



Request for Offer Conditions

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1. Definitions and interpretation

1.1. Definitions

In these RFO Conditions, unless the context indicates otherwise:

"Addendum" means an addendum issued by Sunwater or Sunwater's Representative under clause 4.4. **"Addenda"** has a corresponding meaning.

"Alternative Offer" means an alternative Offer made by the Offeror in accordance with clause 9.1.

"Associate" has the meaning given by sections 10 to 17 of the *Corporations Act 2001* (Cth).

"Closing Time and Date" means the closing time and date identified in Schedule 1, Item 3, or such later closing time or date as Sunwater or Sunwater's Representative may notify in writing.

"Conforming Offer" means an Offer:

- a) which is lodged at the Place for Lodgement by the Closing Time and Date as required by clause 7.1;
- b) which complies in every respect with the requirements of the RFO Documents (including these RFO Conditions);
- c) which complies with all Regulatory Requirements that regulate either the supply of the Equipment and Services or the making of an Offer;
- d) which does not seek to include the Offeror's own conditions of offer or conditions of contract; and
- e) which is not an Alternative Offer, a Joint Offer or a Part Offer.

"Contract" means a contract between Sunwater and the Offeror for the delivery of the Equipment and Services based on the Proposed Agreement.

"Duty Concessions" means import duty concessions relating to any items of Equipment and Services that would be supplied by an Offeror under the Contract.

"Equipment and Services" means the product(s), service(s) or works or a combination of products, services and works to be supplied or carried out pursuant to the Contract, which are described in general terms in Schedule 1 and more particularly described in the RFO Documents.

"Final Date for Clarifications" means the final date identified in Schedule 1, Item 4, or such later date as Sunwater or Sunwater's Representative may notify in writing.

"Fuel Rebates" means rebates applicable to the price or cost to the Offeror, or any proposed subcontractor or supplier of the Offeror, of fuel that would be consumed in connection with the carrying out of the supply of the Equipment and Services under the Contract.

"GST" has the meaning given in the GST Act.

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Information Document" means any document or information not being a RFO Document, given to or made available to the Offeror before the submission of Offers or during the Offer evaluation and negotiation period in connection with:

- a) the RFO Documents; or
- b) the Equipment and Services.

"Information Request" means a request from Sunwater for the Offeror to provide information.

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"Intellectual Property Rights" includes all present and future rights in relation to copyright, trademarks, designs, patents or other proprietary rights, or any rights to registration of such rights whether created before or after the date of this Agreement, and whether existing in Australia or otherwise.

"Joint Offer" means an offer submitted by more than one Offeror in accordance with clause 9.2.

"Offer" means an offer (including an Alternative Offer) made by the Offeror in response to this RFO.

"Offeror" means a person who submits an Offer.

"Part Offer" means an offer that responds to only part of the RFO submitted by an Offeror in accordance with clause 9.3.

"Personal Information" has the same meaning as in the *Privacy Act 1988* (Cth).

"Place for Lodgement" means the place for lodgement of Offers set out in Schedule 1, Item 3.

"Proposed Agreement" means the proposed contract contained in Schedule 4.

"Regulatory Requirements" means:

- a) any Commonwealth, State or Territory Act, regulation, order, by-law or other regulatory instrument of any kind;
- b) any code or other instrument made (including the Building Code of Australia that applies in Queensland maintained by the Australian Building Codes Board), or agreement required to be entered into (including network use of system, co-ordination or access agreements or community service obligation, concession or rebate agreements), under any Act, regulation, order or other regulatory instrument referred to in paragraph a); and
- c) any condition or requirement of an authority, permit or licence held by Sunwater, with which Sunwater must comply, together with any voluntary code or other instrument which Sunwater from time to time advises the Offeror is a regulatory requirement with which the Offeror must comply.

"Response Annexures" means the Response Annexures set out in Schedule 5.

"RFO" means this Request for Offers.

"RFO Documents" means the documents listed in clause 4.1, as may be amended pursuant to clause 4.4.

"Site" means the site where the Equipment and Services is to be delivered.

"Special Conditions" means the special conditions set out in Schedule 1, Item 15.

"Specification" means Sunwater's requirements and specifications for the Equipment and Services as outlined in Schedule 2.

