

Standing Offer Agreement

Contract No [Insert]

[Insert Project Name]

Water NSW ABN 21 147 934 787
Principal

[Insert name and ABN]
Contractor

Version: 1.0

Version Date: May 2024

Standing Offer Agreement overview

This Standing Offer Agreement enables WaterNSW to periodically procure project activities such as services, goods, maintenance services, construction works or professional services from the Contractor from time to time.

The standing offer agreement structure facilitates the efficient procurement of project activities by setting out a process through which WaterNSW may request a Quotation for project activities from the Contractor, negotiate the final form of the Contractor's Quotation and choose whether to procure those project activities from the Contractor. If WaterNSW chooses to procure the project activities from the Contractor, a separate Contract will be formed with pre-agreed commercial terms (the General Conditions) and pricing structures (the Schedule of Prices).

Where the Schedule of Prices included in the standing offer agreement includes pricing for the supply only of Goods and/or Services, the standing offer agreement also allows WaterNSW to order such Goods and/or Services by issuing a Purchase Order nominating the Goods and/or Services and quantity thereof that are required. In these circumstances a Contract is formed for the supply of these Goods and/or Services without the need for any further action by either party.

Below is a summary of the structure of the Agreement:

- **Standing Offer Agreement:** sets out the framework for entering into Contracts, including:
 - the process through which the quotes will be requested, quotes will be negotiated and Contracts may be formed; and
 - requirements that apply in respect of the Standing Offer Agreement (e.g. provision of a parent company guarantee by the Contractor).
- **Annexure A (Key Details for Standing Offer Agreement):** sets out the key details for the Standing Offer Agreement, including party notice details.
- **Annexure B (Schedule of Prices and Indexation):** sets out the rates in accordance with which the Contractor will calculate its proposed Contract Price under the Quotation/Purchase Order procedure in the Standing Offer Agreement and the indexation (if any) that is to apply to the rates in the Schedule of Prices.
- **Annexure C (Request for Quotation):** sets out the form of Request for Quotation that will be used for seeking and providing Quotations. The Request for Quotation will set out a range of project-specific information, including price, time obligations and the scope of works.
- **Annexure D (KPIs):** sets out any KPIs which apply to the Standing Offer Agreement in addition to the standard KPIs included in Schedule 8 of the Appendix.
- **Annexure E (General Conditions including Appendix):** sets out the legal terms which will be incorporated into Contracts formed in accordance with the Standing Offer Agreement. These conditions will be the General Conditions for the Supply of Goods and/or Services Contract, the Maintenance Services Contract, the Construction Works Contract or the Professional Services Contract (as applicable), and will include a general Statement of Work. The Appendix sets out the form of ancillary deeds required under the separate Contracts.

This note will not be used in the interpretation of the Standing Offer Agreement.

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Standing Offer Agreement made at Sydney on the Commencement Date

Parties

Principal: Name: WaterNSW ABN 21 147 934 787 Address: Level 14, 169 Macquarie Street, Parramatta NSW 2150 Contractor: Name: [Insert name of Contractor] ABN [insert] Address: [insert address]

Background

The Principal and the Contractor have agreed to put in place arrangements by which the Principal can procure works, goods, services or other activities from the Contractor on a standing offer basis on the terms and conditions of this Agreement.

Agreement

1. Definitions and interpretation 1.1 Definitions

In this Agreement capitalised terms have the same meaning as in the General Conditions (unless they are assigned a different meaning below) and the following terms have the meaning assigned to them below:

Agreement means this Standing Offer Agreement. Commencement Date means the date on which this Agreement has been signed by the last party to sign. Contractor's Activities means all activities that the Contractor performs, or is required to perform, to exercise its rights or comply with its obligations under any Contract. Contractor's Representative means the person so nominated in the Key Details for Standing Offer Agreement.

Expiry Date means the expiry date set out in the Key Details for Standing Offer Agreement.

General Conditions means the terms and conditions set out in Annexure E.

Guarantor has the meaning given in clause 7.2(a)(ii).

Key Details for Standing Offer Agreement means the particulars to this Agreement in Annexure A.

Key Performance Indicators or KPIs means the key performance indicators:

- (a) in Schedule 8 to the Appendix; and (b) if any, set out in Annexure D.

Legal Opinion means a legal opinion:

- (c) from: (i) lawyers to the Contractor, authorised to practice in the place of incorporation of the Contractor, stating that this Agreement is binding and enforceable against the Contractor; or (ii) lawyers to the Guarantor, authorised to practice in the place of incorporation of the Guarantor, stating that the parent company guarantee is binding and enforceable against the Guarantor, (as applicable);

(d) which states that it may be relied upon by the Principal; and

(e) in a form reasonably satisfactory to the Principal.

Option Period 1 means the period stated in the Key Details for Standing Offer Agreement. Option Period 2 means the period stated in the Key Details for Standing Offer Agreement.

Option Period 3 means the period stated in the Key Details for Standing Offer Agreement.

Personnel means:

- (a) in respect of the Contractor, any directors, officers, employees, consultants, agents and Subcontractors of the Contractor; and (b) in respect of the Principal, any directors, officers, employees, consultants, agents and contractors of the Principal (other than the Contractor).

Principal's Representative means the person so nominated in the Key Details for Standing Offer Agreement or any other person nominated by the Principal from time to time under clause 2.7 to replace that person.

Purchase Order means a document titled "Purchase Order" issued by the Principal to the Contractor in accordance with clause 3.1(a)(ii) or 3.3(a)(i).

Quotation has the meaning given in clause 3.2(b).

Request for Quotation means a Request for Quotation in the form (or substantially in the form) set out in Annexure C.

Schedule of Prices means the schedule of rates and prices set out in Annexure B.

Statement of Work means the statement of work set out in:

- (a) Exhibit A to the General Conditions (if any); and (b) Attachment 1 to the Request for Quotation.

Subcontractor means any person engaged by the Contractor for the performance of any of the Contractor's Activities.

Term has the meaning given in clause 2.1.

1.2 Interpretation

In this Agreement:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) an obligation or liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes a party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
- (e) a reference to a document (including the Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes it delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of the Agreement, and a reference to the Agreement includes all schedules, exhibits, attachments and annexures to it;
- (i) if the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Agreement, falls on a day which is not a Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be taken to be on the next Business Day;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) "includes" in any form is not a word of limitation;
- (l) a reference to "\$" or "dollar" is to Australian currency;
- (m) to the extent that:
 - (i) any amounts are payable to the Contractor under this Agreement or any Contract by reference to hourly or daily rates; and
 - (ii) the Contractor's Personnel is engaged in the relevant Contractor's Activities for an increment of time less than a full hour or day (or for one or more full hours or days plus an increment of time less than a full hour or day) (as applicable),
 the Contractor will be entitled to payment in respect of such time on a pro rata basis; and
- (n) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation,

deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and

- (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body.

1.3 No bias against drafting party

No term or provision of this Agreement will be construed against a party on the basis that the Agreement or the term in question was put forward or drafted by or on behalf of that party.

1.4 Novation

- (a) The Principal may at any time, at its sole discretion, novate this Agreement or any Contract to:
 - (i) the State of New South Wales or any Authority without the consent of the Contractor; or
 - (ii) an entity not referred to in clause 1.4(a)(i) with the prior consent of the Contractor (which shall not be unreasonably withheld or delayed by the Contractor).
- (b) If the Principal elects to novate this Agreement or any Contract in accordance with paragraph (a), the Principal will provide the Contractor with a duly completed Deed of Novation and the Contractor must execute and return to the Principal such Deed of Novation within 5 Business Days of receipt of the relevant Deed of Novation.
- (c) If the Contractor fails to properly execute a relevant Deed of Novation within the time period specified in the previous paragraph, then for the purpose of executing the relevant Deed of Novation, the Contractor irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars and execute, sign, send and deliver in the name of the Contractor the relevant Deed of Novation and all notices, deeds and documents for that purpose.

1.5 Consideration

Each party acknowledges incurring obligations and giving rights under this Agreement for valuable consideration received from the other party.

