

Appendix B: OTC Platform Selection-Terms

Defined terms are shown using capitals. You can find definitions at the end of this Section.

Preparing and submitting a response

1.1 Preparing a response

a. Respondent obligations

The Respondent must:

- i. read the complete Platform Selection document and any additional information provided and referred to by the Industry Selection Panel (Panel)
- ii. respond using the Platform Selection Response Form (Appendix A) provided and include all information the Panel requests
- iii. consider the risks and contingencies relating to the delivery of the Requirements and outline how it will manage those risks and contingencies
- iv. include any assumptions, dependencies and/or qualifications in the Response, including anything that may limit its obligations or increase its quoted pricing or cost estimates
- v. quote prices in NZ\$, exclusive of GST
- vi. obtain independent advice before submitting a Response (if necessary)
- vii. make sure the Response is correct and the Response pricing is sustainable, e.g. covers the Whole- of- Life of the Contract, not just the initial term.

b. Process acceptance

By submitting a Response, the Respondent accepts the Platform Selection Terms.

c. No obligation, no penalty

Respondents are not expected or required to submit a Response in order to remain on any prequalified or registered supplier list.

1.2 Offer validity period

The Response must remain open for the Response validity period stated in section 1 of the Platform Selection document.

1.3 Respondent questions

- a. The Respondent must make sure they understand the Platform Selection document.
- b. If the Respondent has any questions or needs clarification, they:
 - i. must submit questions before the Deadline for Questions (Section 1 of the Platform

Selection document)

- ii. must clearly indicate any commercially sensitive information in their questions
- iii. may withdraw their questions at any time.

c. When the Panel receives questions before the Deadline for Questions:

- i. The Panel will respond on or before the Deadline for Answers.
- ii. The Panel may provide details of both the questions and the answers to other Respondents. In these circumstances the Panel will summarise the questions and will not disclose the Respondent's identity.
- iii. Unless stated otherwise in the Platform Selection document, the Panel will post both the questions and answers on the Electricity Authority's website.
- iv. The Panel will not publish the Respondent's commercially sensitive information. However, if the Panel considers the information to be significant for all Respondents, the Panel may modify the question and publish both this and the answer. In that case the Panel will first give the Respondent the opportunity to withdraw the question or remove any of their own commercially sensitive information.

1.4 Submitting a Response

- a. The Respondent must ensure the Panel receives the Response to the correct email address on or before the Deadline.
- b. After the Deadline, the Panel will acknowledge receipt of the Response.
- c. The Respondent must ensure that all information they provide to the Panel:
 - i. is true, accurate and complete
 - ii. is not misleading in any material respect
 - iii. does not contain material that infringes a third party's intellectual property rights.
- d. The Panel may rely on the Response and all information provided by the Respondent during the Platform Selection process (e.g. correspondence and negotiations).

Assessing Responses

1.5 Evaluation panel

The Panel will evaluate the Response. The Panel may have different evaluation panel members for evaluating differing aspects of the Response. The Panel may include independent advisors as evaluation panel members to evaluate some or all aspects of the Response.

1.6 Third party information

- a. The Panel may request information from a third party where the Respondent considers the information may be relevant to the Platform Selection process, excluding commercially sensitive information about pricing or other commercial terms.

- b. If this occurs, the Respondent:
 - i. authorises the Panel to collect that information from the relevant third party (e.g. a referee or client), and authorises the third party to release it to the Respondent
 - ii. agrees the Panel may use that information in its evaluation of the Response
 - iii. must ensure that all referees listed in the Response agree to provide a reference.

1.7 Clarification of Response

- a. The Panel may ask the Respondent for more information or clarification on the Response at any time during the Platform Selection process.
- b. The Panel need not ask all Respondents for the same clarification.
- c. The Respondent agrees to provide the information or clarification as soon as possible, in the format requested by the Panel.
- d. If the Respondent does not provide adequate information or clarification within a reasonable time (as determined by the Panel), the Panel may remove the Response from its selection process.

1.8 Evaluation and shortlisting of Response

- a. The Panel will evaluate the Response according to the Evaluation Approach (Section 3 of the Platform Selection document).
- b. The Panel may adjust its evaluation after considering additional information or clarification, as described in Sections 1.6 and 1.7 above.

