

The logo for the Town of Port Hedland features a blue rectangle at the top with the text "Town of Port Hedland" in white. Below this is a stylized graphic composed of several triangles in shades of blue, green, and light blue. At the bottom is a large green trapezoidal shape.

Town of  
Port Hedland

## EXPRESSION OF INTEREST

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<b>Expression of Interest (EOI):</b>	LONG-TERM LEASE OF PORT HEDLAND INTERNATIONAL AIRPORT
<b>Deadline:</b>	10:00AM (AWST), Thursday, 14th MAY 2015
<b>Delivery Details:</b>	Town of Port Hedland E-Procurement Portal <a href="https://www.tenderlink.com/porthedland/">https://www.tenderlink.com/porthedland/</a>
<b>EOI Number:</b>	03/15

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# TABLE OF CONTENTS

<b>1.</b>	<b>CONDITIONS OF RESPONDING</b>	<b>4</b>
1.1.	Definitions	4
1.2.	Introduction	5
1.3.	EOI Documents	6
1.4.	How to Prepare an EOI	6
1.5.	Overview of the Transaction	6
1.6.	Contact Persons and Further Information	12
1.7.	Advisors	12
1.8.	Site Briefing	12
1.9.	Procurement Process	12
1.10.	Selection Criteria	15
1.11.	Policies that may Affect Selection	15
1.12.	Lodgement of EOIs and Delivery Method	16
1.13.	Late EOIs	16
1.14.	Acceptance or Rejection of EOIs	16
1.15.	Terms and Conditions	17
1.16.	Addenda	17
1.17.	EOI Opening	17
<b>2.</b>	<b>CONFIDENTIALITY UNDERTAKING</b>	<b>18</b>
<b>3.</b>	<b>RESPONDENT'S EXPRESSION OF INTEREST</b>	<b>23</b>
3.1.	Response Form	23
3.2.	Respondent's Response	24
3.3.	Selection Criteria	24
<b>4.</b>	<b>TERMS AND CONDITIONS</b>	<b>27</b>
4.1.	Liability to Respondents	27
4.2.	Legal Relationship	27
4.3.	Disclosure of Information and Documents	27
4.4.	EOI Validity Period	28
4.5.	Respondents to Inform Themselves	28
4.6.	Alterations by Respondent	28
4.7.	Alterations by Town	29
4.8.	Clarifications	29



4.9.	Ownership of EOIs	29
4.10.	Canvassing of Officials	29
4.11.	Identity and Liability of the Respondent	30
4.12.	Costs of Responding	30
4.13.	Warranties and Representations	31
4.14.	Electronic Submission	31
4.15.	General	31



## **1.      CONDITIONS OF RESPONDING**

### **1.1.    DEFINITIONS**

The following terms have the corresponding meanings when used in this Invitation.

- Acceptable Tenderers:** The Respondents (if any) that are considered by the Town to be capable of satisfactorily delivering the Project;
- Airport:** Port Hedland International Airport and the airport precinct, as more particularly described in section 1.5 of this Part 1 below;
- Attachments:** The documents to be attached to the Response Form as part of the EOI;
- Binding Tender:** Has the meaning set out in section 1.9 of this Part 1 below;
- Compliance Criteria:** The criteria set out in the section entitled 'Compliance Criteria' in Part 3;
- Conditions of Responding:** The conditions applying to the submission of an EOI, consisting of:
- (a) the terms, restrictions and requirements set out, or referred to, in Part 1;
  - (b) the Terms and Conditions; and
  - (c) any additional terms and amendments issued to Respondents in any addenda;
- Deadline:** The deadline shown on the front cover of this Invitation for lodgement of EOIs;
- EOI Phase:** The phase of the Procurement Process, commencing on the date of this Invitation and ending on the first to occur of the issue of the RFP and the cancellation of the Procurement Process;
- Evaluation Panel:** The panel appointed to evaluate the EOIs;
- Expression of Interest or EOI :** A completed Response Form, the Respondent's response to the Selection Criteria and all Attachments;
- Interactive Tender Process:** Has the meaning set out in section 1.9 of this Part 1 below;
- Invitation:** This document;
- Lease:** The lease agreement between the Town and the successful tenderer in respect of the lease of the Airport, as more particularly described in section 1.5 of this Part 1 below;
- Non-Binding Tender:** Has the meaning set out in section 1.9 of this Part 1 below;
- Part:** A part of this Invitation;
- Portal:** Has the meaning set out in section 1.12 of this Part 1 below;
- Probity Advisor:** Has the meaning set out in section 1.7 of this Part 1 below;
- Procurement Process:** The process for the procurement of the Transaction, as more particularly described in section 1.9 of this Part 1 below;



**Qualitative Criteria:** The criteria set out in the section entitled ‘Qualitative Criteria’ in Part 3 and “**Qualitative Criterion**” has a corresponding meaning;

**Regulations:** The *Local Government (Functions and General) Regulations 1996* (WA);

**Respondent:** A person, company or consortium who has submitted, or intends to submit, an EOI in response to this Invitation;

**Response Form:** The response form set out in Part 3;

**RFP:** A request for proposals, to be issued by the Town to invite Non-Binding Tenders;

**Selection Criteria:** The criteria to be used by the Town in evaluating EOIs, being the Compliance Criteria and the Qualitative Criteria, and “**Selection Criterion**” has a corresponding meaning;

**Terms and Conditions:** The terms and conditions set out in Part 4;

**Town:** The Town of Port Hedland;

**Transaction:** The lease of the Airport, as more particularly described in section 1.5 of this Part 1 below; and

**TWA:** Each transient workforce accommodation facility in the Airport precinct, as further described in section 1.5 of this Part 1 below.

## 1.2. INTRODUCTION

### Background

Port Hedland International Airport is the gateway to Western Australia’s North West and the strongly growing Pilbara region.

In the year ending June 2014, 512,000 passengers arrived and departed from the Airport, following increases of 75% and 21% over the last 5 and 10 years respectively. The Airport has nearly 70 flights a week, including daily flights to Perth and direct weekly flights to Brisbane, Melbourne and Bali. The Town has planned for substantial investment over the next five years to create a modern and well-serviced airport that will provide a welcoming gateway to the North West.

The Town’s redevelopment plans include redevelopment of the terminal and surrounding precinct, infrastructure upgrades, new subdivisions and new business opportunities. The new terminal precinct will have a future capacity for more than 700,000 passengers per year. Plans are also in place to expand the Airport’s regional, national and international flights with more airlines, more routes and more services.

Given these future plans, the Town is considering the granting of a long-term lease (**Lease**) over the Airport to a private sector party (**Lessee**) so as to bring the appropriate funding capacity to the Airport and to transfer risk to the private sector. The Airport will continue to be owned by the Town.