2. Operation

2.1 Term

This Agreement commences on the Commencement Date and expires on the Expiry Date, unless it is extended in accordance with clause 2.2 or terminated earlier in accordance with this Agreement (**Term**).

2.2 Extension

- (a) The Principal may in its sole discretion:
 - (i) extend the Term once by a period up to Option Period 1;
 - (ii) if the Principal exercised its right to extend the Term by a period up to Option Period 1 in accordance with clause 2.2(a)(i), extend the Term once by a period up to Option Period 2; and
 - (iii) if the Principal exercised its right to extend the Term by a period up to Option Period 2 in accordance with clause 2.2(a)(ii), extend the Term once by a period up to Option Period 3.

by giving written notice to the Contractor at least 30 days before the end of the then current Term (or such shorter period as agreed between the parties).

- (b) Any extension exercised in accordance with this clause 2.2 will be on the terms and conditions in effect on, and takes effect from, the end of the then current Term.
- (c) Notwithstanding clause 2.1, if after the expiry of the Term the parties purport to enter into a Contract in accordance with the procedures set out in clause 3:
 - (i) a Contract will be formed;
 - (ii) that Contract will be valid and binding on the parties; and
 - (iii) each party must comply with the terms of that Contract.

2.3 No guarantee of work

- (a) The Principal is not, by executing this Agreement, bound to engage the Contractor to carry out any works or supply any goods, services or other activities (including if the Contractor is appointed as a member of a panel arrangement).
- (b) To the extent that the Contractor is a member of a panel arrangement, the Principal may in its absolute discretion add any Other Contractor to the panel arrangement of which the Contractor is a member.

2.4 No guarantee of exclusivity

The Principal is not, by executing this Agreement, restricted in any way from engaging any person to carry out any works or supply any goods, services, or other activities:

- (a) of any type, including work or supply similar to the works, goods, services or other activities which may be required of the Contractor; or
- (b) at any location where, or in respect of any project that, the Contractor may be required to perform works or to supply goods, services or other activities.

2.5 No representation

Clauses 2.3 and 2.4 apply even though the Principal may have provided the Contractor with a forecast or estimate of the works, goods, services or other activities that the Principal may require at any time and the Contractor acknowledges that any forecasts or estimates do not constitute a representation of the works, goods, services or other activities the Principal may require in any period.

2.6 Discretion

- (a) Subject to any express provision in the Agreement to the contrary:
 - (i) a provision of the Agreement which says that the Principal or the Principal's Representative "may" do or not do something is not to be construed as imposing an obligation on the Principal or the Principal's Representative to do or not do that thing; and
 - (ii) there will be no procedural or substantive limitation upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by the Agreement.
- (b) Without limiting the previous paragraph, neither the Principal nor the Principal's Representative will be under any obligation to exercise any such

discretion, power or entitlement for the benefit of the Contractor or as required by any other legal doctrine which in any way limits the express words used in the provision of the Agreement conferring the discretion, power or entitlement.

2.7 Principal's Representative

The Principal may by written notice:

- (a) replace the Principal's Representative, in which event the Principal will appoint another person as the Principal's Representative and notify the Contractor of that appointment; and
- (b) appoint persons to exercise any of the Principal's Representative's functions under this Agreement, and revoke any such appointment.

2.8 Key people

The Contractor must in respect of each Contract:

- (a) employ those people specified in the Key Details for Standing Offer Agreement in the jobs specified in the Key Details for Standing Offer Agreement;
- (b) subject to paragraph (c), not replace the people referred to in paragraph (a) without the Principal's Representative's prior written approval, with such approval not to be unreasonably withheld where the proposed replacement personnel are of at least equivalent experience, ability and expertise as those referred to in paragraph (a); and
- (c) if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Contractor, replace them with persons approved by the Principal's Representative of at least equivalent experience, ability and expertise.

2.9 Removal of persons

The Principal's Representative may by notice in writing instruct the Contractor to remove any person from the Contractor's Activities who in the reasonable opinion of the Principal's Representative is guilty of misconduct, is incompetent or negligent, is not suitably qualified or who in the opinion of the Principal may bring the Principal into disrepute.

The Contractor must ensure that any such person is not again employed in the Contractor's Activities.

2.10 Policies and Procedures

- (a) The Contractor must ensure that the Contractor and its Personnel are aware of, and comply with:
 - (i) the Code of Conduct;
 - (ii) the Policies and Procedures; and
 - (iii) Schedule 11 of the Appendix.
- (b) For the purposes of paragraph (a), any reference to "Water NSW employees" in the Policies and Procedures is to be read as a reference to the Contractor's employees.

3. Requests for Quotation and Purchase Orders

3.1 Request for Quotation or Purchase Order for Goods

- (a) The Principal may:
 - (i) if it wishes the Contractor to submit a Quotation for works, goods, services or other activities, issue to the Contractor a Request for Quotation; or
 - (ii) if the Principal requires only the supply of Goods and/or Services for which a price has been included in the Schedule of Prices, issue a Purchase Order to the Contractor setting out, as applicable:

- A. details of the Goods and/or Services;
 - B. the quantity of Goods and Date(s) for Delivery; and/or
 - C. the period, dates or times for the performance of the Services (which period, dates or times will be deemed to be the Term of Services),
- which the Principal requires, in which case paragraph (b) and clauses 3.2, 3.3 and 3.4 will not apply.
- (b) Each Request for Quotation issued by the Principal under clause 3.1(a)(i) must specify the details required by:
 - (i) Part 1 of the Request for Quotation that sets out:
 - A. identification details for the Request for Quotation; and
 - B. the time within which the Contractor must provide a response to the Request for Quotation under clause 3.2(a);
 - (ii) Part 2 of the Request for Quotation that sets out the relevant "Key Details" for Schedule 1 of the General Conditions (other than the Contract Price); and
 - (iii) Attachment 1 of the Request for Quotation that sets out the Statement of Work.
 - (c) The Principal is not required to sign any Request for Quotation or Purchase Order given under or in connection with this Agreement.

3.2 Quotation

- (a) Within the time specified in the Request for Quotation, or if no time is specified, within 5 Business Days, the Contractor must:
 - (i) prepare and submit a Quotation in accordance with clause 3.2(b); or
 - (ii) notify the Principal's Representative that the Contractor will not submit a Quotation.
- (b) Where the Contractor wishes to submit a quotation in accordance with clause 3.2(a)(i), the Contractor must return to the Principal's Representative a completed copy of the Request for Quotation by:
 - (i) setting out the proposed Contract Price in Part 2 of the Request for Quotation, calculated in accordance with the Schedule of Prices;
 - (ii) duly completing all remaining relevant particulars in the Request for Quotation; and
 - (iii) the Contractor's Representative executing Part 3 of the Request for Quotation, (Quotation).

3.3 Review of Quotations

- (a) After receiving a Quotation from the Contractor under clause 3.2 or 3.3(c)(i) (as applicable), the Principal may by notice in writing, within 20 Business Days (or such longer period as agreed between the parties):
 - (i) accept the Quotation by issuing a Purchase Order enclosing or attaching the relevant Quotation;
 - (ii) request the Contractor to submit an amended Quotation by providing a notice setting out the aspects of the Quotation which require amendment; or
 - (iii) reject the Quotation.

- (b) If the Principal does not issue an notice under clause 3.3(a) to the Contractor within the time required by clause 3.3(a), the Principal will be deemed to have rejected the Quotation.
- (c) If the Principal requests the Contractor to submit an amended Quotation under clause 3.3(a)(ii), the Contractor must, within 2 Business Days (or such longer period as agreed between the parties):
 - (i) submit an amended Quotation that addresses the issues identified in the Principal's notice under clause 3.3(a)(ii); or
 - (ii) notify the Principal's Representative that the Contractor will not submit an amended Quotation, in which case the Contractor's original Quotation is deemed to be rejected, (unless the Principal's Representative notifies the Contractor that it is not rejected).
- (d) Where the Contractor submits an amended Quotation under clause 3.3(c)(i), this clause 3.3 will recapply.
- (e) If the Principal does not issue the Contractor a Purchase Order under clause 3.3(a)(i), the Principal may engage an Other Contractor to carry out works or supply goods, services or activities the subject of a Request for Quotation under clause 3.1(a)(i).

