

# Part 3 Terms and Conditions

## Disclaimer

These Guidelines have been prepared by the Housing Authority (Communities) in Western Australia to assist prospective Respondents in understanding Communities' objectives, requirements, and preferences in relation to the CFS-CHP framework.

Respondents should read and consider the Terms and Conditions in these Guidelines prior to participation in the CFS-CHP framework and/or lodging a Submission.

Respondents should conduct their own independent investigations, review and analysis of the Opportunity and the information set out in these Guidelines. Respondents must rely entirely on their own investigations, review and analysis, and not on these Guidelines or any information provided by or on behalf of Communities nor any of Communities' employees, agents, advisers or consultants in relation to their assessment of the Opportunity.

Neither Communities, nor any of its employees, agents, advisers or consultants (or their respective associated companies or businesses, partners, directors, officers or employees) makes any representation or warranty, express or implied, as to the accuracy, reliability or completeness of the information contained in these Guidelines or subsequently provided to Respondents by or on behalf of Communities or its advisers or consultants. To the maximum extent permitted by law, none of those persons shall have any liability (whether arising from negligence or otherwise) for:

- a) any representations or warranties (express or implied) or information contained in, or for any omissions from, these Guidelines or any written, oral or other communications transmitted to the Respondents by or on behalf of the Housing Authority or any of its employees, agents, advisers or consultants; or
- b) any cost, expense, loss, claim or damage of any nature arising in any way out of or in connection with the statements, opinions, projections, forecasts or other representations, actual or implied, contained in or omitted from these Guidelines or by reason of any reliance thereon by any person or body.

Communities may, at its sole and absolute discretion, but without being under any obligation to do so, amend, update or supplement the information contained in these Guidelines. Any further information will be and is provided subject to the terms and conditions set out in this notice.

Nothing in these Guidelines will be construed to be, or create a binding contract (express or implied, including a process contract) enforceable against Communities by any Respondent.

Any conduct or statement by Communities, whether prior to, or subsequent to, the issue of these Guidelines is not, and these Guidelines are not, and must not be deemed to be, an offer to contract on the part of Communities or a binding undertaking of any kind by Communities. Each Respondent waives any right to administrative law relief (whether under statute, the common law, equity or otherwise) to which that Respondent is, or may in the future become, entitled in connection with this document or the process outlined in it.



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# Terms and Conditions

### 1.1 Interpretation

These terms and conditions are to be interpreted in favour of Housing Authority (through the Department of Communities) (**Communities**) in the event of any ambiguity or inconsistency.

### 1.2 Rights and Obligations

#### 1.2.1 Communities' Rights

Communities reserves the right to:

- a) Vary the Conditions of Submission.
- b) Vary any other part of these Guidelines.
- c) Suspend or terminate the Evaluation Process.
- d) Admit or exclude any Respondent from the Evaluation Process at any time.
- e) Consider or not consider any Submission.
- f) Request and rely on clarification or additional information from any or all Respondents.
- g) Provide additional information to any or all Respondents.
- h) Issue Addenda.
- i) Discontinue negotiations with any Respondent.
- j) Elect not to proceed to support any one or more Submissions and/or Respondents.
- k) Cancel, add to or amend the information, requirements, terms, procedures or processes set out in these Guidelines.

#### 1.2.2 No Fettering

The Respondent acknowledges and agrees that nothing contained or implied in these Guidelines will be construed or interpreted as unlawfully restricting or otherwise unlawfully affecting the unfettered discretion of Communities to exercise any of its executive or statutory powers or functions under any law.

#### 1.2.3 Exclusion of Liability

In no event will Communities be liable for:

- a) any cost, expense, loss, claim or damage arising out of, or in connection with, a Respondent's participation in the subject matter of these Guidelines including, without limitation, the preparation and lodgement of a Submission, or other activities following a CFS Determination;
- b) any cost, expense, loss, claim or damage resulting from the exercise of any of Communities' rights referred to in this section; or
- c) any failure to inform a Respondent of the exercise of any of Communities' rights under this section.