The Town has appointed The Airport Group as the advisor who is retained to guide the Town through the Transaction.



## **Major Land Transaction**

The Transaction will constitute a 'major land transaction' under the *Local Government Act 1995* (WA). The Town is, separately and as required under the *Local Government Act 1995* (WA), advertising a business plan and inviting public submissions on the major land transaction. Respondents are not required to participate in this process.

### **1.3. EOI DOCUMENTS**

This Invitation is comprised of the following parts:

- (a) Part 1 – Conditions of Responding (read and keep this part);
- (b) Part 2 – Confidentiality Undertaking (read and keep this part);
- (c) Part 3 – Response Form (complete and return this part); and
- (d) Part 4 – Terms and Conditions (read and keep this part).

### **1.4. HOW TO PREPARE AN EOI**

- (a) Carefully read all parts of this document.
- (b) Ensure you understand the Transaction, the Procurement Process and the Conditions of Responding.
- (c) Complete the Response Form, your response to the Selection Criteria and attach your Attachments.
- (d) Make sure you have signed the Response Form and responded to all of the Selection Criteria.
- (e) Lodge the EOI, and confirm the Respondent is prepared to accept the terms of the Confidentiality Undertaking, and sign the Confidentiality Undertaking, should they be shortlisted (or noting any part of the Confidentiality Undertaking that it cannot comply with), before the Deadline.

### **1.5. OVERVIEW OF THE TRANSACTION**

The Town is proposing to grant a long term lease to a private sector party for fair value.

The Town would be looking to the Lessee to fund the future infrastructure and redevelopment of the Airport as passenger numbers grow, and to take responsibility for the operations and maintenance of the Airport. The Transaction will enable the Town to fund other priority public infrastructure over time. The Town may reserve certain rights in relation to land use, planning and potential commercial outcomes. The Town will retain land use planning control in accordance with the current Town of Port Hedland Planning Scheme.



## **THE AIRPORT**

The Airport is situated along Great Northern Highway between Port Hedland and South Hedland due east of Wedgefield Industrial Estate.

The main point of entry is Waldren Drive, which links the various Airport related facilities and incidental land uses including parking areas.

The land is currently zoned "Airport" under the current Town of Port Hedland Town Planning Scheme and forms part of the Airport Development Plan Area.

The Airport site is within the airport zone under the Town of Port Hedland Town Planning Scheme, the objective of the Airport precinct is to:

- protect options for future airport infrastructure within the precinct;
- ensure that development within the precinct meets prevailing noise and height limitation standards associated with the operation of aircraft; and
- ensure that any commercial development reinforces the transportation functions of the Airport.

### **Property Information**

The Airport consists of four main precincts and designated airside facilities, which are as follows:

- Precinct One – Terminal & Regular Public Transport Precinct. This is the most developed component of the Airport and includes a variety of land uses. Most are directly or incidentally related to the function of the runway and terminal, including car hire, terminal services, Royal Flying Doctor Service and Bureau of Meteorology, as well as freight and general aviation;
- Precinct Two – Transient Worker Accommodation Precinct. This precinct has been predominantly developed with two transient workforce accommodation developments: the Mia Mia Airport site, and the 1200 person Port Haven Village site. Airservices Australia's navigation and communications infrastructure and Telstra's communications infrastructure are also located within this precinct;
- Precinct Three – the Aerodrome Rescue and Fire Fighting Services (ARFFS) and Control Tower is located in this precinct, and it is expected that a portion of the masterplanned Kingsford Smith Business Park may be included in this precinct as part of the Lease;
- Precinct Four – this precinct is located at the junction of Great Northern Highway and Port Hedland Road. The Great Northern Highway effectively "wraps" around the precinct and both runways. This precinct is as yet undeveloped; and
- Airside facilities – consisting of the existing airfield movement areas, and comprising of two runways and adjoining taxiways. The main runway 14/32 is 2500m long and 45m wide with turning bays at each end. The secondary runway 18/36 is 1000m long and 18m wide.

The land on which the Airport is located is owned in freehold by the Town. The Airport is largely contained on portions of Lots 15, 16, 29, 436, 9000, 9001, 9002 and 9003 as shown indicatively on Deposited Plan 402661 (version 2). The land and assets which are the subject of the Lease are described in further detail below.



## **Revenues**

### *Aeronautical*

The Airport derives most of its revenue from passenger service charges and weight based landing fees levied to the major domestic airlines for the airport's Regular Passenger Transport. The publicly available Regular Passenger Transport 2014 15 Airport charges are available on the Airport's website - <http://www.porthedlandairport.com.au/corporate.html>.

### *Non-Aeronautical*

The Airport generates car parking revenues as well as property lease revenue from the Airport's tenants including a cafe/bar and car rental companies. The Town has also developed a portion of Airport land for use as TWA sites by large mining companies under long term leases.

## **Operating Expenditures**

The Airport's operating costs can be broadly broken up into the following major function areas:

- Airport operations;
- security;
- Airport maintenance;
- administration; and
- utilities and other contracted services.

## **2014-15 Financial Budget**

Currently the Airport's financial reports are consolidated into the Town's general account, such that the Airport does not develop its own income statements or Earnings Before Interest, Tax, Depreciation and Amortization (EBITDA) estimate. The last proposed budget reported on the Airport's website stated that the Airport is budgeting to earn total revenue of \$19.8 million in 2015/16 and incur total expenses of \$12.3 million. The EBITDA is estimated to be \$9 million. This does not include around \$4.5 million of ground lease income from leaseholds for TWA sites.

## **PROPOSED LEASE ARRANGEMENT**

### **Commitments**

It is intended that the Lessee will take on the responsibility for the day to day operation of the Airport including existing airport employees. This will include management oversight, compliance management, all administrative matters, financial management and operational services in relation to the Airport, including:

- airfield operations;
- airline relationship management;
- security;
- routine maintenance including runways, taxiways and aprons;
- terminal management, maintenance, cleaning and development;



- car park management;
- management of the Airport's tenants; and
- marketing and business development.

All operations, management and maintenance and associated costs will be the responsibility of the Lessee.

In addition to operations, the Lessee will be responsible for development capital spending in relation to operations and services for the Airport. Within the first five years of the Lease, the Lessee will be required to redevelop the terminal and undertake a range of maintenance projects for the aeronautical infrastructure.