3.4 Refusal to provide or amend a Quotation

If the Contractor notifies the Principal's Representative:

- (a) under clause 3.2(a)(ii), that the Contractor will not submit a Quotation; or
- (b) under clause 3.3(c)(ii), that the Contractor will not submit an amended Quotation, then:
 - (c) the Contractor must provide the Principal with reasons why the Contractor will not submit the Quotation or the amended Quotation (as the case may be);
 - (d) the Contractor must provide the Principal with any further information requested by the Principal's Representative regarding the reasons why the Contractor will not submit the Quotation or the amended Quotation (as the case may be);
 - (e) the Principal may exclude the Contractor from any other arrangements that the Principal makes to engage a person to carry out works or supply goods, services or activities that are similar to those proposed under the relevant Request for Quotation; and
 - (f) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with the Contractor's exclusion from the arrangements contemplated by clause 3.4(e).

3.5 Costs

The Contractor is responsible for all costs it incurs arising out of, or in connection with, the procedures contemplated by this clause 3 and the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in respect of such costs.

4. Formation of individual Contracts

- (a) If the Principal:
 - (i) accepts a Quotation by issuing a Purchase Order in accordance with clause 3.3(a)(i); or

- (ii) issues a Purchase Order in accordance with clause 3.1(a)(ii),

the Principal and the Contractor will be deemed to have entered into a separate binding Contract on the date determined in accordance with clause 4(b).

- (b) The date on which a Contract under clause 4(a) will be deemed to be formed is the date the Contractor is deemed by clause 10.1 to have received notice of the relevant Purchase Order.
- (c) The Principal and the Contractor must carry out their respective obligations under each Contract formed in accordance with clause 4(a) from the date on which the Contract is deemed to be formed under clause 4(b).
- (d) The Contractor must not proceed with any works, goods, services or other activities the subject of a Request for Quotation unless and until the Principal has issued the Contractor with a Purchase Order and the Contract is deemed to be formed under clause 4(b).

5. Security

5.1 Form of security

This clause 5.1 applies where so stated in the Key Details for Standing Offer Agreement.

The Contractor must provide security in the form of 2 Unconditional Undertakings each for the amount stated in the Key Details for Standing Offer Agreement.

Security must be provided within 10 Business Days of the Commencement Date.

5.2 Release of security

- (a) Subject to its rights to have recourse to the security, the Principal must:
 - (i) within 10 Business Days of expiry of the Term, release one of the Unconditional Undertakings provided under clause 5.1 (or any remaining proceeds if the Unconditional Undertaking has been converted into cash); and
 - (ii) release the balance of the security then held when:
 - A. the last Defects Liability Period under every Contract has expired; and
 - B. the Contractor has complied with all of its obligations under the Agreement and each Contract.
- (b) If the Principal terminates the Agreement pursuant to clause 9.1(a) then to the extent that the Principal has not had recourse to it, the Principal must release all security then held by it.

5.3 Replacement security

- (a) If the Principal holds security provided under clause 5.1 which contains an expiry date which is earlier than the date upon which the Principal is required to return the security to the Contractor, the Contractor must, on or before the date which is 20 Business Days prior to the expiry date for that security, provide the Principal with replacement security in the form of an Unconditional Undertaking in exchange for the security which is being replaced.
- (b) If paragraph 5.3(a) applies in respect of any security and the Principal has not received from the Contractor replacement security in the form of an Unconditional Undertaking at least 20 Business Days prior to the expiry date for that undertaking then, irrespective of anything contained in, and without limiting the Principal's

rights under, the Agreement for the security, the Principal may make a demand under the security for the entire amount payable under that security and thereafter retain the proceeds.

- (c) Subject to the Principal's rights under the Agreement to use these proceeds, the proceeds from any demand made by the Principal pursuant to paragraph 5.3(b) will be paid to the Contractor at the same time as the Principal would have been required to return the security from which the proceeds were obtained.

5.4 Additional Security

- (a) If, at any time during the Term, the value of the Unconditional Undertakings provided under clause 5.1 represents less than 10% of the combined value of the Contract Prices (as adjusted) for each Contract formed under this Agreement (**Combined Contract Value**), the Principal may direct the Contractor to provide additional security so that the amount of the security held by it is equal to 10% of the Combined Contract Value.
- (b) The Contractor must provide additional security in the form of an Unconditional Undertaking within 10 Business Days of a direction under clause 5.4(a).

5.5 Interest

The Principal:

- (a) is not obliged to pay the Contractor interest on any Unconditional Undertaking provided under clause 5.1, 5.3 or 5.4 including the proceeds of any bank guarantee if it is converted into cash; and
- (b) does not hold the proceeds or money referred to in paragraph (a) on trust for the Contractor.

6. Indexation and Review of Rates

If specified in the Key Details for Standing Offer Agreement, the rates and prices in the Schedule of Prices will be adjusted by the method of indexation or adjustment (if any) set out in Part 2 of the Schedule of Prices.

7. Other requirements

7.1 KPIs

- (a) The Contractor in performing the Contractor's Activities must comply with the KPIs as amended in accordance with this Agreement.
- (b) The Contractor must report to the Principal's Representative at the frequency specified in the Key Details for Standing Offer Agreement in the form of a report (**KPI Performance Report**) in a form satisfactory to the Principal which:
 - (i) provides an analysis of the performance of the Contractor in meeting the KPIs in respect of each Contract;
 - (ii) identifies any non-compliances;
 - (iii) proposes an action plan to remedy non-compliances and implement continuous improvements; and
 - (iv) reports on whether the Contractor has implemented any previous action plan and, if not, the extent of non-compliance.
- (c) The Contractor acknowledges and agrees that:
 - (i) the Principal will review each KPI Performance Report to assess the level of compliance by the Contractor with the KPIs;
 - (ii) it must provide any action plan required by the Principal and must implement and

comply with any action plan required by the Principal;

- (iii) the Principal, acting reasonably, may amend the KPIs provided that the Contractor has been consulted by the Principal in respect of the amended KPIs, including being advised of the reasons for the amendment; and
 - (iv) where the Principal amends the KPIs pursuant to clause 7.1(c)(iii), the amended KPIs will only apply to Contracts formed after the Principal's written notification to the Contractor of the amendments to the KPIs.
- (d) The Principal and the Contractor must meet at the times specified in the Key Details for Standing Offer Agreement, to monitor and review the Contractor's performance under each Contract and, if required by the Principal, the Contractor's compliance with any action plan.
- (e) The Contractor acknowledges that the Principal may share performance data gathered from the Contractor and other contractors with whom it has entered into a standing offer agreement in relation to similar works (**Panel**) with all Panel members to encourage improved performance.

7.2 Parent Company Guarantee

- (a) If the Contractor is required by the Key Details for Standing Offer Agreement to provide a parent company guarantee the Contractor must, on the Commencement Date, provide the Principal's Representative with a parent company guarantee:
- (i) in the form set out in Schedule 2 of the Appendix with all particulars completed; and
 - (ii) duly executed by the person named in the Key Details for Standing Offer Agreement (**Guarantor**).
- (b) If the Contractor has provided a parent company guarantee in accordance with clause 7.2(a), the Contractor will not be required to provide a parent company guarantee under the General Conditions of any subsequent Contract.

7.3 Financial Capability

- (a) The Contractor must, on each anniversary of the Commencement Date, provide to the Principal the following:
- (i) a copy of its fully audited annual reports and accounts for the past year; and
 - (ii) details of any circumstances which may affect the ability of the Contractor to meet its obligations and liabilities under any then current or potential future Contract.
- (b) If the Contractor fails to comply with paragraph (a), or the Principal is not satisfied that (acting reasonably) the Contractor has the requisite financial capacity to properly carry out the obligations of the Contractor under this Agreement or any current or potential future Contract, then the Principal may by written notice to the Contractor, request the Contractor to make available during normal business hours, to the Principal:
- (i) access to its data, records, accounts or other financial material for inspection and copying; and
 - (ii) any personnel responsible for its financial administration,

as is reasonably necessary to enable the Principal to verify the financial standing, and the ability to comply with its obligations under any Contract.

