expense or liability, which may be incurred, paid or payable, by any Invited Supplier in connection with any of the matters referred to in clause 12.7(a).

12.8 Validity Period

- (a) A Request Response must remain open and valid for acceptance by the Customer for the Validity Period. On expiry of the Validity Period the Invited Supplier may withdraw its Request Response by notice, in writing, to the Customer. At any time before the expiry of the Validity Period, the Customer may request and obtain an extension to the Validity Period.
- (b) The consideration given by the Customer to an Invited Supplier for the matters provided for in clause 12.8(a) is limited to the promise by the Customer to pay to that Invited Supplier the sum of \$1.00, if demanded.

12.9 Alternative Request Responses

- (a) **General:** An Invited Supplier may submit an alternative proposal if the alternative proposal is clearly identified as an 'Alternative Request Response' wherever it does not comply with the essential requirements of the Request Document applicable to the Deliverables.
- (b) **Supplementary material to be included:** An Invited Supplier who submits an Alternative Request Response must include any supplementary material, and associated prices, which demonstrates, in detail, that the alternative will fully achieve the essential requirements of the Request Document applicable to the Deliverables.
- (c) **Novel and innovative offers are encouraged:** Invited Suppliers are encouraged to offer options or solutions that, in a novel or innovative way, contribute to the Customer's ability to carry out its functions in a more cost-effective manner.

These may relate to the functional, performance and technical aspects of the requirements or to opportunities for more advantageous commercial arrangements.

- (d) **No obligation to consider Alternative Request Response:** The Customer reserves the right either to consider Alternative Request Responses on their merits or not to consider them further.

13 Evaluation of Request Responses

13.1 Exclusion of Request Responses from evaluation process

- (a) Nothing in this clause affects the operation of clause 11 or clause 12.2(c).
- (b) A Request Response may be excluded from the evaluation process if there is evidence that the Invited Supplier (lodging that Request Response):
- (i) has breached a provision of the Rules, and that breach, in the opinion of the Customer, has materially and adversely affected the integrity of the Procurement Process; or
 - (ii) has significant or persistent deficiencies in the performance of any substantive requirement or obligation under a prior contract or contracts.
- (c) A Request Response may be excluded from the evaluation process if there is supporting material that acceptance of the Request Response on the terms submitted by the Invited Supplier:
- (i) would result in an unacceptable contract outcome for the Customer;
 - (ii) pose unacceptable risks to the Customer in relation to the Deliverables (including the intended use of the Deliverables); or
 - (iii) would result in a breach of an applicable law.

13.2 Evaluation against conditions for participation

- (a) Request Responses that are not excluded from the evaluation process pursuant to clause 11, clause 12.2(c) or clause 13.1 will be assessed against any conditions for participation in Part A of Attachment 5 of the Request Document.
- (b) If a Request Response, or the Invited Supplier who lodged that Request Response, does not satisfy any condition for participation in Part A of Attachment 5 of the Request Document, at time of opening Request Responses, the Request Response will be rejected, and excluded from evaluation.

13.3 Evaluation against other criteria

Request Responses that are not excluded from the evaluation process pursuant to clause 11, clause 12.2(c), clause 13.1 or clause 13.2, will then be evaluated, and scored against, the evaluation criteria and weightings in Part B of Attachment 5 of the Request Document.

13.4 Negotiations and clarifications

During the evaluation process, the Customer may negotiate with, or seek clarifications from, one or more Invited Suppliers who have submitted a Request Response (whose Request Response has not been excluded from evaluation). If an Invited Supplier fails to provide a clarification within the time stipulated by the Customer, the Customer may nevertheless proceed to assess the Request Response as originally submitted. An Invited Supplier cannot use the clarification or negotiation process to materially amend their Request Response.