1.9 Negotiations

- a. The Panel may invite one or more Respondents to enter into negotiations with a:
 - i. view to confirming the selection of the Respondent/s as the preferred provider of the Platform (Platform Provider), subject to meeting further requirements including
 - ii. Agreement between the Panel and the Respondent/s on the form of contract (Platform Contract) between the Platform Provider and trading participants
- b. During negotiations, the Panel may:
 - i. discontinue negotiations with one Respondent and then initiate negotiations with another Respondent
 - ii. negotiate concurrently with more than one Respondent.
- c. If negotiating concurrently with more than one Respondent, the Panel must:
 - i. treat each Respondent fairly
 - ii. prepare a separate plan for each negotiation
 - iii. hold a separate negotiation meeting with each Respondent
 - iv. advise each relevant Respondent that concurrent negotiations will be carried out.

- d. Unless the Panel agrees otherwise, the Respondent agrees that the form of the Platform Contract that results from the negotiations will be essentially in the form used with trading participants unless reasonably determined by the Platform Provider and the Panel.

1.10 Respondents debrief

- a. At the end of the Platform Selection process, the Panel will offer to debrief the Respondent by email.
- b. The Respondent has 10 Business Days from the date of the Panel's offer to accept a debrief.
- c. The Panel will provide the debrief within 30 Business Days from either the date of the Respondent's acceptance of a debrief, or the date the Contract is signed, whichever is later.
- d. The debrief will:
 - i. explain why the Response was successful or not successful
 - ii. explain how the Response performed against the pre-conditions (if applicable) and the evaluation criteria
 - iii. indicate the relative strengths and weaknesses of the Response

1.11 Notification of outcome

During the 30 Business Days after the successful respondent has been selected, the Panel:

- a. will let all unsuccessful Respondents know the name of the Successful Respondents, if any
- b. may make public the name and address of the Successful Respondents (if any).

1.12 Issues and complaints

- a. The Respondent may, in good faith, raise with the Panel any issue or complaint about the Platform Selection or Platform Selection process at any time.
- b. When this occurs:
 - i. the Panel will consider and respond promptly and impartially to the Respondent's issue or complaint
 - ii. both the Respondent and the Panel must do their best to resolve the issue or complaint
 - iii. the Panel must not allow the issue or complaint to prejudice the Respondent's participation in the Platform Selection process, or limit or affect the Respondent's future engagement opportunities.

Standard selection process conditions

1.13 Panel's Point of Contact

- a. The Respondent must direct all Platform Selection enquiries to the Panel's Point of Contact in Section 1 of the Platform Selection document.
- b. The Respondent must not approach any other employee or other representative of the Panel,

directly or indirectly, for information on any aspect of the Platform Selection.

- c. Only the Point of Contact, or a person authorised by the Panel, may communicate with the Respondent on any aspect of the Platform Selection process. The Panel will not be bound by any statement made by any other person.
- d. The Panel may change its Point of Contact at any time. The Panel will notify the Respondent of any change by email.
- e. If the Respondent has an existing contract with the Panel, the Respondent must not use its business-as- usual communications to contact the Panel regarding the Platform Selection process.

1.14 Conflict of Interest

- a. The Respondent must complete the Conflict of Interest declaration in the Platform Selection Response Form (Appendix A). If a joint Response is being submitted, each party must complete the Conflict of Interest declaration separately.
- b. If a Conflict of Interest arises during the Platform Selection process, the Respondent must inform the Panel immediately.
- c. The Panel may exclude a Respondent from the Platform Selection process if a material Conflict of Interest arises.

1.15 Ethics

- a. The Respondent must not attempt to influence, reward or benefit any representative of the Panel, nor offer any form of personal inducement, in relation to the Platform Selection document or the Platform Selection process.
- b. The Panel may exclude the Respondent from the Platform Selection process for a breach of paragraphs 1.13b, 1.13e, 1.15a or 1.15b.
- c. To maintain a fair and ethical Platform Selection process, the Panel may require additional declarations or other evidence from the Respondent, or any other person, at any time.