- (c) The Contractor must comply within 3 Business Days with a request made by the Principal under clause (a), or within such longer time period as agreed between the parties.
- (d) Subject to any obligation on the part of the Principal under any Law, the Principal agrees to treat as confidential all information of and relating to the Contractor that is provided to the Principal under this clause 7.3.
- (e) Without limiting clause 9.1, if the Principal is not satisfied, acting reasonably, that the Contractor does not have the requisite financial capacity to meet its obligations under this Agreement or any Contract that has been awarded to it, then the Principal may terminate this Agreement.

7.4 Insurance

At any time during the Term, the Principal's Representative may request, and the Contractor must provide, copies of certificates of currency, and any other evidence reasonably required by the Principal's Representative, to confirm that the Contractor has in place the insurances required under the General Conditions.

7.5 Confidentiality

- (a) The Contractor must, and must ensure its Personnel, keep confidential and not make, or cause to be made, any public announcement, public comment, press release or other disclosure directly or indirectly in connection with any Request for Quotation, Purchase Order, Contractor's Activities or this Agreement to any person other than:
- (i) as necessary to perform the Contractor's Activities;
 - (ii) with respect to any matter already within the public domain; or
 - (iii) to comply with any applicable Law or any requirement of any regulatory body (including any relevant stock exchange).
- (b) The Contractor must not disclose any information concerning the Agreement for distribution through any communications media without the Principal's prior written approval. The Contractor must refer to the Principal any enquiries from any media concerning the Agreement.

7.6 Intellectual Property

- (a) Title and ownership of Intellectual Property Rights in all material developed or created or required to be developed or created by either party under this Agreement (other than any Intellectual Property Rights of the Contractor pre-existing as at the Commencement Date) (**Agreement Material**) will vest immediately upon its creation in the Principal.
- (b) The Principal grants to the Contractor a licence to use the Agreement Material for the purposes of the Contractor's performance of this Agreement or any Contract.

8. Disputes

- (a) If a dispute or difference arises between the Contractor and the Principal or between the Contractor and the Principal's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with this Agreement, or either party's conduct before the Agreement,

the dispute or difference must be determined in accordance with the procedure in this clause 8.

- (b) Where such a dispute or difference arises, either party may give a notice in writing (**Notice of Dispute**) to the Principal's Representative and the other party specifying:
- (i) the dispute or difference;
 - (ii) particulars of the party's reasons for being dissatisfied; and
 - (iii) the position which the party believes is correct.
- (c) The Principal's Representative and the Contractor (or their nominees) must, within 10 Business Days of a notice being given under clause 8(b), meet and discuss the dispute or difference.
- (d) Whether or not discussions have taken place under clause 8(c), if the dispute or difference is not resolved within 20 Business Days after a notice is given under clause 8(b), the dispute or difference must be referred to senior executives of each party (as nominated by each party) who must:
- (i) meet and discuss the dispute or difference; and
 - (ii) if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference.
- (e) If the senior executives of each party have not resolved the dispute or difference or agreed on an alternative process for resolving the dispute or difference within 25 Business Days after a notice is given under clause 8(b), either party may commence court proceedings in respect of the dispute or difference.
- (f) Despite the existence of a dispute or difference between the parties, the parties must continue to comply with their obligations under this Agreement and each Contract.
- (g) Nothing in this clause 8 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

9. Termination or expiry

9.1 Termination or expiry of this Agreement

- (a) Without prejudice to any of the Principal's other rights, the Principal may at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate this Agreement effective 30 days after the Principal gives its written notice to the Contractor.
- (b) Subject to clauses 9.1(c) and 9.1(d), the Principal will not be liable upon any Claim arising out of or in connection with any termination of this Agreement under clause 9.1(a).
- (c) The Principal and the Contractor agree that if this Agreement is terminated, discharged (including through expiry of the Term) or becomes frustrated, the separate Contracts formed in accordance with clause 4 of this Agreement will not be affected and must be fulfilled in accordance with the terms of the relevant Contract, unless the parties otherwise agree in writing.
- (d) Termination of this Agreement will not prevent either party from relying on rights accrued under the Agreement prior to such termination.

9.2 Termination of a Contract

The Principal and the Contractor agree that the termination, discharge or frustration of any Contract will not affect the operation of this Agreement or the operation of any other Contract.

10. General provisions

10.1 Notices

- (a) All communications (including notices, consents, approvals, requests and demands) including:
- (i) any Request for Quotation or Purchase Order issued by the Principal pursuant to clause 3.1 or 3.3; and
 - (ii) any Quotation submitted by the Contractor pursuant to clause 3.2,
- under or in connection with this Agreement:
- (iii) must be in writing;
 - (iv) subject to clause 3.1(c), must be signed by the party making the communication or (on its behalf) by any director, secretary, attorney or authorised agent of, that party;
 - (v) must be delivered or posted by prepaid express post to the address, or sent by email to the email address, of the Principal's Representative or the Contractor's Representative (as applicable); and
 - (vi) are taken to be received by the addressee:
 - A. (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting;
 - B. (in the case of express post sent to an address in another country) on the fourth Business Day after the date of posting;
 - C. (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 10.1(a)(v); and
 - D. (in the case of email) at the local time (in the place of receipt of that email) that would be determined if section 13A of the Electronic Transactions Act 2000 (NSW) were to apply in respect of the email,

provided that if the communication would be taken to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

- (b) The Contractor must ensure that any documents it provides, including by electronic means, are in the file structure and format for such documents as may be specified by the Principal from time to time. As at the Commencement Date, the Principal requires such documents which are submitted by email to be submitted as an attachment to an email, where the attachment is in .pdf, or where appropriate Excel, Primavera (.xer or .xml) or Microsoft Project (.mpp) format.

10.2 Governing Law

This Agreement is governed by and must be construed according to the Law of the State of New South Wales.

10.3 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings that may

be brought at any time relating to this Agreement; and

- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 10.3(a).

10.4 Counterparts

- (a) This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the Agreement of each party who has executed and delivered that counterpart.
- (b) A party who has executed a counterpart of this Agreement may exchange that counterpart with another party by emailing the counterpart executed by it to that other party and, upon request by that other party, will thereafter promptly deliver by hand or post to that party the executed counterpart so exchanged by email, but delay or failure by that party to so deliver a counterpart of this Agreement executed by it will not affect the validity of this Agreement.

10.5 Entire agreement

This Agreement constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersedes:

- (a) any prior agreement (whether in writing or not) between the parties in relation to the subject matter of this Agreement; or
- (b) any correspondence or other documents relating to the subject matter of this Agreement that may have passed between the parties prior to the Commencement Date and that are not expressly included in this Agreement.

10.6 Amendments

This Agreement may only be amended by a deed executed by or on behalf of both the Principal and the Contractor.

10.7 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this Agreement, by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this Agreement.
- (b) A waiver or consent given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Agreement operates as a waiver of any other breach of that term or of a breach of any other term of this Agreement.

10.8 Assignment

- (a) The Principal may at any time, and without having to obtain the Contractor's approval, assign any right or interest of the Principal under this Agreement to any person, or create or allow to exist, a security interest over or in respect of the Agreement or any right or interest of the Principal under the Agreement.
- (b) The Contractor cannot assign, novate or otherwise transfer any of its rights or obligations

under this Agreement without the prior written consent of the Principal.

- (c) If the Principal, in its absolute discretion, approves a novation of this Agreement, the Contractor must provide the Principal with a duly completed and executed Deed of Novation and the Principal's costs and expenses in connection with negotiating, preparing and executing any Deed of Novation will be a debt due and payable from the Contractor to the Principal.

10.9 Consents

A consent required under the Agreement from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless the Agreement expressly provides otherwise.

10.10 Expense

Except as otherwise provided in the Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing the Agreement.

10.11 Severance

If at any time a provision of the Agreement is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of the Agreement; or
- (b) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of the Agreement.