### **The Leased Assets**

The Lease will include the Airport site and the structures affixed to the Airport. Specifically, the assets contemplated to be included under the Lease are:

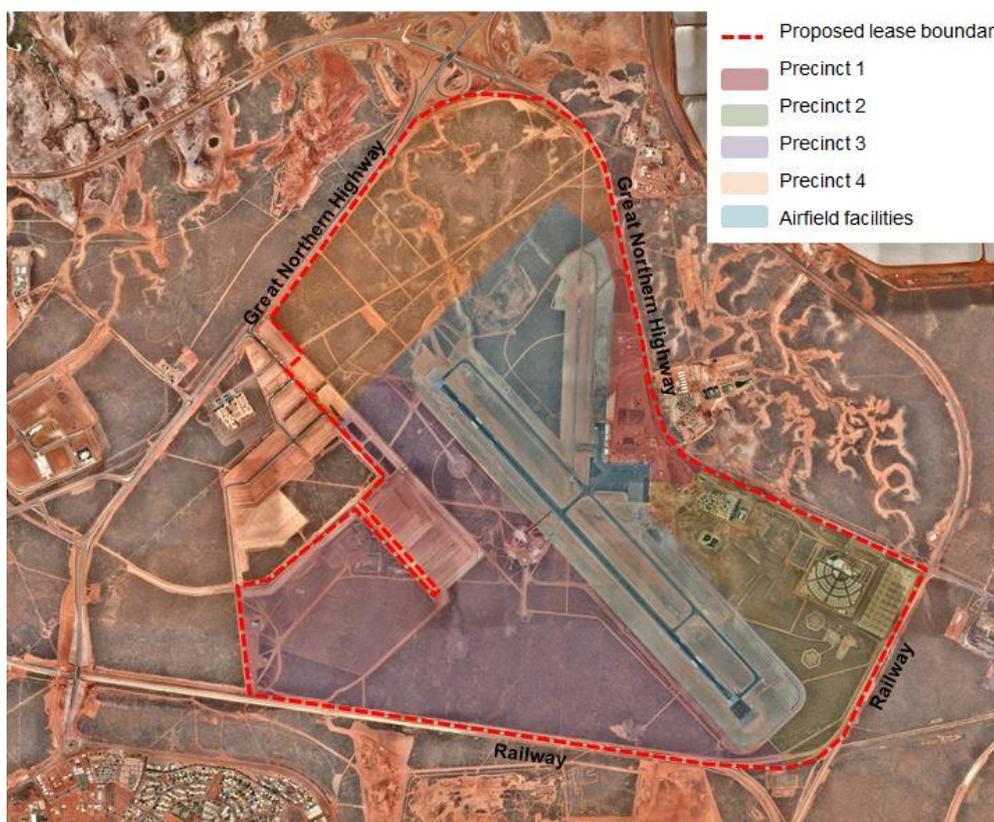
- the 900 hectares of land that make up the Airport's precincts as depicted on the plan below;
- the Airport runways, terminal, car parks and all commercial buildings on the airport property; and
- all existing Airport plant and equipment.

Certain land and lease agreements, including freight, car rental, the Royal Flying Doctor Service, terminal concessionaires, and transient workers accommodation leaseholds will also be transferred to the Lessee.



### The Lease Area

The land area that will be the subject of the Lease is shown in red below. The TWA sites, whilst included in the area shown below, may be excluded from the lease area in the final Lease documentation.



The marking on the map is indicative only.

### TRANSACTION DOCUMENTATION

The Transaction documentation is likely to include the following:

- an agreement that will include the transfer of certain fixed assets, for example airport related plant and equipment and the conditions precedent for the Lease;
- a detailed Lease that will cover all the terms and rights and obligations applicable to the Lessee and the Town;
- a tripartite agreement between the Town, the Lessee and the Lessee's debt financiers covering any lenders' rights and obligations as they relate to the Airport and the Lease; and
- the novation of existing commercial agreements relating to the Airport e.g. existing concessions and services.

### THE TOWN'S OBJECTIVES OF LEASING THE AIRPORT

- The transfer of all of the Airport development, operational and financial risks to the private sector including:
  - business planning and budgeting for the Airport; and
  - airport management report to the independent Lessee board.



- The terms and conditions of any Lease to provide the Town with adequate protections and ensure:
  - a commercial focus in the way the airport is developed, operated and managed;
  - the airport meets all regulatory, insurance and licensing requirements;
  - essential services are maintained, including the Royal Flying Doctor Service, emergency services, airfreight and postal services;
  - the quality of airport management expertise is maintained and wherever possible enhanced; and
  - the airport maximises the use and the return from the existing land and facilities through planning and the efficient use of airport infrastructure.
- The Town is to receive fair value from the Lessee for the Lease.
- The airport operates as a stand alone entity.
- The lessee to undertake prescribed capital expenditure.
- The Town intends to select a private sector partner:
  - that has demonstrated experience, and recognise and understands the responsibility of managing public infrastructure; and
  - has the financial resources to the meet the development needs of the airport over the long term.

#### **THE TOWN'S FUTURE VISION FOR THE AIRPORT**

The Town's vision for the Airport is for a modern technologically advanced airport that supports the further growth of Port Hedland.

The Town wishes to develop the Airport into a modern and well-serviced welcoming gateway to Australia's North West. The Town is committed to making the Airport a vibrant meeting place that welcomes travellers to the friendly Port Hedland community and treasures of the Pilbara, coupled with the core business of providing efficient passenger and freight services to the North West.

The Lessee will work in partnership with the Town to create further development opportunities at the Airport, business attraction, and additional aeronautical and non aeronautical services.

#### **TRANSITIONING REQUIREMENTS**

The Airport currently operates as an integrated business unit of the Town. Prior to the commencement of the Lease, finance and other operating tasks will be required to be separated from the Town's administration. A transition plan will be developed to facilitate the orderly transfer of the Airport's operations and management from the Town to the Lessee.



## **1.6. CONTACT PERSONS AND FURTHER INFORMATION**

Respondents may contact the person(s) listed below for further information. Respondents should not rely on any information provided by any person(s) other than the person(s) listed below:

Name:	Brett Reiss
Mobile:	0418 537 159
Email:	pdar@porthedland.wa.gov.au

Respondents may request clarification of any aspect of the Transaction and Procurement Process from the Town by submitting a written request to the contact person(s) above.

## **1.7. ADVISORS**

The Town has appointed The Airport Group, Herbert Smith Freehills and Greenwoods & Herbert Smith Freehills as its advisors to assist the Town with the Procurement Process and the Transaction.

The Town has appointed Stephen Linden of Protiviti as the probity advisor (**Probity Advisor**) in respect of the Procurement Process and the Transaction. Respondents may contact the Probity Advisor in circumstances where they have concerns as to probity or the conduct of the Procurement Process. Any contact or communication with the Probity Advisor may be disclosed to the Town and the Town reserves its rights to deal with the information in accordance with the Conditions of Responding. The Probity Advisor's contact details are as follows:

Name:	Stephen Linden
Organisation:	Protiviti
Mobile:	0448 247 888
Email:	Stephen.linden@protiviti.com.au

## **1.8. SITE BRIEFING**

A compulsory site briefing will be conducted for Respondents who are shortlisted to proceed to the next stage of the Procurement Process. The Town expects to conduct this briefing in late May or early June 2015.