13.5 Contract Departures

- (a) At the conclusion of the evaluation process referred to in clause 13.3, the Customer may negotiate the Contract Departures (if any) proposed in the Request Response lodged by the Invited Supplier:
 - (i) who lodged the highest ranked Request Response (as scored against the evaluation criteria and weightings in Part B of Attachment 5) of the Request Document; and
 - (ii) who the Customer has determined has the capability to deliver the Deliverables on terms acceptable to the Customer.
- (b) If the Customer and the Invited Supplier who lodged the highest ranked Request Response are unable to reach agreement on the Contract Departures proposed in the Request Response, the Customer:
 - (i) will not accept the Request Response lodged by that Invited Supplier; and
 - (ii) may negotiate with the Invited Supplier who lodged the next highest ranked Request Response (scored against the evaluation criteria and weightings in Part B of Attachment 5 of the Request Document).
- (c) The process set out in this clause 13.5 will be repeated until, if at all, the Customer is able to conclude a Contract with the Invited Supplier (who has lodged a Request Response that has not otherwise been rejected or excluded from evaluation) who the Customer has determined that:
 - (i) is fully capable of delivering the Deliverables on terms acceptable to the Customer; and
 - (ii) will provide best value for money in accordance with the essential requirements for the Request Document and the evaluation criteria in Part B of Attachment 5 of the Request Document.
- (d) The Customer is not required to negotiate with an Invited Supplier any material Contract Departures that are not set out in the Request Response lodged by the Invited Supplier.
- (e) For the avoidance of doubt, nothing in this clause 13.5 requires the Customer to enter into a contract for the delivery of the Deliverables on terms and conditions that are not acceptable to the Customer.

14 Debriefing

14.1 Request for debriefing

Unsuccessful Invited Suppliers are encouraged to request a debriefing from the Customer to discuss the reasons for their non-selection. An Invited Supplier who would like a debriefing should contact the Contact Officer.

14.2 Timing for debriefing

If requested to do so, the Customer will provide a debriefing for an unsuccessful Invited Supplier after either:

- (a) a contract for the delivery of the Deliverables been executed pursuant to the Procurement Process; or
- (b) the Customer decides not to enter into contract after the conclusion of the Procurement Process.

15 Complaints process

A Listed Supplier may lodge a complaint if the Listed Supplier believes the Procurement Process has not complied with the Tasmanian Government's procurement policies. Further information on the formal complaints process is available from the Tasmanian Government Purchasing website at <<www.purchasing.tas.gov.au>>, or may be obtained in hard copy from the Contact Officer.

Part F: Tasmanian Government procurement policies

16 *Professional Standards Act 2005 (Tasmania)*

- (a) In this clause 16, **Act** means the *Professional Standards Act 2005 (Tas)*.
- (b) The Contract will include provisions to the following effect:
 - (i) If no scheme (for the purposes of the Act) applies to the successful Invited Supplier, the successful Invited Supplier waives all present and future rights, as against the Customer, to claim any limitation of liability provided by any future scheme, in connection with claims concerning or arising out of the Contract.
 - (ii) If a scheme applies to the successful Invited Supplier as at the date of the Contract:
 - (A) the level of the successful Invited Supplier's liability under the Contract will be limited by the scheme and the Act; and
 - (B) if required by the Customer, and to the extent that the scheme allows, the successful Invited Supplier must obtain approval under the scheme for a level of liability not lower than the level (if any) stated in the Contract.

17 Confidentiality in Government contracts

- (a) In this clause:
- accountable authority** has the same meaning as in the *Financial Management Act 2016* (Tas).
- Confidentiality Provision** means a provision that, if included in a contract, would restrict or prohibit the capacity of any party to that contract to lawfully disclose any term of, or other information in or concerning, the contents of, that contract.
- TI C-1** means Treasurer's Instruction C-1 issued under the *Financial Management Act 2016* (Tas).
- (b) Except in accordance with TI C-1, the Contract will not include any Confidentiality Provision. Where inclusion of a Confidentiality Provision is approved in accordance with TI C-1, the terms of the contract will be drafted to give effect to the decision of the accountable authority, including any decision on any limit on the period of confidentiality.
- (c) The restriction on Confidentiality Provisions does not apply to:
- (i) pre-contract information which passes between the parties in order to enable the Contract to be performed; or
 - (ii) the services or products that flow from the performance of the Contract, including information that is brought into existence pursuant to the Contract.
- (d) Subject to any Confidentiality Provision included in the Contract, a party to the Contract may publish all or any part of the Contract without reference to another party.