10.12 Indemnities

- (a) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiry of the Agreement.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by the Agreement.
- (c) A party must pay on demand any amount it must pay under an indemnity in the Agreement.

10.13 United Nations Convention not applicable

The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement.

10.14 English language

All communications between the parties and all documentation provided in connection with this Agreement must be in the English language.

10.15 No partnership, joint venture or other fiduciary relationship

Nothing in this Agreement will be construed or interpreted as constituting the relationship between the Principal on one hand and the Contractor on the other hand as that of partners, joint venturers or any other fiduciary relationship.

10.16 Proportionate liability

- (a) To the extent permitted by Law, Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with the Agreement whether such rights, obligations or liabilities are

- sought to be enforced in contract, tort or otherwise.
- (b) Without limiting paragraph (a), the rights, obligations and liabilities of the Principal and the Contractor under the Agreement with respect to proportionate liability are as specified in the Agreement and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a Claim in contract, in tort or otherwise.
- (c) To the extent permitted by Law:
- (i) the Contractor must not seek to apply the provisions of Part 4 of the Civil Liability Act 2002 (NSW) in relation to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise); and
 - (ii) if any of the provisions of Part 4 of the Civil Liability Act 2002 (NSW) are applied to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any loss, damage, cost or expense that forms part of a Claim by the Principal against the Contractor which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the Civil Liability Act 2002 (NSW).

10.17 If the Contractor is a Trustee

If the Contractor enters into the Contract as trustee for a trust (**Contractor Trust**), without limiting any other provision of the Contract, the Contractor represents and warrants that:

- (a) the Contractor is the only trustee of the Contractor Trust;

- (b) the Contractor has unqualified power under the constitution of the Contractor Trust to perform its obligations under this Contract;
- (c) no action is currently taking place or pending to remove the Contractor as trustee of the Contractor Trust or to appoint additional trustees of the Contractor Trust;
- (d) the Contractor has entered into this Contract in its capacity as trustee of the Contractor Trust and for the benefit of the beneficiaries of the Contractor Trust;
- (e) the Contractor has the right to be fully indemnified out of the assets of the Contractor Trust in respect of the obligations incurred by it in relation to this Contract;
- (f) there is no subsisting breach of the constitution of the Contractor Trust; and
- (g) the Contractor Trust has not been terminated and there is no action pending to terminate the Contractor Trust.

10.18 Legal Opinion

If:

- (a) the Contractor is incorporated outside of Australia the Contractor must, on the Commencement Date, provide a Legal Opinion supporting, and in respect of, the execution of this Agreement; and
- (b) the Guarantor is incorporated outside of Australia the Contractor must, on the Commencement Date, provide a Legal Opinion supporting, and in respect of, the execution of the parent company guarantee required by clause 7.2(a).

Signed as an agreement



Signed for and on behalf of **WaterNSW ABN 21 147 934 787** by its authorised delegate in the presence of:

Signature of witness

Signature of authorised delegate

Full name of witness

Full name of authorised delegate

Executed by **[Insert name of Contractor] ABN [insert]** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

OR, where the Contractor is executing under a power of attorney:

Executed on behalf of **[Insert name of Contractor]** **ABN [insert]** by its attorney)
)
)
.....)
Name of attorney (print))
Under power of attorney)
Registration Number / Book Number)
(Powers of attorney created in Victoria do not have a number. Insert the date of the power of attorney instead.)

.....

in the presence of:

.....
Signature of witness
.....
Name of witness (print)

.....
Signature of attorney
By executing this document the attorney states that the attorney has received no notice of revocation of the power of attorney mentioned above.

.....20.....
Date

Annexure A - Key Details for Standing Offer Agreement



Clause 1 - Definitions and interpretation											
1. Contractor's Representative: (Clause 1.1)	Name: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i>										
2. Principal's Representative: (Clause 1.1)	Name: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i>										
3. Expiry Date (Clause 1.1)	<i>[Insert Expiry Date, which may be an exact date, or a number of months/years from the Commencement Date.]</i>										
4. Option Period 1 (Clause 1.1)	<i>[If applicable, insert option period, e.g. "2 years". If there is to be no Option Period 1, insert "N/A".]</i>										
5. Option Period 2 (Clause 1.1)	<i>[If applicable, insert option period, e.g. "2 years". If there is to be no Option Period 2, insert "N/A".]</i>										
6. Option Period 3 (Clause 1.1)	<i>[If applicable, insert option period, e.g. "2 years". If there is to be no Option Period 3, insert "N/A".]</i>										
Clause 2 - Operation											
7. Key people (Clause 2.8(a))	<table border="1"> <thead> <tr> <th>Person</th> <th>Position</th> </tr> </thead> <tbody> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> </tbody> </table>	Person	Position
Person	Position										
.....										
.....										
.....										
.....										
Clause 5 - Security											
8. Security (Clause 5)	<p>Clause 5.1 applies: <i>[yes / no]</i></p> <p><i>[Select yes if the Contractor is required to provide security at the Standing Offer Agreement level (i.e. not under every individual Contract)]</i></p> <p>Amount</p> <p>If clause 5.1 applies, security is required for \$<i>[insert amount which must be a dollar figure]</i></p>										
Clause 6 - Indexation and review of rates											
9. Indexation and review of rates (Clause 6)	<p><i>[Applicable / Not applicable]</i></p> <p>If applicable:</p> <ol style="list-style-type: none"> CPI indexation in accordance with clause 1 of Part 2 of Annexure B <i>[does / does not]</i> apply. <i>[select this option if the Contractor's prices will be CPI indexed annually AND if neither Alternative 1 (WPI) or Alternative 2 (PPI) apply.]</i> OR <i>[Alternative 1 (WPI) OR Alternative 2 (PPI)/ Alternative 1 (WPI) AND Alternative 2 (PPI)]</i> of clause 2 of Part 2 of Annexure B applies. <i>[select that this applies if WaterNSW agrees to an annual increase in the Contractor's rates by the wage price index or the producer price index. Alternative 1 relates to the supply of services or labour. Alternative 2 relates to the supply of Goods. Selecting Alternative 1 AND 2 is appropriate where the Schedule of Prices contains prices for both Goods and services or labour. If CPI indexation applies, neither Alternative 1 (WPI) or Alternative 2 (PPI) should apply, to avoid double indexation]</i> 										

	<p>3. the foreign currency adjustment in clause 3.6 of Part 2 of Annexure B [does / does not] apply. [select that this applies if WaterNSW agrees to take foreign currency risk]</p> <p>(If nothing is specified, not applicable.)</p>
<p>Clause 7 - Other requirements</p>	
<p>10. Frequency of KPI reporting and times at which Principal and Contractor to meet: (Clause 7.1)</p>	<p><i>[Insert how frequently in months/days the Contractor must produce a KPI Performance Report]</i></p> <p><i>[Insert how frequently in months/days the Principal and the Contractor must meet to review the Contractor's performance]</i></p> <p>(If nothing is specified, the Contractor must provide a KPI Performance Report at the end of each month and the Principal and the Contractor will meet every 3 months, unless otherwise agreed in writing by the Principal.)</p>
<p>11. Is a parent company guarantee required?: (Clause 7.2)</p>	<p><i>[Yes/No]</i></p> <p>If required, it must be provided by: <i>[Insert name of Guarantor].</i></p>

Annexure B - Schedule of Prices and Indexation



Part 1 - Schedule of Prices

[Insert Schedule of Prices applying to Contractor's standing offer to the Principal]

[Note to user: any schedule of prices containing a daily rate must specify how many hours are assumed in a day for that rate]

(If nothing is annexed, the Payment Schedule in Schedule 2 of the General Conditions applies.)

Part 2 - Indexation

This Part 2 is only applicable where specified in the Key Details for Standing Offer Agreement.

1. CPI Indexation

- (a) Any prices in the Schedule of Prices will be indexed for movements in the CPI on and from the date following each yearly anniversary of the Commencement Date (**CPI Adjustment Date**) in accordance with the following formula:

$$A \text{ (CPI Indexed)} = A \times \frac{CPI_{q-2}}{CPI_{Base}}$$

Where:

A is the monetary amount originally specified in this Agreement;

CPI_{q-2} is the last CPI published prior to the CPI Adjustment Date;

CPI_{Base} is the last CPI published prior to the Commencement Date; and

CPI means the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" as maintained and published quarterly by the Australia Bureau of Statistics (ABS), or as otherwise determined in accordance with paragraph (b).