1.16 Anti-collusion and bid rigging

- a. By submitting the Response, the Respondent warrants that:
 - i. the Response has not been prepared in collusion with a Competitor.
 - ii. it will not engage in deceptive or improper conduct during the Platform Selection process.
- b. The Panel may exclude the Respondent from the Platform Selection process if a breach of these warranties occurs.
- c. The Panel reserves the right to report suspected collusion or anti-competitive behaviour to the appropriate authority, and to give that authority all relevant information, including the Response.

1.17 Confidential Information

- a. Without limiting any other confidentiality agreement between them, the Panel and the Respondent will both take reasonable steps to protect the other party's Confidential Information.
- b. Except as permitted by the other provisions of this Section 1.17, neither party will disclose the other party's Confidential Information to a third party without that other party's prior written consent.
- c. Each party may each disclose the other party's Confidential Information to anyone who is directly involved in the Platform Selection process on that party's behalf, but only for the purpose of participating in the Platform Selection. This could include (but is not limited to) officers, employees, consultants, contractors, professional advisors, evaluation panel members, partners, principals or directors. Where this occurs, the disclosing party must take reasonable steps to ensure the third party does not disclose the information to anyone else, and does not use the information for any purpose other than participating in the Platform Selection process.
- d. The Respondent acknowledges that the Panel's confidentiality obligations are subject to requirements imposed by the Official Information Act 1982 (OIA), the Privacy Act 2020, parliamentary and constitutional convention, and any other obligations imposed by law. Where the Panel receives an OIA request that relates to a Respondent's Confidential Information, the Panel will consult with the Respondent and may ask the Respondent to explain why the information is considered by the Respondent to be confidential or commercially sensitive.
- e. The Respondent may disclose the Panel's Confidential Information to the extent strictly necessary to comply with law or the rules of any stock exchange on which the securities of the Respondent or any related entity are currently listed. Unless prohibited by law, the Respondent must consult with the Panel before making such a disclosure.
- f. The Panel will not be in breach of its obligations if it discloses Confidential Information to the appropriate authority because of suspected collusive or anti-competitive tendering behaviour.

1.18 Costs of participating in the Platform Selection process

Except as otherwise stated in the Platform Selection document, the Respondent must meet their own costs associated with the preparation, presentation and negotiation of the Response.

1.19 Ownership of documents

- a. The Platform Selection document and its contents remain the property of the Panel. All Intellectual Property rights in the Platform Selection remain the property of the Panel or its licensors.
- b. The Panel may request the immediate return or destruction of any Platform Selection documents and any copies, in which case the Respondent must comply in a timely manner.
- c. All documents forming part of the Response will, once they are delivered to the Panel, become the property of the Panel. The Response will not be returned to the Respondent.
- d. Intellectual Property rights in the Response remain the property of the Respondent or its

licensors.

- e. The Respondent grants to the Panel a licence to retain, use, copy and disclose information contained in the Response for any purpose related to the Platform Selection process, including keeping appropriate records.

1.20 Limited rights and obligations

- a. Except as stated otherwise in this Section 1.20, nothing in the Platform Selection document, these Platform Selection Terms or the Platform Selection process creates a contract or any other legal relationship between the Panel and Respondent, unless and until they enter into a Contract.
- b. The following are binding on the Respondent:
 - i. The Respondent's signed declaration (contained in the Platform Selection Response Form).
 - ii. The Respondent's obligation under Section 1.2 to ensure the Response remains open for the Offer Validity Period.
 - iii. The Respondent's obligations under paragraphs 1.4c and 1.4d. Nothing in this Section 1.20 takes away from any rights or remedies the Panel may have in relation to the Respondent's statements, representations or warranties in the Response or in correspondence or negotiations with the Panel.
 - iv. The standard Platform Selection conditions in Sections 1.13 to 1.25.
- c. Sections 1.17 and 1.19 are binding on the Panel.
- d. Where applicable, the Panel and each Respondent are bound by any other obligation expressly identified in Section 1 of the Platform Selection document as being binding.
- e. All terms and other obligations that are binding on the Panel are subject to the Panel's additional rights in Section 1.22.