18 Zero tolerance towards violence against women

The Contract will include provisions to the following effect:

- (a) Violence against women is defined by the United Nations as 'any act of gender based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women'.
- (b) The Customer upholds a zero tolerance policy towards violence against any person in the workplace. The Supplier must uphold a zero tolerance policy towards violence against any person in the workplace in its interaction with the Customer's employees, and in the performance of the Contract.
- (c) The Supplier must, and will take reasonable measures to ensure that the Supplier's Personnel, at all times in the performance of the Contract act in a manner that is non-threatening.
- (d) If the Supplier reasonably believes that any Supplier's Personnel, involved in the performance of the Contract, is failing to comply with the behavioural standards specified in this clause, then the Customer may:
 - (i) prohibit access by the relevant Supplier's Personnel to any premises occupied or used by the Customer; and

- (ii) direct the Supplier to withdraw the relevant Supplier's Personnel from being involved in the performance of this Contract.
- (e) The Supplier must, at its cost, comply with a direction given by the Customer in accordance with paragraph (d).

19 Dumped Goods

The Contract will include provisions to the following effect:

- (a) The Supplier must not supply any Goods that are Dumped Goods.
- (b) If the Supplier breaches paragraph (a), the Customer may by notice, in writing to the Supplier, terminate the Contract and reject any Goods that have already been delivered by the Supplier. If the Customer so elects, the following provisions apply:
 - (i) Any Loss suffered by the Customer (including any difference in price between the cost of acquiring goods in substitution for the rejected Goods) will be a debt due by the Supplier to the Customer.
 - (ii) The Customer will not be liable for any Loss suffered by the Supplier or liable to make any payment for the rejected Goods.
 - (iii) The Supplier must:
 - (A) immediately refund to the Customer any payment previously made for the Goods that are rejected; and
 - (B) at its cost, collect and remove the rejected Goods from the Customer as soon as practicable. If the Supplier fails to collect the rejected Goods within five Business Days of the Goods being rejected, the Customer may, at the Supplier's expense, either store the Goods until collected by the Supplier or return the rejected Goods to the Supplier.
- (c) In this clause **Dumped Goods** means:
 - (i) goods imported into Australia at less than their normal value; or
 - (ii) goods that are subject to any dumping duty under a law of the Commonwealth of Australia.

20 Economic and Social Benefits Statement

- (a) The Tasmanian Government is committed to ensuring expenditure by the Government on goods and services provides a corresponding benefit to the Tasmanian community, where possible.
- (b) As part of this commitment, where a Request Document states that Economic and Social Benefits Statements apply, Invited Suppliers are requested to provide an Economic and Social Benefits Statement as part of their Request Response outlining how the Invited Supplier's proposed delivery of the Deliverables will provide a potential positive impact on the Tasmanian economy and wider community if the Invited Supplier is successful. A template for completing an

Economic and Social Benefits Statement is included in Attachment 6 of the Request Document.

- (c) The Economic and Social Benefits Statement submitted by an Invited Supplier will be scored in accordance with the evaluation criteria in Attachment 5 of the Request Document, and will contribute a minimum of 25% towards the evaluation of the Request Response submitted by the Invited Supplier.
- (d) Invited Suppliers who decide not to submit an Economic and Social Benefits Statement, as part of their Request Response, will receive a zero score in relation to the Request Response evaluation criterion applicable to the Economic and Social Benefits Statement.

Part G: Additional conditions related to Procurement Process

21 Additional conditions applicable to Procurement Process and the Rules

21.1 Intellectual property rights in, and use of, the Request Document

The Request Document remains the property of the Customer, and may only be used for the purpose of preparing a Request Response.

21.2 Documents

- (a) All Request Responses become the property of the Customer.
- (b) Despite any copyright or other intellectual property right that subsists in a Request Response, each Invited Supplier licenses the Customer to reproduce the whole or any part of its Request Response for the purposes of evaluation.
- (c) The Customer may include in the Contract, as required, any parts of the Request Response (and any clarifications) lodged by the successful Invited Supplier.