- (b) If the CPI ceases to be published or its method of calculation substantially alters, then it is to be replaced by the nearest equivalent index as selected in good faith by the Principal's Representative and any necessary consequential amendments are to be made.

2. General Review of Prices

2.1 Alternative 1 - General Review of Prices for Supply of Services or Labour

- (a) This alternative applies to the supply of services or labour not subject to CPI indexation and where specified in the Key Details for Standing Offer Agreement that this alternative applies.
- (b) Once each year during the Term, either party may provide a notice to the other requesting that any prices in the Schedule of Prices relating to the supply of services or labour be reviewed in accordance with this clause.
- (c) If either party provides a notice under paragraph (b), the parties must meet within 20 Business Days to hold good faith discussions to attempt to agree a revised Schedule of Prices which reflects the Contractor's actual, direct, proven and reasonable increases or decreases in costs.
- (d) If the parties agree to a revised Schedule of Prices, the Schedule of Prices will be deemed to be replaced with the revised Schedule of Prices on and from the date following the yearly anniversary of the Commencement Date (**Rates Adjustment Date**).
- (e) If the parties cannot agree to a revised Schedule of Prices within 35 Business Days of the notice under paragraph (b), the prices in the Schedule of Prices relating to the supply of Services will be adjusted on and from the Rates Adjustment Date by the amount given by the following formula:

$$AP = P \times (WPI 2 / WPI 1)$$

Where:

AP is the adjusted price for the relevant services or labour;

P is the price for the services or labour originally specified in the Schedule of Prices (as adjusted in accordance with this clause from time to time);

WPI means the "Wage Price Index: Total Hourly Rates of Pay Excluding Bonuses" as maintained and published quarterly by the Australian Bureau of Statistics, or as otherwise determined in accordance with paragraph (g);

WPI 1 is the last WPI published prior to the Commencement Date, or from the second year of the Term onwards, the previous Rates Adjustment Date; and

WPI 2 is the last WPI published prior to the Rates Adjustment Date.

- (f) If paragraph (e) applies the Principal's Representative will calculate the adjusted prices and provide written notice of the adjusted prices to the Contractor.
- (g) If the WPI ceases to be published or its method of calculation substantially alters, then it is to be replaced by the nearest equivalent index as selected in good faith by the Principal's Representative and any necessary consequential amendments are to be made.

2.2 Alternative 2 - General Review of Prices for Supply of Goods

- (a) This alternative applies to the supply of Goods not subject to CPI indexation and where specified in the Key Details for Standing Offer Agreement that this alternative applies.

- (b) Once each year during the Term, either party may provide a notice to the other requesting that the prices in the Schedule of Prices relating to the supply of Goods be reviewed in accordance with this clause.
- (c) If either party provides a notice under paragraph (b), the parties must meet within 20 Business Days to hold good faith discussions to attempt to agree a revised Schedule of Prices which reflects the Contractor's actual, direct, proven and reasonable increases or decreases in costs.
- (d) If the parties agree to a revised Schedule of Prices, the Schedule of Prices will be deemed to be replaced with the revised Schedule of Prices on and from the date following the yearly anniversary of the Commencement Date (**Rates Adjustment Date**).
- (e) If the parties cannot agree to a revised Schedule of Prices within 35 Business Days of the notice under paragraph (b), the prices in the Schedule of Prices relating to the supply of Goods will be adjusted on and from the Rates Adjustment Date by the amount given by the following formula:
AP = P x (PPI 2 / PPI 1)
 Where:
AP is the adjusted price for the relevant Goods;
P is the price for the Goods originally specified in the Schedule of Prices (as adjusted in accordance with this clause from time to time);
Producer Price Index or **PPI** means the Producer Price Index published by the Australian Bureau of Statistics for Series ID A2305166A, or as otherwise determined in accordance with paragraph (g);
PPI 1 is the last Producer Price Index published prior to the Commencement Date or, from the second year of the Term onwards, the previous Rates Adjustment Date; and
PPI 2 is the Producer Price Index published prior to the Rates Adjustment Date.
- (f) If paragraph (e) applies the Principal's Representative will calculate the adjusted prices and provide written notice of the adjusted prices to the Contractor.
- (g) If the PPI ceases to be published or its method of calculation substantially alters, then it is to be replaced by the nearest equivalent index as selected in good faith by the Principal's Representative and any necessary consequential amendments are to be made.

3. Foreign Exchange Adjustments

- (a) This clause applies where specified in the Key Details for Standing Offer Agreement.
- (b) Where this clause applies the relevant Australian dollar amount of any rate or price which is stated to be subject to a foreign currency adjustment (**Foreign Currency Amount**) will be adjusted in accordance with this clause on each date on which the Schedule of Prices provides that a foreign currency adjustment is to occur (**FX Review Date**).
- (c) The Foreign Currency Amount will be adjusted based on movements in the relevant exchange rate in accordance with the following formula:
FCA (Adjusted) = FCA x [XR (current) / XR (base)]
 Where:
FCA (Adjusted) is the relevant Foreign Currency Amount as adjusted;
FCA is the relevant Foreign Currency Amount specified in the Schedule of Prices which is to be subject to a foreign currency adjustment;
XR (current) is the relevant exchange rate published by the Reserve Bank of Australia as at the relevant FX Review Date; and
XR (base) is the relevant exchange rate specified in the Schedule of Prices as at the Commencement Date.

Annexure C - Request for Quotation

Part 1 of the Request for Quotation - Identification					
<p>This Request for Quotation is issued by the Principal under the Standing Offer Agreement between the Principal and [insert]</p> <p>Contract No: [insert]</p> <p>Request for Quotation No: [insert]</p> <p>Contractor response required by: [insert]</p>					
Part 2 of the Request for Quotation - Additional Project Details for Schedule 1 (Key Details) in General Conditions					
<p>Contract - Other documents forming part of the Contract: (Clause 1.1)</p>	<p>[[List any other Contract documents] (If nothing is specified, nil.)]</p>				
<p>Contract Price: (Clause 1.1)</p>	<p>[Note to user: only applicable to Maintenance Services Contract, otherwise delete this row]</p> <p>[Contractor to complete based on Schedule of Prices]</p>				
<p>Contract Price: (Clause 1.1)</p>	<p>[Note to user: only applicable to Goods and/or Services Contract, Professional Services Contract and Construction Works Contract, otherwise delete this row]</p> <p>[Insert lump sum if applicable, or insert 'Calculated in accordance with Schedule 2'.] (Where the Contract Price is not a lump sum, the Contract Price is calculated in accordance with Schedule 2.)]</p>				
<p>Contractor's Representative: (Clause 1.1)</p>	<p>Name: [insert] Address: [insert] Email: [insert]</p>				
<p>Date for Completion: (Clause 1.1)</p>	<p>[Note to user: only applicable to Construction Works Contract, otherwise delete this row]</p> <p>Where there are no Separable Portions, for the Works is: [insert] Where there are Separable Portions, for each Separable Portion is:</p> <table border="0"> <thead> <tr> <th style="text-align: left;">Separable Portion</th> <th style="text-align: left;">Date for Completion</th> </tr> </thead> <tbody> <tr> <td>[insert]</td> <td>[insert]</td> </tr> </tbody> </table>	Separable Portion	Date for Completion	[insert]	[insert]
Separable Portion	Date for Completion				
[insert]	[insert]				
<p>Date for Delivery: (Clause 1.1)</p>	<p>[Note to user: only applicable to the Goods and/or Services Contract, otherwise delete this row]</p> <p>Where there are no Separable Portions, for the Goods is: [insert] Where there are Separable Portions, for each Separable Portion is:</p> <table border="0"> <thead> <tr> <th style="text-align: left;">Separable Portion</th> <th style="text-align: left;">Date for Delivery</th> </tr> </thead> <tbody> <tr> <td>[insert]</td> <td>[insert]</td> </tr> </tbody> </table>	Separable Portion	Date for Delivery	[insert]	[insert]
Separable Portion	Date for Delivery				
[insert]	[insert]				
<p>Defects Liability Period: (Clause 1.1)</p>	<p>[Note to user: only applicable to the Goods and/or Services Contract and the Construction Works Contract otherwise delete this row]</p> <p>Defects Liability Period greater than that required under the General Conditions: (yes/no) If yes: [insert]</p>				