## **1.9. PROCUREMENT PROCESS**

### **Summary**

The Transaction will be procured in three stages, namely:

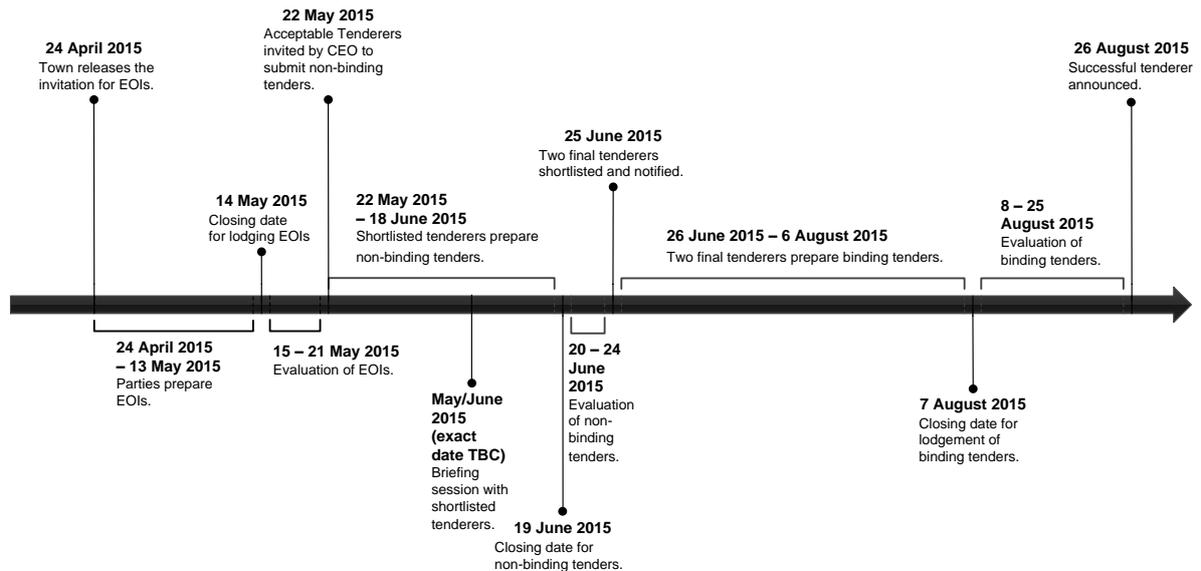
- the EOI Phase;
- the preliminary, non-binding offer (**Non-Binding Tender**) phase; and
- the final and binding offer (**Binding Tender**) phase,

together, the Procurement Process.

Timing relating to the Procurement Process is set out below and is indicative only. The Town may alter the timing of, and process for, the Transaction at its absolute discretion.



## PART 1 READ AND KEEP THIS PART



### Expression of Interest Phase

This is an Invitation for Expressions of Interest. This Invitation requires Respondents to lodge an EOI, as well as written confirmation that the Respondent is prepared to accept the terms of the Confidentiality Undertaking, and sign the Confidentiality Undertaking, should they be shortlisted (or note any part of the Confidentiality Undertaking that it is not able to accept).

The Confidentiality Undertaking must then be executed by the person comprised in the Respondent, or (where the Respondent is comprised of more than one person) the lead person comprised in the Respondent, in the form set out in Part 2 and submitted to the Portal.

In the event the Respondent does not provide confirmation that it will accept the Confidentiality Undertaking by the Deadline, the Respondent must provide a detailed explanation as to why it has not done so. In this event, if the explanation is unacceptable to the Town, the Town may exclude that Respondent from further participation in the Procurement Process (including the remainder of the EOI Phase). The Town, in its discretion, may not provide any further information to a Respondent until it has agreed the confidentiality arrangements with the Respondent.

Each EOI will be assessed based on, amongst other factors, its compliance with the terms and requirements set out in this Invitation.

Eligibility to participate in the RFP will be restricted to Respondents who are accepted by the CEO of the Town as Acceptable Tenderers.

The submission of an EOI does not automatically commit the Town to include any organisation on the shortlist in the event that the Procurement Process and Transaction proceed. However, Acceptable Tenderers will be invited to participate if the Non-Binding Tender phase and the Transaction proceed.



### **Non-Binding Tender Phase**

The Non-Binding Tender phase will require the preparation of Non-Binding Tenders by those invited to participate.

The key elements of the Non-Binding Tender phase are expected to be:

- the issue of an RFP. The RFP will contain a specification, a term sheet for the Lease and a due diligence information memorandum;
- compulsory site briefing conducted by the Town, as noted in section 1.8 of this Part 1; and
- the lodgement of Non-Binding Tenders which respond to the requirements in the RFP.

The Town will evaluate Non-Binding Tenders submitted and select Respondents to proceed to the Binding Tender phase. Respondents who submit Non-Binding Tenders may be invited to proceed to the Binding Tender phase at any time following the submission of a Non-Binding Tender, until the selection of a preferred Respondent.

### **Binding Tender Phase**

The Binding Tender phase is intended to involve the preparation of legally Binding Tenders by Respondents selected to proceed to the Binding Tender phase. The Binding Tender phase will involve an Interactive Tender Process with the Town, during which the Respondents will further develop their Non-Binding Tenders into Binding Tenders.

The key elements of the Binding Tender phase are expected to include:

- access to detailed information made available through an electronic data room on terms and conditions, and subject to any restrictions, set out in the Confidentiality Undertaking or subsequently notified to Respondents participating in this phase (including in the lead up to, and as part of, the Interactive Tender Process);
- the Interactive Tender Process; and
- tenderers being required to lodge an unconditional and fully financed Binding Tender and ensuring that they have responded to the requirements in the RFP.

Further details of the Non-Binding Tender Phase and the Binding Tender Phase will be provided in the RFP.

### **Regulatory Approvals**

Tenderers will be required to obtain any necessary regulatory approvals and clearances, which may include seeking approval from the Australian Competition and Consumer Commission and the Foreign Investment Review Board or otherwise demonstrate to the satisfaction of the Town that there is no regulatory risk to the progress of the Procurement Process or Transaction.

It will be the responsibility of the Respondents to take any action necessary to fulfil these requirements. The Town may, at its absolute discretion, exclude from the Binding Tender phase any Respondent that does not satisfy the relevant requirements above.



## **1.10. SELECTION CRITERIA**

### **Evaluation Methodology**

Respondents' EOIs will be evaluated using information provided in the Response Form and Attachments and on the Respondent's response to the Selection Criteria. The Town may also take into account such other information as is necessary in order to determine whether Respondents are Acceptable Tenderers.