1.21 Exclusion from the Platform Selection process

- a. The Panel may exclude the Respondent from the Platform Selection process if the Respondent:
 - i. has not provided requested information in the correct format
 - ii. has breached the Platform Selection Terms and the Panel considers the impact of the breach is more than trivial (this applies whether or not the provision in question is itself legally binding on the Recipient)
 - iii. included a material error, omission or inaccuracy in the Response
 - iv. is in bankruptcy, receivership or liquidation
 - v. has made a false declaration
 - vi. has a conviction for a serious crime or offence
 - vii. has failed to pay taxes, duties or other levies

- viii. represents a threat to national security or to confidentiality of government information, and/or
- ix. is a person or organisation designated as a terrorist by New Zealand Police.

b. The Panel may exclude the Respondent from the Platform Selection process if:

- i. there was a serious performance issue in a previous, or current, contract delivered by the Respondent
- ii. the Panel becomes aware of any other matter that materially diminishes the Panel's trust in the Respondent.

1.22 Panel's additional rights

a. Changes to the Platform Selection

- i. The Panel may amend, suspend, cancel or re-issue the Platform Selection document, or any part of it, so long as it notifies the Respondent.
- ii. The Panel may change material aspects of the Platform Selection document, such as the timeline, Requirements or Evaluation Approach, provided it gives the Respondent time to respond to update its Response in relation to the changes.

b. Timeline

- i. The Panel may accept a late Response if it is the Panel's fault it is late, or if the Panel considers there is no material prejudice to other Respondents in accepting a late Response.
- ii. The Panel may answer a question submitted after the Deadline for Questions and notify all Respondents about the submission of the question and the answer.

c. The Response

- i. The Panel may accept or reject any Response, or part of a Response. This includes any non-compliant, non-conforming or alternative Response.

d. Platform Selection process

- i. Subject to paragraph 1.9c, the Panel may liaise or negotiate with any Respondent without informing, or doing the same, with any other Respondent.
- ii. The Panel may provide Respondents with information arising from questions about the Platform Selection document.
- iii. The Panel may withhold information arising from questions about the Platform Selection document. This may be the case if the information is unnecessary, is commercially sensitive, is inappropriate to supply at the time of the request or cannot be released for legal reasons.
- iv. The Panel may waive requirements or irregularities around the Platform Selection process if the Panel considers it appropriate or reasonable to do so.

e. Consortia and unbundling

The Panel may make its selection conditional on the Respondent agreeing to:

- i. the Panel selecting the Respondent to deliver the Requirements as a joint venture or consortium with another Respondent selected by the Panel, and/or
- ii. the Panel selecting individual elements of the Response that can be delivered separately, unless the Response specifically states that the Response, or the relevant elements, must be taken collectively.

1.23 New Zealand law

The laws of New Zealand govern the Platform Selection document. Each Respondent agrees New Zealand courts have non-exclusive jurisdiction to rule in any dispute concerning the Platform Selection document or the Platform Selection process. The Respondent agrees that it cannot bring any claim in relation to the Platform Selection document except in a New Zealand court.

1.24 Disclaimer

- a. Nothing contained or implied in the Platform Selection document, or Platform Selection process, or any other communication by the Panel to the Respondent is to be construed as legal, financial or other advice.
- b. The Panel will endeavour to provide accurate information in any communication, but the Respondent accepts this information is not independently verified and may not be up-to-date.
- c. The Panel will not be liable in contract, tort, equity, or in any other way for any direct or indirect damage, loss or cost incurred by the Respondent or any other person in respect of the Platform Selection process, whether as a result of the Panel exercising its rights under Section 1.22, the Panel's negligence or breach of these Platform Selection Terms, the Panel failing to select the Respondent as the Successful Respondent, or any other cause.
- d. To the extent that liability cannot be excluded, the maximum aggregate liability of the Panel, its agents and advisors (including the Electricity Authority) in connection with the Platform Selection process, to all Respondents combined, is NZ\$100, including for breach of confidentiality or infringement of the Respondent's intellectual property rights

1.25 Precedence

- a. Any conflict or inconsistency in the Platform Selection document shall be resolved by giving precedence in the following descending order:
 - i. Section 1 of the Platform Selection document
 - ii. these Platform Selection-Terms
 - iii. all other Sections of the Platform Selection document
 - iv. any additional information or document provided by the Panel to Respondents through the Panel's Point of Contact
- b. If there is any conflict or inconsistency between information or documents having the same level of precedence the more recent information or document will prevail.