#### 1.2.4 Exclusion from Consideration

Where, under these Guidelines, Communities may:

- a) exclude a Submission from consideration; or
- b) exercise any other discretion,
- c) Communities may do so at its sole and absolute discretion and will not be required to act, or be restrained from acting, in any way or for any reason.



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### 1.2.5 Exercise of Rights

If Communities does exercise any of its rights under this section, it will endeavour to inform Respondents. However, Communities will not be under any obligation to do so.

### 1.3 Relationships Between Parties

#### 1.3.1 No offer or contract

The Respondent acknowledges and agrees that:

- a) these Guidelines do not constitute an offer or an invitation to treat; and
- b) no Contract exists or will arise between Communities and any Respondent in respect of these Guidelines or the subject matter of these Guidelines, or any Submission or the subject matter of any Submission, unless and until a binding Contract is executed by Communities and the Respondent.

#### 1.3.2 Communities' obligations and liabilities

Without limiting section 5.2, any obligations or liabilities of Communities to the Respondent in respect of any aspect of the Evaluation Process:

- c) are limited to those obligations and liabilities expressly set out in these Guidelines; and
- d) exclude (to the extent permitted by law) any obligations or liabilities which may otherwise be implied or imposed on Communities under contract, equity by statute or otherwise.

### 1.4 Consideration and Evaluation of Submissions

#### 1.4.1 General

Communities is not bound to support any Submission made under these Guidelines, including the Submission which requires comparatively the lowest financial contribution from Communities.

#### 1.4.2 Whole or Part Submission

Communities may consider the whole or any part of a Submission.

#### 1.4.3 Subject to Agreement

Notwithstanding any discussions during the Engagement and Collaboration phase, the evaluation of Submissions in accordance with these Guidelines, or any CFS Determination, the pursuit of any Submission by Communities is subject to further progression and the execution of a Contract(s) in a form(s) acceptable to Communities as the project specifics require.

#### 1.4.4 No Legal Rights or Obligations

No legal rights or obligations arise between the Respondent and Communities until such time as a Contract is executed by Communities and the Respondent.

#### 1.4.5 Acceptance of Conditions of Submission

Lodgement of a Submission indicates the Respondent's acceptance of the Terms and Conditions.

### 1.5 Ownership of these Guidelines

All documents comprising these Guidelines remain the property of Communities. All copyright and other intellectual property rights contained in these Guidelines are and remain vested in Communities and any third party who has given Communities permission to incorporate them in these Guidelines.



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### 1.6 Ownership of Submissions

By lodging a Submission, the Respondent agrees that the original and all copies of the Submission lodged with Communities become the property of the Crown in right of the State of Western Australia at the time of lodgement and that Communities may make further copies of, and use, the Submission for the purpose of conducting the Evaluation Process, considering and/or analysing Submissions and negotiating and preparing a Contract(s).

### 1.7 Intellectual Property Rights

#### 1.7.1 Grant of licence to Communities

The Respondent agrees to grant Communities and its officers, contractors, employees, agents, and advisers an irrevocable, perpetual, royalty free, non-exclusive license to copy, adapt, amend, disclose to third parties or do anything else necessary (at Communities' discretion) to all material (including that which contains intellectual property rights of the Respondent or other persons) contained in the Submission for the purpose of:

- a) Communities' evaluation of Submissions;
- b) negotiating Contract(s) if the Respondent proceeds to the contract negotiation stage;
- c) reference during resolution of any issues that may occur in relation to a Contract(s) or these Guidelines; and
- d) other matters relating to the above, including audit requirements.

#### 1.7.2 All consents etc. to grant licence

The Respondent must obtain all consents, waivers, licences, and approvals necessary or required in order for Communities to exercise its rights described in this clause without infringing the rights of any third party.

#### 1.7.3 Representation and warranty

The Respondent represents and warrants to Communities that the exercise by Communities of its rights under this clause will not infringe any third-party rights.