The following evaluation methodology will be used in respect of this Invitation:

- the Town will appoint the Evaluation Panel for the purpose of assessing and evaluating EOIs and making a recommendation to the Town;
- EOIs will be checked for completeness and compliance. EOIs that:
  - are not submitted at the place, or by the delivery method and within the time specified in this EOI, will be rejected; and
  - are submitted at a place and within the time specified in this Invitation, but fail to satisfy the Compliance Criteria, may be rejected by the Town without considering its merits;
- EOIs which have not been rejected will be assessed against the Selection Criteria; and
- Respondents may be shortlisted and may also be required to clarify the EOI, make a presentation, demonstrate their experience or understanding of the requirements of the Lease or open their premises for inspection.

### **Qualitative Criteria**

In determining the Acceptable Tenderers, the Evaluation Panel will score each Respondent against the Qualitative Criteria. Each criterion will be weighted to indicate the relative degree of importance that the Town places on each criterion.

A scoring and weighting system will be used as part of the assessment of the Qualitative Criteria. The objective of that scoring and weighting system is to allocate points and weightings to those criteria which are considered key to meeting the Town's requirements and objectives. The aggregate score of each EOI will be used as one of the key factors in the final assessment of the EOIs.

NOTE: It is essential that Respondents address each Qualitative Criterion. Failure to provide the specified information may result in elimination from the evaluation process or a low score, in the Town's discretion.

## **1.11. POLICIES THAT MAY AFFECT SELECTION**

The following policies may affect the selection of Respondents during the Procurement Process:

- (a) Procurement Policy;
- (b) Regional Price Preference Policy; and
- (c) Tender Policy.



### **1.12. LODGEMENT OF EOIs AND DELIVERY METHOD**

- (a) EOIs must be lodged by the Deadline.
- (b) EOIs must be:
  - (i) marked with the words “Strictly Confidential”, followed by the EOI number and title as shown on the front cover of this Invitation;
  - (ii) no more than 10 pages in length; and
  - (iii) submitted to the Town’s E-Procurement Portal, operated by TenderLink, in respect of this Transaction (**Portal**) at <https://www.tenderlink.com/porthedland/>. Respondents will receive an email notification from TenderLink to confirm that the EOI has been successfully submitted to the Portal.
- (c) Receipt of EOIs will be determined by the date and time that the EOI was received by Tenderlink via submission to the Portal, as recorded by TenderLink. Lodgement of electronic files may take time and the Respondent must make its own assessment of the time required for full transmission of its EOI.
- (d) The Town will not be responsible in any way if an EOI is not received by TenderLink via the Portal by the Deadline or at all for whatever reason. Respondents are responsible for ensuring that the correct version of their EOI is submitted, as substitutes will not be accepted. This does not limit the Town’s right to request clarification of the Respondent’s EOI.
- (e) Respondents must submit their EOI in a way that allows clear identification of information to be considered for each Selection Criterion.

### **1.13. LATE EOIs**

EOIs received:

- (a) after the Deadline; or
- (b) in a place, or by a delivery method, other than that stipulated in this Invitation,

will not be accepted for evaluation.

### **1.14. ACCEPTANCE OR REJECTION OF EOIs**

- (a) An EOI may be rejected (including without consideration of its merits) if:
  - (i) it fails to comply with the Compliance Criteria, or is materially incomplete; or
  - (ii) the Respondent fails to comply with the Conditions of Responding (whether before or after the lodging of its EOI).
- (b) The Town is not bound to accept, and may reject, any or all EOIs where the Town determines that the Respondent is not an Acceptable Tenderer. The acceptance of an EOI, or the listing of a Respondent as an Acceptable Tenderer, does not oblige the Town to proceed to issuing the RFP.



**1.15. TERMS AND CONDITIONS**

The EOI Phase, including this Invitation and the submission of EOIs, is governed by this Part 1 and the Terms and Conditions.

**1.16. ADDENDA**

The Town will issue an addendum to all registered Respondents on Tenderlink where matters of significance make it necessary to amend the Invitation before the Deadline.

**1.17. EOI OPENING**

EOIs will be opened in the Town's offices, following the advertised Deadline. All Respondents and members of the public may attend or be represented at the opening of EOIs.

The names of the persons who submitted an EOI by the Deadline will be read out at the opening. No discussions will be entered into between Respondents and the Town's officers present or otherwise, concerning the EOIs.



## 2. CONFIDENTIALITY UNDERTAKING

### Confidentiality Undertaking

Date: [insert date] 2015

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By: [Insert full entity name of lead Respondent], ACN [insert ACN of lead Respondent] of [insert registered office of lead Respondent]

(Recipient)

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In favour of the Town of Port Hedland (**Town**):

- (a) **(Confidentiality obligations):** The Recipient must:
- (i) hold the Confidential Information in strict confidence and not disclose, or cause or permit the disclosure of, the Confidential Information, except as permitted by this undertaking or with the prior written consent of the Town;
  - (ii) keep the Confidential Information secure and protected from any use, disclosure, access, damage or destruction which is inconsistent with this undertaking;
  - (iii) do anything required by the Town to restrain a breach of this undertaking or any infringement of the Town's rights arising out of this undertaking by any person, whether by court proceedings or otherwise;
  - (iv) immediately, on request by the Town, return to the Town, or destroy or delete as the Town directs and provide evidence to the Town's reasonable satisfaction of that destruction or deletion, all original and copy Documents which are, or contain, Confidential Information or reproduce, are based on, utilise or relate to Confidential Information; and
  - (v) immediately notify the State if it suspects, or becomes aware of, any loss or any unauthorised use, storage, copying or disclosure of the Confidential Information.
- (b) **(Permitted use and disclosure):** The Recipient may only:
- (i) use the Confidential Information for the Purpose;
  - (ii) disclose Confidential Information to the Town's advisors and consultants, and to Recipient Parties, for the Purpose;