	<p>If the period specified above is not greater than the period stated in the General Conditions, or if nothing is specified above, then the Defects Liability Period stated in the General Conditions applies.</p>
<p>Defects Liability Period: (Clause 1.1)</p>	<p>[Note to user: only applicable to the Maintenance Services Contract otherwise delete this row]</p> <p>Defects Liability Period greater than that required under the General Conditions: (yes/no)</p> <p>If yes:</p> <p>For Defects in goods and materials: [insert] from the date on which the relevant goods and materials are installed in the Serviced Equipment</p> <p>For all other Defects: [insert] from the date on which the relevant Maintenance Services are completed</p> <p>If the periods specified above are not greater than the periods stated in the General Conditions, or if nothing is specified above, then the Defects Liability Period stated in the General Conditions applies.]</p>
<p>Option Period 1: (Clause 1.1):</p>	<p>[Note to user: only applicable to the Goods and/or Services Contract, Maintenance Services Contract and Professional Services Contract otherwise delete this row]</p> <p>[if applicable, insert option period, e.g "2 years". If there is to be no Option Period 1, insert "Not applicable".]</p>
<p>Option Period 2: (Clause 1.1)</p>	<p>[Note to user: only applicable to the Goods and/or Services Contract, Maintenance Services Contract and Professional Services Contract otherwise delete this row]</p> <p>[if applicable, insert option period, e.g "2 years". If there is to be no Option Period 2, insert "Not applicable".]</p>
<p>Option Period 3: (Clause 1.1)</p>	<p>[Note to user: only applicable to the Goods and/or Services Contract, Maintenance Services Contract and Professional Services Contract otherwise delete this row]</p> <p>[if applicable, insert option period, e.g "2 years". If there is to be no Option Period 3, insert "Not applicable".]</p>
<p>Principal's Representative: (Clause 1.1)</p>	<p>Name: [insert] Address: [insert] Email: [insert]</p>
<p>Separable Portions: (Clause 1.1)</p>	<p>[Note to user: only applicable to the Goods and/or Services Contract, Maintenance Services Contract and the Construction Works Contract otherwise delete this row]</p> <p>[Describe each Separable Portion of the Works / Goods and/or the Services, Contractor's Activities or insert 'Not applicable']</p>
<p>Term: (Clause 1.1)</p>	<p>[Note to user: only applicable to Maintenance Services Contract, otherwise delete this row]</p> <p>[Insert Term of Contract - for how long or until when the Contractor's Activities must be carried out. Specify when the Term starts and ends.]</p>
<p>Term: (Clause 1.1)</p>	<p>[Note to user: only applicable to Professional Services Contract, otherwise delete this row]</p> <p>[Insert term of Contract in relation to Contractor's Activities - for how long or until when the Contractor's Activities must be carried out. Specify when the Term starts and ends.]</p>

	<p>[Select "Upon delivery of the Goods or Separable Portion to the Delivery Point " if the Principal will accept care, custody and control of the Goods on delivery.]</p> <p>[Select "Date of Acceptance" if the Contractor will continue to have care, custody and control of the Goods between delivery and Acceptance (e.g. if it is installing the Goods).]</p> <p>(If nothing is specified, Date of Acceptance.)]</p>										
<p>Documents and number of copies to be provided by the Principal to the Contractor: (Clause 6.1)</p>	<p>[Note to user: only applicable to the Construction Works Contract, Goods and / or Services Contract and Maintenance Services Contract, otherwise delete this row.]</p> <table border="1"> <thead> <tr> <th>Document</th> <th>No of copies</th> </tr> </thead> <tbody> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> </tbody> </table>	Document	No of copies
Document	No of copies										
.....										
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<p>Number of copies of Design Documentation to be submitted or resubmitted by the Contractor to the Principal: (Clause 6.5)</p>	<p>[Note to user: only applicable to the Construction Works Contract, Goods and / or Services Contract and Maintenance Services Contract, otherwise delete this row.]</p> <p>[Insert]</p> <p>(1 electronic copy if not otherwise stated).</p>										
<p>Number of copies of Principal's Material to be provided by the Principal to the Contractor: (Clause 6.1)</p>	<p>[Note to user: only applicable to the Professional Services Contract, otherwise delete this row.]</p> <table border="1"> <thead> <tr> <th>Document</th> <th>No of copies</th> </tr> </thead> <tbody> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> </tbody> </table>	Document	No of copies
Document	No of copies										
.....										
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<p>Number of copies of Deliverables to be submitted or resubmitted by the Contractor to the Principal: (Clause 6.6)</p>	<p>[Note to user: only applicable to the Professional Services Contract, otherwise delete this row.]</p> <p>[Insert]</p> <p>(1 electronic copy if not otherwise stated).]</p>										
<p>Pre-approved Subcontractors: (Clause 8.5(b) of the Goods and/or Services Contract, Maintenance Services Contract and the Construction Works Contract; Clause 7.8(b) of the Professional Services Contract)</p>	<table border="1"> <thead> <tr> <th>Subcontractor</th> <th>Part of the Contractor's Activities</th> </tr> </thead> <tbody> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> </tbody> </table>	Subcontractor	Part of the Contractor's Activities	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]		
Subcontractor	Part of the Contractor's Activities										
[insert]	[insert]										
[insert]	[insert]										
[insert]	[insert]										
<p>Existing Approvals and other Approvals which the Principal is to obtain: (Clause 8.3(c) of the Goods and/or Services Contract, Construction Works Contract and Maintenance Services Contract)</p>	<p>[Note to user: only applicable to the Goods and/or Services Contract, Construction Works Contract and Maintenance Services Contract otherwise delete this row.]</p> <p>[Insert any Approvals that will be obtained by the Principal e.g. a planning Approval, eg. Environmental Protection Licence.]</p>										
<p>Existing Approvals and other Approvals which the Principal is to obtain: (Clause 7.9(b) of the Professional Services Contract)</p>	<p>[Note to user: only applicable to the Professional Services Contract, otherwise delete this row.]</p>										

	[Insert any Approvals that will be obtained by the Principal e.g. a planning Approval.]								
Warranties required to be procured by the Contractor from Subcontractors and provided to the Principal: (Clause 8.6)	<p>[Note to user: only applicable to Goods and/or Services Contract, Maintenance Services Contract and Construction Works Contract otherwise delete this row.]</p> <p>Warranty required</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>[Insert description of types of equipment or trades from whom subcontractor warranties are required]</p>								
Provisional Sum Work: (Clauses 1.1 and 8.19)	<p>[Note to user: only applicable to Construction Works Contract otherwise delete this row.]</p> <table border="1" data-bbox="774 716 1428 1008"> <thead> <tr> <th>Description of Work</th> <th>Allowance in Contract Price</th> </tr> </thead> <tbody> <tr> <td>[insert]</td> <td>\$(insert)</td> </tr> <tr> <td>[insert]</td> <td>\$(insert)</td> </tr> <tr> <td>[insert]</td> <td>\$(insert)</td> </tr> </tbody> </table>	Description of Work	Allowance in Contract Price	[insert]	\$(insert)	[insert]	\$(insert)	[insert]	\$(insert)
Description of Work	Allowance in Contract Price								
[insert]	\$(insert)								
[insert]	\$(insert)								
[insert]	\$(insert)								
Percentage for additional profit and attendance for Provisional Sum Work exceeding provisional sum allowance by 20%: (Clause 8.19)	<p>[Note to user: only applicable to Construction Works Contract otherwise delete this row]</p> <p>[insert]]</p>								
Working hours for Contractor's Activities on Site: (Clause 8.22)	<p>[Note to user: only applicable to Construction Works Contract otherwise delete this row]</p> <p>[insert]</p>								
Date for completion of whole or parts of the Contractor's Activities: (Clause 10.1)	<p>[Note to user: only applicable to Professional Services Contract otherwise delete this row]</p> <p>[Insert any required date (or dates) for completion of any part (ie milestone), or the whole of the Contractor's Activities]</p>								
Cap on delay costs: (Clause 10.11 of the Professional Services Contract; Clause 10.12 of the Goods and/or Services Contract and Construction Works Contract)	<p>[Note to user: only applicable to the Goods and/or Services Contract, Professional Services Contract and the Construction Works Contract otherwise delete this row]</p> <p>\$(insert) per day</p> <p>(If nothing is stated, 0.5% of the Contract Price per day.)</p> <p>[insert] % of the Contract Price in the aggregate</p> <p>(If no amount is specified, 10% of the Contract Price in the aggregate.)]</p>								
Percentage of extra costs reasonably incurred due to Acceleration: (Clause 10.16(b)(ii))	<p>[Note to user: only applicable to Construction Works Contract otherwise delete this row]</p> <p>[insert]%</p> <p>(5% unless otherwise stated)]</p>								