"Sunwater" means any, or all, of the following entities:

- (a) Sunwater Limited ACN 131 034 985;
- (b) Eungella Water Pipeline Pty Limited ACN 070 999 236;
- (c) North West Queensland Water Pipeline Pty Ltd ACN 070 999 218;
- (d) Burnett Water Pty Ltd ACN 097 206 614;
- (e) as may be nominated by Sunwater from time to time, including any future related body corporates.

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"Sunwater's Representative" means the person identified as Sunwater's Representative in Schedule 1 Item 5, or any other person from time to time appointed in writing by Sunwater to be Sunwater's Representative for the purposes of these RFO Conditions.

"Validity Period of Offer" means the period of time specified in Schedule 1, Item 13, commencing from the Closing Time and Date, during which the Offer must remain open in accordance with clause 12.

1.2. Interpretation

In these RFO Conditions:

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

and unless the context indicates a contrary intention:

b) if a word or a phrase used in these RFO Conditions has been given a defined meaning in the Proposed Agreement, it will bear the same meaning in these RFO Conditions;

c) any inconsistency between the RFO Documents, including between Addenda, will be interpreted and resolved at Sunwater's sole discretion;

d) 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;

e) a reference to:

i. a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

ii. a person includes an individual, the estate of an individual, a corporation, a Government, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

iii. a numbered clause is a reference to a clause in these RFO Conditions;

iv. a document (including the RFO Documents or any one of them) is to that document as varied, novated, ratified or replaced from time to time;

v. a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements; and

vi. information includes information communicated in whatever form, including electronic or oral.

f) "includes" in any form is not a word of limitation; and

g) a reference to "\$" or "dollar" is to Australian currency.

2. Invitation to Submit Offer

Sunwater invites the Offeror to submit an Offer in accordance with the RFO Documents for the delivery of the Equipment and Services. This document is not an offer by Sunwater to any Offeror.

Phone: 13 15 89

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3. RFO Conditions binding

By submitting an Offer, the Offeror acknowledges that the Offeror is bound by these RFO Conditions.

4. RFO Documents and their confidentiality

4.1. RFO Documents comprise

The RFO Documents comprise the following:

- a) the Special Conditions (if any) at Schedule 1 – RFO Particulars;
- b) these RFO Conditions;
- c) Schedule 1 - RFO Particulars;
- d) Schedule 2 - Specification;
- e) Schedule 3 - Evaluation Criteria;
- f) Schedule 4 - Proposed Agreement;
- g) Schedule 5 - Response Annexures; and
- h) any Addenda.

4.2. Ownership

The RFO Documents, and the Intellectual Property Rights in them, are and remain the property of Sunwater, except to the extent that any of them expressly state otherwise.

4.3. Enquiries

All enquiries regarding the RFO Documents must be directed in writing to Sunwater's Representative in accordance with Schedule 1, Item 5.

4.4. Amendment of RFO Documents

- a) At any time prior to the formation of a Contract in the manner stated in clause 18, Sunwater and/or Sunwater's Representative may, for any reason (including in response to a request for clarification under clause 5), clarify, add to, modify or otherwise amend the RFO Documents by issuing an Addendum. Any Addenda issued by Sunwater will form part of the RFO.
- b) Addenda will be issued by notice to the relevant Offeror(s) according to the means of notification described in Schedule 1, Item 7. If publication on the Queensland Government QTenders website has been nominated, then it is the responsibility of each Offeror to regularly check this website for any Addenda issued prior to the Closing Time and Date.
- c) If an Addendum is issued by Sunwater prior to the Closing Time and Date, your Offer will be deemed to have taken into account the Addendum.

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4.5. Confidentiality of RFO Documents

The Offeror must, and must ensure that its Associates:

- a) do not use the RFO Documents or Information Documents for any purpose whatsoever, other than the consideration of whether to submit an Offer and the subsequent participation in the processes described in this RFO; and
- b) keep confidential the RFO Documents and Information Documents (“Confidential Information”), subject to clause 4.6.