- (iii) disclose Confidential Information to comply with any law or legally binding order of any court, government, semi-governmental authority, administrative or judicial body, or a requirement of a stock exchange or regulator, and, if the Recipient or another Recipient Party must make a disclosure permitted by this paragraph (b)(iii):
  - (iv) the Recipient must disclose, and must ensure that the relevant Recipient Party discloses, only the minimum Confidential Information required to comply with the applicable law, order or other requirement; and
  - (v) before making that disclosure, the Recipient must give the Town reasonable written notice of the full circumstances of the required disclosure, together with the Confidential Information which it, or the relevant Recipient Party, proposed to disclose, and consult with the Town as to the form and content of the disclosure.
- (c) **(Recipient Parties):** The Recipient must inform each Recipient Party of the Recipient's obligations under this undertaking and ensure that each Recipient Party strictly observes all of the Recipient's obligations under this undertaking as if those obligations were imposed on that person.
- (d) **(Acknowledgements):** The Recipient acknowledges that:
  - (i) disclosure of Confidential Information in breach of this undertaking could cause considerable detriment to the Town; and
  - (ii) damages may be inadequate compensation for breach of this undertaking and, subject to the Court's discretion, the Town may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is, or would be, a breach of this undertaking.
- (e) **(Indemnity):** The Recipient is liable for and indemnifies the Town in respect of any claim, action, damage, loss, cost, charge, expense, outgoing or payment which the Town suffers, incurs or is liable for in respect of:
  - (i) any breach of this undertaking by the Recipient;
  - (ii) any failure by the Recipient to ensure compliance by each Recipient Party with the terms of this undertaking; or
  - (iii) any infringement of the Town's rights in respect of the Confidential Information by the Recipient or a Recipient Party.
- (f) **(Term):** The obligations of the Recipient under this undertaking, including as those obligations relate to each Recipient Party, continue for as long as the information is Confidential Information, regardless of any changes in the employment or circumstances of a Recipient Party.
- (g) **(Consent):** When granting any consent, the Town may impose conditions on that consent, in its absolute discretion, which the Recipient must comply with.



- (h) **(Waiver):** A term of this undertaking can only be waived, varied, discharged or released by the Town by its express consent in writing.
- (i) **(Governing law):** This undertaking is governed by the law in force in Western Australia and the Recipient irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia.
- (j) **(Part 1F of the Civil Liability Act):** The operation of Part 1F of the Civil Liability Act 2002 (WA) is excluded in relation to all and any rights, obligations and liabilities arising out of, or in connection with, this undertaking whether such rights, obligations and liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity or otherwise at law.
- (k) **(Definitions):** The terms used in this undertaking have the meanings set out in Part 1 of the Town's Expression of Interest Invitation (no. 03/15), except where otherwise expressly stated in this undertaking, including the terms set out below:

**Confidential Information** means any and all information which relates directly or indirectly to the Town (or its past, existing or future business, operations, administration or strategic plans), the Airport or the Transaction and which:

- 1 is disclosed to a Recipient Party in connection with the Transaction; or
- 2 is otherwise acquired directly or indirectly by a Recipient Party from the Town or any adviser engaged by the Town,

whether in oral or visual form or recorded or stored in a Document, and includes discussions or negotiations that have occurred, are occurring or may occur between a Recipient Party and the Town, or their respective advisers or representatives, in relation to the Transaction but excluding information which is in the public domain other than due to a breach of this undertaking.

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**Document** includes any note, memorandum, record, report, financial information, summary, analysis, calculation, strategic assessment, market survey, business plan, computer program, computer record, circuit, circuit layout, drawing, specification, material or any other means by which information may be stored or reproduced.

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**Procurement Response** means an EOI, a Non-Binding Tender or a Binding Tender or such other response or submission as may be required by the Town.

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**Purpose** means to assist the Recipient to do any or all of the following:

- 1 assess whether or not to submit a Procurement Response;
- 2 prepare each Procurement Response that the Recipient is entitled to submit; and
- 3 negotiate with the Town the terms of any agreements necessary to record and give effect to the Transaction.

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**Recipient Parties** means:

- 1 each Respondent Member; and
- 2 each officer, employee and adviser of each Respondent Member, and each Related Body Corporate of each Respondent Member, who has a specific need to have access to the Confidential Information for the Purpose, and 'Recipient Party' means any one of them.

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**Related Body Corporate** has the meaning given to it in the *Corporations Act 2001* (Cth).

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**Respondent Member** means:

- 1 each person comprising the Recipient in the Recipient's EOI;
- 2 any other person that is added as a member to the consortium comprising the Respondent from time to time; and
- 3 the financiers to the persons described in paragraphs 1 and 2 above.

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(l) **(Interpretation):**

In this undertaking, unless the context otherwise requires:



**PART 2 READ AND KEEP THIS PART**

- (i) words importing the singular include the plural and vice versa;
- (ii) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency;
- (iii) a reference to a person includes that person's successors and legal personal representatives;
- (iv) headings are for convenience only and do not affect interpretation; and
- (v) specifying anything after the words "includes", "including" or "for example" or similar expressions does not limit what else is included.

Executed as a deed:

Signed, sealed and delivered by

[insert name of lead Recipient]

by

sign here



\_\_\_\_\_  
Company Secretary/Director

print  
name

sign here



\_\_\_\_\_  
Director

print  
name

\_\_\_\_\_



**3. RESPONDENT'S EXPRESSION OF INTEREST****3.1. RESPONSE FORM**

(Registered Entity Name) \_\_\_\_\_

**(BLOCK LETTERS)**

of \_\_\_\_\_

**(REGISTERED STREET ADDRESS)**

ABN \_\_\_\_\_ ACN (if any) \_\_\_\_\_

Telephone No: \_\_\_\_\_ Facsimile No: \_\_\_\_\_

E-mail (if any): \_\_\_\_\_

**In response to EOI 03/15 Port Hedland International Airport, I:**

1. submit the following EOI subject to the terms and conditions of this Invitation;
2. agree that I am bound by, and will comply with, the Conditions of Responding contained in this signed and completed EOI;
3. agree that there will be no cost or compensation payable by the Town towards the preparation or submission of this EOI or any subsequent tender, irrespective of its outcome; and
4. if the Town requests the provision of another electronic copy of this EOI, undertake that the copy we provide will be a true copy of the original electronic copy of this signed and completed EOI and I acknowledge that a failure to provide a true copy will constitute a breach of the Conditions of Responding and therefore a failure to comply with the Compliance Criteria.

Defined terms in this Response Form have the meaning given in the Invitation.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Signature of authorised signatory of Respondent: \_\_\_\_\_

Name of authorised signatory (BLOCK LETTERS): \_\_\_\_\_

Position: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Authorised signatory Postal address: \_\_\_\_\_

Email Address: \_\_\_\_\_



### 3.2. RESPONDENT'S RESPONSE

Please provide all information and documents required by this Part 3. Where it is necessary to provide additional information please ensure that all documents are clearly marked with the relevant attachment title to assist the Evaluation Panel with their assessment.

(NOTE: All pages within Part 3 are to be completed and returned to the Town as they form part of the Respondent's EOI).

### 3.3. SELECTION CRITERIA

#### Compliance Criteria

Please select with a yes or no whether the Respondent has complied with the following Compliance Criteria:

Description of Compliance Criteria		
(a)	Compliance with the Conditions of Responding contained in this Invitation.	Yes / No
(b)	Submission of confirmation that the Respondent is prepared to sign the Confidentiality Undertaking in accordance with the Expression of Interest, should it be shortlisted.	Yes / No
(c)	Submission of details of any actual or potential conflict of interest as required by section D of the Qualitative Criteria.	Yes / No

#### Qualitative Criteria

Subject to the Conditions of Responding, each Respondent submitting an EOI will be assessed and evaluated against all of the Qualitative Criteria.