21.3 Customer's discretions, rights and powers

- (a) The Customer reserves the right in its absolute discretion (and without limitation to any other right it may have) to do any one more of the following as it thinks fit at any time, without giving any reasons:
 - (i) to suspend, discontinue or abandon the Procurement Process;
 - (ii) to withdraw, vary, supplement, update, amend or replace the Request Document;
 - (iii) vary, amend or terminate the Procurement Process;
 - (iv) to issue an Addendum;
 - (v) to extend the Closing Time;
 - (vi) in the evaluation of Request Responses:
 - (A) to have regard to the knowledge and previous experience and dealings of the Customer with an Invited Supplier or any Related Party of an Invited Supplier;
 - (B) to have regard to information about past and current performance of an Invited Supplier, or any Related Party of an Invited Supplier,

under any contract, arrangement or dealing with the Customer or other government entities;

- (C) to obtain, and rely upon, advice from any third party in respect of any legal, technical or financial matter,

but in each case, only to the extent relevant to the evaluation criteria;

- (vii) to publish the names of Invited Suppliers;
 - (viii) to rely on publicly available information relating to an Invited Supplier as part of the evaluation process relevant to the evaluation criteria;
 - (ix) not to enter into any contract for the delivery of the Deliverables (including where the Customer determines that it is not in the public interest to award a contract); or
 - (x) to take such other action as it considers, in its absolute discretion, appropriate in relation to the Procurement Process.
- (b) If the Customer is notified of, or otherwise discovers an ambiguity, discrepancy, error or omission in the Request Document, the Customer may, in its absolute discretion, direct the Invited Suppliers, in writing, as to how to resolve the ambiguity, discrepancy, error or omission.
 - (c) Any discretion of the Customer under, or in connection with, the Rules or the Procurement Process is an absolute discretion. This clause applies even irrespective of whether or not the discretion is expressed to be absolute.
 - (d) No person is entitled to enquire into the basis of the exercise (or failure of the Customer to exercise) the Customer's discretions in this clause 21.3.

21.4 Investigations

- (a) The Customer may conduct independent investigations regarding an Invited Supplier and the information contained in its Request Response in the same manner and subject to the same conditions as set out in clause 2.2 as if the Request Response were an application to be included in the List. The Customer may take into account any matters revealed as a result of such investigation in evaluating Request Responses in accordance with the evaluation criteria.
- (b) By submitting a Request Response, an Invited Supplier (including its directors, officers and any person referred to in its Request Response as part of the Invited Supplier's team), consents to such investigations being conducted.
- (c) The Customer will be under no obligation to provide Invited Suppliers with details of the results of its investigations.

21.5 Confidentiality of Request Response to be preserved

- (a) The Customer and each Invited Supplier must hold the Request Response of that Invited Supplier in confidence, so far as the law allows, except if a Permitted Disclosure applies.
- (b) The Customer may include in the Contract parts of the Request Response (and any clarifications) lodged by the successful Invited Supplier.

21.6 Public access to information

The Customer does not warrant, or make any representation to the effect that, a Request Response will be exempted from disclosure under the RTI Act. A Listed Supplier will

not be entitled to make any claim in relation to any actions taken in relation to, or under, the RTI Act in relation to a Request Response.

21.7 Anti-competitive Conduct

- (a) A Listed Supplier must not engage, and must ensure that no person acting on behalf of the Listed Supplier engages, in any Anti-competitive Conduct.
- (b) For the purposes of clause 21.7(a) **Anti-competitive Conduct** includes any act, omission or thing done, or omitted to be done, with the intention of reducing free and fair competition in relation to the Procurement Process. The expression also includes any of the following:
 - (i) any agreement, arrangement or understanding between Invited Suppliers as to who should be the successful Invited Supplier;
 - (ii) if the Customer is not present, any meetings of Invited Suppliers to discuss the preparation or submission of a Request Response (other than a Request Response to be submitted as a Joint Bid);
 - (iii) any agreement, arrangement or understanding for the giving of any benefit (including the payment of money) to an unsuccessful Invited Supplier by the successful Invited Supplier;
 - (iv) any agreement, arrangement or understanding between Invited Suppliers to fix prices or otherwise collaborate in relation to Request Responses (other than a Request Response to be submitted as a Joint Bid);
 - (v) any assistance to any Invited Supplier to submit a Request Response that is intended to be uncompetitive, and therefore unlikely to be accepted by the Customer.