Definition

In relation to the Platform Selection document the following words and expressions have the meanings described below.

Business Day	Any weekday in New Zealand, excluding Saturdays, Sundays, New Zealand (national) public holidays and all days from Boxing Day up to and including the day after New Year's Day.
Panel	The Industry Selection Panel, facilitated by the Authority, that has issued the Platform Selection document with the intent of purchasing the goods or services described in the Requirements.
Competitors	Any other business that is in competition with a Respondent either in relation to the goods or services sought under the Platform Selection document or in general.
Confidential Information	<p>Confidential Information of a party (Provider) means information acquired by the other party (Recipient) from the Provider in connection with the Platform Selection process, where that information:</p> <ul style="list-style-type: none">a. is by its nature confidentialb. is marked at the time of disclosure to the Recipient as 'confidential', 'in confidence', 'restricted', 'sensitive', 'secret' or 'top secret', and/orc. the Recipient knows, or ought to know, is confidential to the Provider or a third party who supplied it to the Provider. <p>However, this does not include information that is publicly available through no fault of the Recipient, or that the Recipient acquired entirely independently of the Provider.</p>
Conflict of Interest	<p>A Conflict of Interest arises if personal or business interests, relationships or obligations of the Respondent or any of its personnel do, could, or could be perceived to:</p> <ul style="list-style-type: none">a. conflict with the Respondent's obligations to the Panel under the Platform Selection document or in the provision of the goods or services, and/orb. call into question the independence, objectivity or impartiality of any person involved in the Platform Selection process on behalf of the Panel. <p>A Conflict of Interest may be:</p> <ul style="list-style-type: none">c. actual: where the conflict currently existsd. potential: where the conflict is about to happen or could happen, ore. perceived: where other people may reasonably think that a person is compromised.
Deadline for Answers	The deadline for the Panel to respond to questions submitted by a Respondent stated in Section 1.2 of the Platform Selection document.
Deadline for Responses	The deadline for delivering or submitting Responses to the Panel as stated in Section 1 of the Platform Selection document.
Deadline for Questions	The deadline for submitting questions to the Panel as stated in Section 1 of the Platform Selection document.

Evaluation Approach	The approach used by the Panel to evaluate Responses as described in Section 3 of the Platform Selection document.
Intellectual Property	All industrial and intellectual property rights whether conferred by statute, at common law or in equity, including (but not limited to) copyright, trademarks, designs and patents.
Offer Validity Period	The period of time when a Response is held open by the Respondent for acceptance by the Panel as stated in Section 1 of the Platform Selection document.
Point of Contact	The Panel and each Respondent are required to appoint a Point of Contact. This is the channel to be used for all communications during the Platform Selection process. The Panel's Point of Contact is identified in Section 1 of the Platform Selection document. The Respondent's Point of Contact is identified in its Response.
Platform Contract	Any contract agreed by the Panel and the Platform Provider for the delivery of the Requirements.
Platform Selection	The Platform Selection comprises the OTC Platform Selection documents (including the Requirements), Response document and any other schedule, appendix or document attached to the Platform Selection document, and any subsequent information provided by the Panel to Respondents.
Platform Provider	The successful Respondent selected by the Panel for the delivery of the Requirements.
Platform Selection Terms	Means the OTC Platform Selection Terms as set out in Section 5 of the Platform Selection document, together with any additions or amendments to those Platform Selection Terms specifically identified in Section 1 of the Platform Selection document.
Requirements	The Panel's requirements for the Platform and service provided as described in Section 2 of the Platform Selection document
Respondent	A person, company or organisation that submits a Response in response to the Platform Selection document. The term Respondent includes each member of any consortium.
Response	The response a Respondent submits in reply to the OTC Platform Selection document. It comprises the Platform Selection Response Form and all other information submitted by a Respondent.
Response Form	The form and declaration prescribed by the Panel and used by a Respondent to respond to the OTC Platform Selection document, duly completed and submitted by a Respondent as part of the Response.
Successful Respondent	Following the selection process and successful negotiations, any Respondent who is awarded a Contract to deliver all or part of the Requirements.