Before responding to the following Qualitative Criteria, Respondents must note the following:

- all information relevant to the Respondent's answers to each criterion are to be contained within the Respondent's EOI;
- Respondents are to assume that the Evaluation Panel has no previous knowledge of the Respondent's organisation, its activities or experience;
- Respondents are to provide full details for any claims, statements or examples used to address the Qualitative Criteria including, where relying on the experience of a particular member of its bidding consortium, identifying that member and details of their role (including length of commitment) in the consortium; and
- Respondents are to address each issue outlined within a Qualitative Criterion.



<p><b>A) Relevant Experience</b></p> <p>Respondents to demonstrate a strong track record investing, managing, operating, and maintaining infrastructure and property assets, preferably transport assets.</p> <p>Respondents must supply these details in an attachment and label it <b>“Relevant Experience”</b>.</p>	<p><b>Weighting</b> <b>&lt;40%&gt;</b></p>	
	<p><b>“Relevant Experience”</b></p>	<p><b>Tick if attached</b> <input type="checkbox"/></p>
<p><b>B) Community Engagement and Corporate Responsibility</b></p> <p><i>Community Engagement:</i> Respondents need to demonstrate previous experience of managing community stakeholder issues.</p> <p><i>Corporate Social Responsibility:</i> Respondents need to demonstrate a willingness to play a positive role in the community, engage with the community on an on-going basis and participate in initiatives that will benefit the community.</p> <p>Respondents must supply details in an attachment and label it <b>“Community Engagement and Corporate Social Responsibility”</b>.</p>	<p><b>Weighting</b> <b>&lt;10%&gt;</b></p>	
	<p><b>“Community Engagement and Corporate Social Responsibility”</b></p>	<p><b>Tick if attached</b> <input type="checkbox"/></p>
<p><b>C) Financial Capability</b></p> <p>Respondents need to demonstrate their capacity and willingness to make the level of financial commitment that will be required both under the Lease and to fund the ongoing operation of the Airport.</p> <p>With reference to the above, respondents should demonstrate their ability to (including with reference to its past track record):</p> <p>(a) commit financial capital in excess of \$100,000,000;</p> <p>(b) commit equity to the Transaction;</p> <p>(c) obtain appropriate debt finance.</p> <p>Respondents must supply details in an attachment and label it <b>“Financial Capability”</b>.</p>	<p><b>Weighting</b> <b>&lt;40%&gt;</b></p>	
	<p><b>“Financial Capability”</b></p>	<p><b>Tick if attached</b> <input type="checkbox"/></p>



<p><b>D) Risk</b>          Respondents must provide the following information in an attachment and label it <b>“Risk”</b>:</p> <p>(a) An outline of your organisational structure for the proposed Transaction. If a consortium and if relevant, provide details on the key people, key directors, and key shareholders.</p> <p>(b) Is the Respondent acting as an agent for another party or as a trustee of a trust. If so, attach details of the principal or the trust (as relevant).</p> <p>(c) Provide details of any circumstances, arrangements or understandings which constitute (or may reasonably be considered to constitute) an actual or potential conflict of interest with the undertaking of the Transaction (or any such conflicts of interest that are likely to arise during the Lease term) and the proposed strategy for managing any such conflict.</p>	<p><b>Weighting</b>  <b>&lt;10%&gt;</b></p>	
	<p><b>“Risk”</b></p>	<p><b>Tick if attached</b>  <input type="checkbox"/></p>



## 4. TERMS AND CONDITIONS

### 4.1. LIABILITY TO RESPONDENTS

- (a) The Town has no liability to Respondents whatsoever in relation to the Procurement Process, including arising out of the rejection of an EOI or the cancellation of, or change to, the Transaction or Procurement Process, including as set out in section 1.16 or section 4.2(b) of this Invitation. No Respondent will make, or be entitled to make, a claim or demand, or initiate any action or proceedings, against the Town arising out of:
  - (i) any of the matters referred to in this section 4.1 of this Part 4; or
  - (ii) the exercise by the Town, or any failure of the Town to exercise or perform, any rights, obligations or duties set out in this Invitation or otherwise in connection with the Procurement Process.
- (b) This section 4.1 of this Part 4 may be pleaded by the Town as a bar to any such claim or demand made, or action or proceedings initiated, by a Respondent against the Town.

### 4.2. LEGAL RELATIONSHIP

- (a) The issue of this Invitation does not:
  - (i) create any legal relationship between the Town and Respondents;
  - (ii) impose any obligation on the Town to proceed with the Transaction or the Procurement Process; or
  - (iii) constitute an offer to enter into the Lease or any other Transaction documentation.
- (b) The Town may amend or cancel the Procurement Process or the Transaction (or both) at any time.
- (c) By submitting to the Town an executed EOI, a Respondent intends and agrees to be bound by the Conditions of Responding, which will constitute the entire agreement between that Respondent and the Town (as amended by any addenda) in respect of the EOI Phase.

### 4.3. DISCLOSURE OF INFORMATION AND DOCUMENTS

- (a) Documents and other information relevant to the Transaction and EOIs, including details relating to the Procurement Process and Respondents, may be disclosed by the Town when required by law, including under the *Freedom of Information Act 1992* (WA) (FOIA), or under a Court order.
- (b) Respondents will not be entitled to make any claim or demand, or initiate any action or proceedings, against the Town in connection with the disclosure by the Town of any information or documents.



- (c) All Respondents will be given particulars of the acceptable Respondent(s) or advising that that the Town has decided not to invite tenders or advising of any other outcome.

#### **4.4. EOI VALIDITY PERIOD**

All EOIs will remain valid and open for acceptance to proceed to the next stage for a minimum period of forty-five (45) days from the end of the EOI Phase, unless extended on mutual agreement between the Town and the Respondent in writing.

#### **4.5. RESPONDENTS TO INFORM THEMSELVES**

- (a) The Town does not warrant, guarantee or represent (expressly or impliedly), and takes no liability for and no duty of care exists in respect of, the accuracy, completeness, adequacy or correctness of any information and documents issued to Respondents.
- (b) Respondents will be deemed to have:
  - (i) examined and informed themselves of the Expression of Interest and any other information available in writing to Respondents for the purpose of submitting an EOI, including any addenda issued by the Town;
  - (ii) examined all further information relevant to the risks; contingencies, and other circumstances having an effect on their EOI which is obtainable by the making of reasonable enquiries;
  - (iii) satisfied themselves as to the correctness and sufficiency of their EOI and of all matters and things necessary for the due and proper performance and completion of the Transaction;
  - (iv) satisfied themselves they have a full set of the Invitation and all relevant attachments; and
  - (v) not relied on any information (oral, written or electronic) and documents issued to them by the Town.
- (c) Respondents must notify the Town in writing as soon as reasonably practicable after becoming aware of any error, inconsistency, ambiguity or discrepancy in this Invitation or in any other information received from the Town in connection with the Transaction or Procurement Process. Following receipt of that notification, the Town will direct Respondents as to how to proceed in relation to the matter notified by issuing a response to all Respondents on Tenderlink.