21.8 Influences

- (a) Without limiting any other provision of the Rules, Listed Suppliers must not seek to influence:
 - (i) the Customer;
 - (ii) any of the Customer's authorities, agencies, contractors, employees, agents or advisors; or
 - (iii) any Minister of the Crown in right of Tasmania,in relation to a Procurement Process (including by making payments or by the provision of favours, gifts, entertainment or other acts which could be construed as special treatment).
- (b) At the absolute discretion of the Customer, any breach of this clause 21.8 by a Listed Supplier may lead to exclusion of that Listed Supplier from the Procurement Process.

21.9 Change in circumstances

- (a) Invited Suppliers must inform the Customer promptly in writing of any material change to any of the information contained in its Request Response, and of any material change in circumstance which may affect the completeness or accuracy of any information provided in, or in connection with, the Request Response.
- (b) The Customer may also require Invited Suppliers to confirm in writing that no such material change has occurred.

- (c) Nothing in this clause 21.9 permits an Invited Supplier to modify its Request Response.

21.10 Conflicts of Interest

Invited Suppliers must, in writing to the Customer, make full, frank and prompt disclosure of any actual or potential Conflict of Interest in relation to themselves or any of the Invited Supplier's Related Parties.

21.11 No implied terms

No term or condition will be implied into the Request Document or these Rules.

21.12 No legal relationship

- (a) The documents issued by the Customer in connection with the procurement (including the Request Document) do not:
 - (i) constitute an offer capable of acceptance; or
 - (ii) create a process contract.
- (b) Other than the obligations of Invited Suppliers, no legal or other relationship or obligations will arise between any Invited Supplier and the Customer or any of its respective officers, employees, advisors, contractors or agents arising out of the Procurement Process (unless and until a Contract is signed between the successful Invited Supplier and the Customer).
- (c) The rights, powers and discretions of the Customer under the Request Document and of the Department of Treasury and Finance under these Rules are not pursuant to any contract between the Customer or the Department and any Listed Supplier but rather are rights, powers and discretions that the Customer has as part of the Procurement Process.

21.13 Customer liability

- (a) The Customer has no obligations or liabilities to any Invited Supplier except to the extent expressly set out in the Request Document and these Rules and will not be liable for any claim by an Invited Supplier arising from or in connection with:
 - (i) any costs, expenses or loss which may be incurred by any person in the preparation of a Request Response or otherwise in connection with the Procurement Process;
 - (ii) the Customer exercising or failing to exercise, in its absolute discretion, any discretion or right it has under or in connection with the Request Document and these Rules;
 - (iii) any error or omission in the Request Document or any information provided to or received by an Invited Supplier from any person in connection with the Procurement Process; or
 - (iv) any of the matters or things in respect of which an Invited Supplier must satisfy itself under these Rules.
- (b) To the maximum extent permitted by law, any obligations and/or liabilities in connection with the Request Document and these Rules which may otherwise be implied or imposed on the Customer under contract, in equity, by statute or otherwise are excluded.

21.14 Acknowledgements

Each Invited Supplier acknowledges and agrees that:

- (a) the Customer is not responsible for, and makes no representation or warranty in respect of, the contents of the Request Document, including the accuracy, adequacy, suitability or completeness of any information contained or referred to in the Request Document or of any other information provided to or received by the Invited Supplier from any person in connection with the procurement to which the Request Document relates;
- (b) the Customer does not accept or owe a duty of care to Invited Suppliers with respect to the Request Document; and
- (c) it will make its own independent investigations and evaluations and will conduct its own due diligence of the information contained or referred to in the Request Document or other information provided to or received by the Invited Supplier from any person, including the obtaining of appropriate legal, financial and other expert advice in relation to such information.

21.15 Customer's consent

Wherever the Customer's consent is required under the Request Document or these Rules, consent may be:

- (a) given or withheld by the Customer in the Customer's absolute discretion; and
- (b) given subject to such conditions as the Customer may determine.

21.16 Governing law

The Rules and each Procurement Process will be governed by the laws of Tasmania. Each Listed Supplier irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Tasmania.

21.17 Severance

If anything in the Rules or a Request Document is unenforceable, illegal or void, then it is severed and the remainder of the Rules or the Request Document, as the case may be, remains in force.