4.6. Exceptions to confidentiality

The Offeror will be excused from its obligations under clause 4.5 b), to the extent that:

- a) Sunwater has given its prior written consent to a disclosure of the relevant Confidential Information;
- b) such disclosure is required by law, provided that the Offeror:
 - i. informs Sunwater as soon as reasonably practical of the legal requirement;
 - ii. consults with Sunwater prior to making a decision to provide, and prior to providing, access to the Confidential Information; and
 - iii. uses reasonable endeavours to restrict the extent of disclosure of the Confidential Information;
- c) the Confidential Information is in the public domain, other than due to a breach of these RFO Conditions; or
- d) the Confidential Information is disclosed to the Offeror’s or its Associates’ employees or professional advisors, provided that the professional advisors are subject to legally binding obligations to keep the Confidential Information confidential, on terms similar to the terms in clauses 4.5 and 4.6.

4.7. Deed of confidentiality

Sunwater may, in its absolute discretion, at any time, require any Offeror to execute a deed of confidentiality, in a form proposed by Sunwater. The Offeror must promptly execute and return to Sunwater any such deed of confidentiality.

5. Further information

5.1. Clarifications

If the Offeror is in doubt as to the meaning, intention, completeness or accuracy of any of the RFO Documents (including any Addenda), the Offeror may submit a written request for clarification to Sunwater's Representative on or prior to the Final Date for Clarifications.

Sunwater may determine in its absolute discretion:

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- a) the timing and content of Sunwater's response to the Offeror's request for clarification; and
- b) that information provided in response to the request for clarification will also be provided to other parties to whom the RFO was sent.

5.2. Discussions and meetings

- a) Sunwater may hold discussions or meetings with any one or more Offerors, either individually or collectively, at any time.
- b) Any discussion or meeting shall be conducted for the purposes of either or both providing background information and for Sunwater obtaining information relating to the Offer.
- c) The Offeror will not in any way rely upon any such discussion or meeting for the purposes of preparing, amending or negotiating its Offer or entry into any contract with Sunwater with regard to the Equipment and Services.
- d) Without limiting these RFO Conditions in any way, Sunwater may, in its absolute discretion, issue:
 - i. Information Documents; or
 - ii. Addenda, (as the case may be) to address matters arising out of any discussion or meeting.

5.3. Site visits and requirements

- a) If specified in Schedule 1, Item 9, Offerors are invited to attend a Site visit at the time and date specified in Schedule 1, Item 9.
- b) If a Site visit is not proposed by Sunwater in Schedule 1, Item 9, Offerors may contact Sunwater's Representative before the Closing Time and Date to request access to any part of the Site that is not accessible to the public.
- c) Sunwater may, in its absolute discretion, grant or refuse to grant a Site visit.
- d) If an Offeror is granted a Site visit under this clause 5.3:
 - i. any costs incurred by the Offeror in relation to the Site visit (e.g. transport costs) are to be borne by the Offeror unless otherwise specified in Schedule 1, Item 9;
 - ii. the Offeror will indemnify and hold indemnified Sunwater against all loss or damage, whether to person or property, to the extent that such loss or damage was a result of the act or omission of the Offeror or its invitees in connection with the Offeror's Site visit;
 - iii. the Offeror will make good any damage caused to the Site, other places or any other property, by the Offeror or the Offeror's invitees in connection with a Site visit; and
 - iv. if required by Sunwater, the Offeror will, prior to the Site visit:
 - A. take out public liability insurance in the names of Sunwater and the Offeror as separate insured parties in relation to the Site visit with an insurer in a form approved by Sunwater and take out workers' compensation insurance in accordance with Regulatory Requirements;

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- B. produce evidence to Sunwater of the currency of such policy;
- C. ensure its attendees complete any induction session required by Sunwater; and
- D. ensure its attendees comply with all requirements communicated by Sunwater in that induction session.

5.4. Industry Briefing

- a) Schedule 1, Item 8, may state that Offerors are invited to attend an Industry Briefing at a time and date specified in Schedule 1, Item 8.
- b) The purpose of the Industry Briefing is to give Offerors an overview of the RFO and allow Offerors to ask questions about the RFO process and the Supply and Equipment.
- c) Schedule 1, Item 8 will also state whether the Industry Briefing is mandatory. Failure to attend a mandatory Industry Briefing will be grounds for Sunwater to reject an Offer on the basis that it is not a Conforming Offer.
- d) If the Industry Briefing is not specified as mandatory in Schedule 1, Item 8, then any questions asked and answered at the Industry Briefing will be sent to all Offerors in the form of an Addendum.