#### **4.6. ALTERATIONS BY RESPONDENT**

Respondents must not alter or add to the EOI once lodged, or any of the documents comprised in it, unless required by the Conditions of Responding or requested by the Town.



#### **4.7. ALTERATIONS BY TOWN**

- (a) The Transaction and Procurement Process, or any aspect of them, may only be changed by the Town issuing an addendum or addenda in accordance with the Conditions of Responding.
- (b) Any addenda will be deemed to be part of this Invitation and Respondents must ensure that their EOI complies with any and all addenda.
- (c) The Town will not be liable for any costs, losses, damages or expenses suffered or incurred by Respondents due to the issue of any addenda.

#### **4.8. CLARIFICATIONS**

If the clarification questions submitted by Respondents are of a general nature, the Town will provide these questions and its responses to all Respondents. If a Respondent believes that a clarification question it submits relates to the proprietary information of that Respondent, it may notify the Town of that belief at the time of submitting the relevant question. If the Town:

- (a) agrees that the question relates to the proprietary information of the Respondent, it will respond only to that Respondent; or
- (b) does not agree that the question relates to the proprietary information of the Respondent, it will notify the relevant Respondent of that position and will give the Respondent the option to withdraw the question. If the Respondent still requires an answer to the relevant question, the Town will circulate the question and its response to all Respondents.

#### **4.9. OWNERSHIP OF EOIs**

All documents, materials, articles and information submitted by the Respondent as part of or in support of a EOI shall become upon submission the absolute property of the Town and will not be returned to the Respondent at the conclusion of the EOI process PROVIDED that the Respondent shall be entitled to retain copyright and other intellectual property rights in the EOI. Each Respondent grants to the Town a non-exclusive, irrevocable, perpetual, royalty-free, transferrable (including the right to sub-license) licence to use any and all intellectual property in the Respondent's EOI for any purpose whatsoever in connection with the Transaction or Procurement Process.

#### **4.10. CANVASSING OF OFFICIALS**

- (a) If a Respondent, whether personally or by an agent, canvasses any of the Town's commissioners or councillors (as the case may be) or officers with a view to influencing the acceptance of any Respondent, then regardless of such canvassing having any influence on the acceptance of such EOI, the Town may at its discretion omit the Respondent from consideration.
- (b) Respondents must not:



- (i) without the Town's prior written consent, directly or indirectly approach or communicate with any Town officers or employees connected with the Transaction to make an offer of employment with the Respondent or make those persons aware of a potential employment opportunity with the Respondent (or any person connected with the Respondent);
  - (ii) directly or indirectly offer a bribe, gift or other inducement to any Town officers or employees; or
  - (iii) engage in any anti-competitive conduct or any other similar conduct, including collusive tendering, with any other Respondent (or person comprised in another Respondent) in relation to the Procurement Process.
- (c) Respondents must:
- (i) disclose details of any arrangements, matters or circumstances that may constitute or be reasonably likely to constitute an actual or potential conflict of interest with the Respondent's involvement with the Transaction or Procurement Process, including its obligations under the Confidentiality Undertaking and Conditions of Responding, together with details of the Respondent's strategy to manage any such actual or potential conflict; and
  - (ii) disclose where a person comprised in the Respondent has a connection with another Respondent, together with details of that connection.

#### **4.11. IDENTITY AND LIABILITY OF THE RESPONDENT**

- (a) The identity of the Respondent is fundamental to the Town. The Respondent shall be the person, persons, corporation or corporations named as the Respondent in Part 3 and whose execution appears on the Response Form in Part 3 of this Invitation. It is only the Respondent (provided it is an Acceptable Tenderer) that will be shortlisted for, and permitted to participate in, the Non-Binding Tender phase.
- (b) The Conditions of Responding, and the liabilities and obligations under them, apply to and bind each person comprising the Respondent and their financiers and Related Bodies Corporate (as defined in the *Corporations Act 2001 (Cth)*) for the purpose of the Transaction and Procurement Process, jointly and severally.
- (c) If the Respondent comprises more than one person, the EOI must identify a lead representative. Any communications received by the Town from, or sent by the Town to, that lead representative will be deemed to have been received from, or sent to, the Respondent.

#### **4.12. COSTS OF RESPONDING**

The Town will not be liable to the Respondents for any costs, losses or expenses incurred by the Respondents in preparing their EOIs.



#### **4.13. WARRANTIES AND REPRESENTATIONS**

The Respondent represents and warrants to the Town that:

- (a) at the time of lodging its EOI, it has not committed any of the acts prohibited by paragraph (b) of section 4.10 of this Part 4;
- (b) has not paid or received, and will not pay or receive, any secret commission in respect of this Invitation or its EOI;
- (c) it has not entered, and will not enter, into any unlawful arrangements with any other person in respect of this Invitation or its EOI;
- (d) any and all information provided to the Town, whether in its EOI or otherwise, during the EOI Phase is true, accurate and complete;
- (e) it has not relied on any information provided by the Town (whether written, oral or electronic) in lodging its EOI; and
- (f) it has complied with the requirements of the *Privacy Act 1988* (Cth) in respect of any and all Personal Information and Sensitive Information (as those terms are defined in that Act) disclosed to the Town, whether in an EOI or otherwise.

#### **4.14. ELECTRONIC SUBMISSION**

- (a) If the EOI (being in electronic format) contains a virus then, notwithstanding any disclaimer made by the Respondent in respect of viruses, the Respondent must pay to the Town all costs incurred by the Town arising in connection with the virus.
- (b) The Town will not be responsible in any way for any loss, damage or corruption of the EOI.
- (c) If the EOI becomes corrupted, illegible or incomplete as a result of transmission, storage, encryption or decryption, then the Town may request the Respondent to provide another electronic copy of its EOI.
- (d) If the Town requests the provision of another electronic copy of an EOI, then the Respondent must provide a true copy of the original electronic copy lodged by the Respondent within the period specified by the Town.

#### **4.15. GENERAL**

- (a) No rule of interpretation applies to the disadvantage of the Town on the basis that the Town drafted the Invitation, including the Conditions of Responding.
- (b) Unless otherwise stated in this Invitation, the words 'including', 'includes' and 'include' will be read as if followed by the words 'without limitation'.