<p>Percentage adjustments for valuing a Variation: (Clause 11.3(c)(i))</p>	<p>[Note to user: only applicable to <u>Goods and/or Services Contract, Maintenance Services Contract and Construction Works Contract</u> otherwise delete this row]</p> <p>(a) For non-time related overheads and profit where the adjustment is to be an increase: [insert]% of the amount determined.</p> <p>(b) For overheads and profit where the adjustment is to be a decrease: [insert]% of the amount determined.]</p> <p>If the adjustment is to be an increase and the percentage stated above is greater than that stated in the General Conditions, or if nothing is specified above, then the percentage stated in the General Conditions applies.</p> <p>If the adjustment is to be a decrease and the percentage stated above is lower than that stated in the General Conditions, or if nothing is specified above, then the percentage stated in the General Conditions applies.</p>
<p>Liquidated damages payable by Contractor for delay in performing the Contractor's Activities by the Date for Completion: (Clause 13.1)</p>	<p>[Note to user: only applicable to <u>Professional Services Contract</u> otherwise delete this row]</p> <p>\$(insert) per day [and if multiple Dates for Completion insert relevant amount for each Date for Completion]</p> <p>..... (If nothing is stated, 0.5% of the Contract Price per day)]</p>
<p>Earliest date and/or time when Goods may be delivered to the Delivery Point: (Clause 13.2(a)(i))</p>	<p>[Note to user: only applicable to <u>Goods and/or Services Contract</u> otherwise delete this row]</p> <p>[Note to User: only relevant where the contract requires the supply of Goods]</p>
<p>Packaging requirements for transportation of the Goods: (Clause 13.2(a)(vi))</p>	<p>[Note to user: only applicable to <u>Goods and/or Services Contract</u>, otherwise delete this row]</p> <p>[Note to User: only relevant where the contract requires the supply of Goods]</p>
<p>Mode of delivery: (Clause 13.2(a)(vii))</p>	<p>[Note to user: only applicable to <u>Goods and/or Services Contract</u> otherwise delete this row]</p> <p>Note to User: only relevant where the contract requires the supply of Goods]</p>
<p>Unload or load the Goods at the Delivery Point: (Clause 13.2(a)(viii))</p>	<p>[Note to user: only applicable to <u>Goods and/or Services Contract</u> otherwise delete this row]</p> <p>Yes/No</p> <p>[Note to User: only relevant where the contract requires the supply of Goods]</p>
<p>Cap on liquidated damages: (Clause 13.3 of the Professional Services Contract, clause 13.7 of the Construction Works Contract and clause 13.13 of the Goods and/or Services Contract))</p>	<p>[Note to user: only applicable to <u>Professional Services Contract, Construction Works Contract and Goods and/or Services Contract</u> otherwise delete this row]</p> <p>Does a cap lower than that specified in the General Condition apply: <u>yes/no</u></p> <p>If <u>yes</u>: [insert]% of the Contract Price</p> <p>If an amount lower than that specified in the General Condition is stated above, or if nothing is stated above, the amount specified in the General Conditions applies.]</p>

<p>Liquidated Damages payable by Contractor when Date of Completion occurs after Date for Completion: (Clause 13.5)</p>	<p>[Note to user: only applicable to Construction Works Contract otherwise delete this row]</p> <p>Where there are no Separable Portions, for the Works is: \$[insert] per day.</p> <p>Where there are Separable Portions, for each Separable Portion is:</p> <table border="1"> <thead> <tr> <th>Separable Portion</th> <th>Liquidated damages</th> </tr> </thead> <tbody> <tr> <td>[insert]</td> <td>\$[insert] per day</td> </tr> <tr> <td>[insert]</td> <td>\$[insert] per day</td> </tr> <tr> <td>[insert]</td> <td>\$[insert] per day</td> </tr> </tbody> </table> <p>(If nothing is stated 0.5% of the Contract Price per day.)</p>	Separable Portion	Liquidated damages	[insert]	\$[insert] per day	[insert]	\$[insert] per day	[insert]	\$[insert] per day
Separable Portion	Liquidated damages								
[insert]	\$[insert] per day								
[insert]	\$[insert] per day								
[insert]	\$[insert] per day								
<p>Liquidated damages payable by Contractor for delay in achieving Acceptance after the Date for Delivery: (Clause 13.11)</p>	<p>[Note to user: only applicable to Goods and/or Services Contract otherwise delete this row]</p> <p>Where there are no Separable Portions, for the Goods is: \$[insert] per day.</p> <p>Where there are Separable Portions, for each Separable Portion is:</p> <table border="1"> <thead> <tr> <th>Separable Portion</th> <th>Liquidated damages</th> </tr> </thead> <tbody> <tr> <td>[insert]</td> <td>\$[insert] per day</td> </tr> <tr> <td>[insert]</td> <td>\$[insert] per day</td> </tr> <tr> <td>.....</td> <td></td> </tr> </tbody> </table> <p>(If nothing is stated 0.5% of the Contract Price per day.)</p>	Separable Portion	Liquidated damages	[insert]	\$[insert] per day	[insert]	\$[insert] per day	
Separable Portion	Liquidated damages								
[insert]	\$[insert] per day								
[insert]	\$[insert] per day								
.....									
<p>Default events in relation to KPIs (Clause 14.2)</p>	<p>[Note to user: only applicable to Maintenance Services Contract otherwise delete this row]</p> <p>[Note to User: specify any additional default events in relation to KPIs that WaterNSW would like to include. Delete if not required]</p> <p>A breach of the any of the following KPIs will give rise to the Principal's rights under clause 14.2: [insert]</p> <p>Any default events specified above will apply in addition to those specified in the General Conditions.</p>								
<p>Principal's Budget: (Schedule 5, clause 1.3)</p>	<p>[Note to user: only applicable to the Professional Services Contract otherwise delete this row]</p> <p>[Insert the value of the Principal's Budget if the Contractor's Activities include design of Works.] \$ [insert] for the Works [[OR] \$ [insert] for that part of the Works to which the Contractor's Activities relate (If nothing is specified, not applicable.)</p>								
<p>Part 3 of the Request for Quotation - Execution by the Contractor's Representative of original Quotation</p>									
<p>Submitted by the Contractor's Representative: [Contractor to complete]</p>	<p>Name: Signature: Date:</p>								

Attachment 1 to the Request for Quotation - Statement of Work

[WaterNSW to insert Statement of Work detailing specific requirements for the Works, Goods and/or Services, Maintenance Services or Professional Services to be provided under the specific Contract. These requirements are in addition to the requirements in the Statement of Work in Exhibit A of the General Conditions]

(If nothing is attached, the Statement of Work in Exhibit A of the General Conditions applies.)]

Annexure D - KPIs



WaterNSW to insert any KPIs in addition to those in the Appendix

(If nothing is attached, the only KPIs are those specified in Schedule 8 of the Appendix).]

Annexure E - General Conditions

[See attached.]