### 1.8 Freedom of Information

The Respondent acknowledges that the *Freedom of Information Act 1992 (WA)* applies to the information provided by Respondent in any Submissions under these Guidelines.

### 1.9 Confidentiality

In accordance with these Guidelines, Communities reserves the right, at its sole and absolute discretion, to require that all information, other than publicly available information, provided to Respondents by or on behalf of Communities (and copies of such information) be returned to Communities or, at the option of Communities, destroyed at any stage.

#### 1.9.1 Obligation of Confidentiality

The Housing Authority will treat as confidential any confidential information provided by Respondents prior to the award of a Contract. If a Contract is awarded, the Housing Authority will not keep such information confidential if it was provided by a Respondent unless:

- a) the Respondent requests that specific information should be kept confidential;



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- b) the specific information is by its nature confidential; and
- c) the Housing Authority agrees to the request.

In considering a request for confidentiality, the Housing Authority will consider whether disclosure would cause detriment to any other third party and the circumstances under which the information was disclosed. The Housing Authority will also consider whether confidentiality is supported by the underpinning principles of value for money, accountability and transparency.

### 1.9.2 Limitation of Obligation of Confidentiality

The obligation of confidentiality does not apply if the confidential information:

- a) is disclosed by Communities to its advisers or employees solely in order to consider a Submission;
- b) is authorised or required by law (including under the *Financial Management Act 2006* and the *Auditor General Act 2006*) to be disclosed or upon request by a Minister or by Parliament or any committee of Parliament; or
- c) is in the public domain.

The obligation may be superseded or amended in accordance with any provisions in a Memorandum of Understanding or Contract.

### 1.10 Conflict of Interest

If a Respondent identifies a conflict of interest, or likely conflict of interest, the Housing Authority may exclude the Submission from consideration.

If a Respondent identifies a conflict of interest or a risk of conflict of interest arising after lodgement of the Submission but prior to the completion of the Evaluation Process for that Submission, that Respondent must immediately disclose the conflict of interest to the Housing Authority.

A Respondent may be required to resolve the conflict of interest in accordance with the direction of the Housing Authority before its Submission becomes subject to final evaluation under these Guidelines (where applicable).

### 1.11 Respondents to Inform

Respondents will be deemed to have:

- a) Examined these Guidelines, any documents referred to herein, and any other information made available in writing by Communities to Respondents for the purpose of participating in the Evaluation Process.
- b) Examined all further information which is obtainable by the making of reasonable enquiries relevant to the risks, contingencies and other circumstances having an effect on their participation in the Evaluation Process and their Submission.
- c) Satisfied themselves as to the correctness and sufficiency of their Submission.

### 1.12 Communities' Investigations

#### 1.12.1 7.15.1 General

Communities may conduct independent research and investigations regarding the Respondent and the information contained in the Submission. The Housing Authority reserves the right to take into account any matters revealed as a result of such research and investigations in evaluating Submissions.

Communities will be under no obligation to provide Respondents with details of the results of such research and investigations. The Housing Authority reserves the right to defer or cancel the acceptance of a particular



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Submission or take such other action as it considers appropriate in light of the information it receives as a result of conducting such research and investigations.

### 1.12.2 Costs of Preparing Submission and Process Participation

Participation in the Evaluation Process outlined in these Guidelines, or in relation to any matter concerning these Guidelines, is at the Respondent's sole risk, cost and expense (unless otherwise agreed noting that Communities may agree or set out to provide project support via a CFS Determination and any subsequent Contract). Communities will not be responsible in any circumstances for any cost or expense incurred by a Respondent in preparing or lodging a Submission or in taking part in the Evaluation Process or taking any action related to the Guidelines unless otherwise agreed.

### 1.12.3 Compliance Costs

Respondents must pay all costs of complying with the terms and conditions of these Guidelines, whether applying to the Evaluation Process or to the performance of any Contract unless otherwise agreed.

### 1.12.4 GST Inclusive

Respondents must indicate the proportion of any price, contribution or fee that constitutes GST.