Part H: Glossary and interpretation

22 Glossary and interpretation

22.1 Defined terms

In these Rules and the Request Document, unless the context otherwise requires:

Addendum means a document stated to be an Addendum (for the purposes of a Request Document) which is issued, before the Closing Time, by the Customer for the purpose of amending or clarifying the Request Document.

Authorised Representative, in relation to a Listed Supplier, means each person nominated as an Authorised Representative of the Listed Supplier in a nomination form acceptable to the Department of Treasury and Finance.

Business Day means any day other than a Saturday, Sunday or statutory holiday, pursuant to the *Statutory Holidays Act 2000* (Tas) at the Customer's address.

Closing Time means the time by which a Request Response must be lodged to be eligible for evaluation. The Closing Time may be extended by the Customer.

Conflict of Interest means any relationship, circumstance, matter or thing which may, or may appear to, affect:

- (a) the integrity and fairness of the Procurement Process; or
- (b) the ability or capacity of an Invited Supplier to perform the Contract diligently and independently.

Contact Officer means the person named as the Contact Officer in Part C of the Request Document. The expression also includes any substitute Contact Officer appointed, for the purposes of the Request Document, by the Customer.

Contract – see clause 8.1.

Contract Departure means any departure, amendment, qualification, limitation, assumption or exclusion relating to the Contract documentation proposed in the Request Response.

Corporations Act means the *Corporations Act 2001* (Cwlth).

Covered Procurement has the meaning given to that expression in the Treasurer's Instructions issued under the *Financial Management Act 2016* (Tas).

Customer, in respect of a Procurement Process, means the Eligible Customer who issues the Request Document.

Deliverables means, in relation to a Request Document, the products and/or services required by the Customer, and in respect of which the Customer is seeking Request Responses pursuant to the Request Document.

Electronic Tender System – see clause **Error! Reference source not found.**

Eligible Customer means:

- (a) an agency as defined in the Financial Management Act 2016; or
- (b) an entity listed as an Eligible Customer by the Department of Treasury and Finance at <www.tenders.tas.gov.au/OpenForBids/Details/5128>.

entity means any legal entity recognised as an entity for the purposes of the law. The expression includes a natural person, a body corporate and a body politic.

GST means any goods and services tax or similar tax imposed by the Commonwealth of Australia (but excluding any penalty, fine, interest or similar payment).

Harmful Code includes:

- (a) any virus, denial of service, disabling or malicious device or code, 'worm', 'trojan', 'time bomb', or other harmful or destructive code, but does not include any 'software lock' or other technical mechanism that is included to manage the proper use of any software;
- (b) any code that allows any person to remotely monitor any activity of, or collect any data about, the Customer or any person dealing with the Customer.

Public Information means the name and approved categories on the List of a Listed Supplier.

Insolvency Event means:

- (a) if the Listed Supplier is a corporation:
 - (i) the Listed Supplier becomes an externally administered body corporate (as defined in section 9 of the Corporations Act) or a person becomes a controller (as defined in section 9 of the Corporations Act) of any of its property;
 - (ii) any steps are taken to pass, or there is passed, a resolution for the winding up or dissolution of the Listed Supplier other than for the purposes of a solvent reconstruction or amalgamation previously approved in writing by the Principal;
 - (iii) an application or order is sought or made in any court for the winding up or dissolution of the Listed Supplier other than for the purposes of a solvent reconstruction or amalgamation previously approved in writing by the Principal;
 - (iv) it fails to comply with a statutory demand within the meaning of section 459F of the Corporations Act; or
 - (v) anything analogous or having a substantially similar effect to any of the events specified above occurs under any applicable Law of another jurisdiction;
- (b) if the Listed Supplier is a natural person:
 - (i) the Listed Supplier was not at the time of applying to be included on the List, or at any later time ceases to be, of full legal capacity; or
 - (ii) the Listed Supplier was at the time of applying to be included on the List, or at any later time becomes, of unsound mind or subject to any Law relating to mental health;
 - (iii) the Listed Supplier becomes an insolvent under administration (as defined in section 9 of the Corporations Act) or any action is taken by any person that could result in that event;
 - (iv) any mortgagee or receiver takes control of any property of the Supplier;
- (c) if the Listed Supplier:

- (i) is unable to pay its debts as and when they fall due for payment or determines that it is insolvent or is likely to become insolvent at some future time;
 - (ii) convenes a meeting of its creditors or proposes or enters into any scheme of arrangement with its creditors or any of them; or
 - (iii) seeks protection from its creditors under any applicable Law;
- (d) if any distress or execution for an amount exceeding \$100,000, or its equivalent in another currency, is levied or enforced upon or against any assets of the Listed Supplier and that distress or execution is not withdrawn or satisfied within 10 Business Days of its levy or issue; or
- (e) if a final judgment in an amount exceeding \$100,000, or its equivalent in another currency, is obtained against the Listed Supplier and is not satisfied within 15 Business Days of it becoming final.

Invited Supplier in relation to a Procurement Process, means a Listed Supplier who receives a Request from the Customer.

Joint Bid means a single Request Response lodged jointly by, or on behalf of, two or more entities.

List means the Tasmanian Government's Technology Services List established and maintained by the Department of Treasury and Finance for the procurement of:

- (a) application development services;
- (b) data analytics services;
- (c) project management and business analysis services;
- (d) operational technical services;
- (e) cyber security services; and
- (f) strategic advisory and consulting services

in relation to information and communications technology.

List Information means the information contained in a Listed Supplier's application for inclusion in the List, as updated by the Listed Supplier from time to time.

Listed Supplier means a supplier or potential supplier of products and/or services included on the List.

Permitted Disclosure means:

- (i) the information is available to the public generally, other than by breach of this obligation;
- (ii) a law requires a party to file, record or register something that includes the information;
- (iii) disclosure is necessary or advisable to get a consent, authorisation, approval or licence from a governmental or public body or authority;
- (iv) it is necessary or advisable to make disclosure to a taxation or fiscal authority;
- (v) it is necessary to provide the information in answer to a question asked of a Minister in the Parliament, or otherwise to comply with a Minister's obligations to Parliament; or

- (vi) it is disclosed on a confidential basis to a party's professional advisers:
 - (A) to get professional advice; or
 - (B) to otherwise consult such professional advisers.

Procurement Process means the process of issuing a Request Document, receiving and evaluating Request Responses, and other activities connected with a Request Document.

Related Party means, in respect of an entity, another entity which is a related body corporate (as defined by sections 9 and 50 of the Corporations Act) or an associate (as defined by sections 10 to 17 of the Corporations Act) of that first mentioned entity.

Request means a Request for Quotation, Request for Tender or other request issued by an Eligible Customer.

Request Document means the document or documents issued by a Customer to Listed Suppliers in accordance with clause 4.

RTI Act means the *Right to Information Act 2009* (Tas).

Rules means these Technology Services List Rules.

Site Inspection – see clause 7.1.

Special Conditions means any special conditions set out in Part C of the Request Document.

Standing Offer Arrangement means an arrangement, for the purposes of the Contract, pursuant to which the successful Listed Supplier must only deliver Deliverables to the Customer in accordance with orders made by the Customer.

Standing Offer Period means the period during which, for the purposes of a Standing Offer Arrangement, the successful Listed Supplier is required to deliver Deliverables to the Customer in accordance with an order made by the Customer.

System Failure means, in relation to the Electronic Tender System, or a Specified Email Address, an outage, fault or delay, occurring for any reason, that affects its use, performance, accessibility or operation, including:

- (a) technical difficulties or faults with any related software, equipment or systems; or
- (b) any outages, faults or delays with the internet, or other infrastructure, involved in the transmitting, or the receipt, of any document, data or information (including an email).

Validity Period means the period stated Part C of the Request Document, and which may be extended in accordance with clause 12.8.

22.2 Interpretation

In these Rules and the Request Document, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include all genders;
- (c) other parts of speech and grammatical forms of a word or phrase defined in these Rules have a corresponding meaning;
- (d) subject to any transitional legislation providing otherwise, a reference to any legislation or legislative provision includes subordinate legislation made under it and any amendment to, or replacement for, any of them;

- (e) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (f) mentioning any thing after the words 'includes', 'included' or 'including' does not limit the meaning of any thing mentioned before those words.

22.3 Headings

Headings are included for convenience only and do not affect the interpretation of these Rules.