6. Offeror to inform itself

6.1. Disclaimer

Neither Sunwater nor Sunwater's Representative, nor any of their directors, officers, employees, agents or advisors, warrants, guarantees or makes any representation, or assumes any duty of care, or (to the extent permitted by law) accepts any liability, with respect to the completeness, accuracy, adequacy or correctness of:

- a) the RFO Documents; or
- b) any Information Document.

6.2. Offeror's responsibilities

Without in any way limiting what the Offeror does, before submitting its Offer, the Offeror must do all of the following:

- a) examine and carefully check the contents of all of the RFO Documents;
- b) inform itself as to:
 - i. the risks, contingencies and other circumstances which might have an effect on the performance of the Equipment and Services or the cost of delivering the Equipment and Services, including those relating to the Site;
 - ii. the nature of the Equipment and Services and of any plant, equipment, materials and other items necessary for the delivery of the Equipment and Services; and

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- iii. all applicable Regulatory Requirements, taxes and insurance premiums (including compulsory insurance premiums); and
- c) obtain all appropriate professional and technical advice with respect to the matters referred to in clauses a) to b),

and any failure by the Offeror to do any of those things will not relieve the Offeror of its obligation to deliver the Equipment and Services in accordance with the Contract should the Contract be awarded to it.

7. Lodgement of Offer

7.1. Requirement to lodge

The complete Offer must be lodged at the Place for Lodgement by the Closing Time and Date.

7.2. Offer to be sealed and labelled

The complete Offer must be marked in accordance with the labelling requirements set out in Schedule 1, Item 11.

7.3. Copies and electronic versions

- a) The Offeror must lodge the Offer in electronic form in accordance with Schedule 1, Item 12.
- b) Offers must be complete in themselves. Sunwater reserves the right not to consider any information referenced externally, including by internet hyperlink.

7.4. Offeror not present at opening

Offerors will not be present at the opening of Offers or at any other time during Sunwater's consideration of the Offers.

7.5. Acknowledgement of receipt of Offer

An acknowledgement by or on behalf of Sunwater or Sunwater's Representative of receipt of the Offer does not mean or imply that the Offer has been or will be treated as a Conforming Offer.

8. Offer requirements

8.1. Format

- a) The Offeror may submit an Offer to deliver the Equipment and Services by completing and lodging the Response Annexures in accordance with clauses 7 and 8 of these RFO Conditions.
- b) The completed Response Annexures must be in the English language and all measurements and quantities must be in metric units and in accordance with the International System of Units (SI units).

8.2. Pricing

- a) All prices in the Offer must be in Australian dollars.

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- b) The Offer must set out prices exclusive of GST.
- c) The Offer must be inclusive of all other taxes, levies, duties and charges.
- d) The Offeror must clearly identify in its Offer:
 - i. all Fuel Rebates and Duty Concessions that would be available to Sunwater (including those indirectly available to Sunwater by any form of pass through from the Offeror or another person), together with details of the body that administers them; and
 - ii. the predicted reduction in the Offeror's pricing that would result if the Fuel Rebates and Duty Concessions were passed on to Sunwater, separately identifying the predicted value of each,in connection with the Offeror's supply of the Equipment and Services under the Contract.

8.3.Completed Response Annexures

- a) If the Offeror elects to submit an Offer, then the Offeror must complete and submit all of the Response Annexures which form part of the RFO Documents and provide all other information required by the Response Annexures.

8.4.Offeror details

- a) An Offer must name and clearly identify the legal entity which is the Offeror making the Offer.
- b) If the Offeror comprises two or more persons, then their Offer will bind them jointly and each of them severally.

8.5.Evidence of agent's authority

If requested to do so by Sunwater's Representative, the Offeror must produce evidence of the authority of any agent or other representative who has signed any part of the Offer on behalf of the Offeror.

8.6.Conflict of interest

- a) The Offeror must declare any actual, potential or perceived conflict of interest which an Offeror may have if the Offeror is awarded the Contract by completing Response Annexure B.
- b) If during the RFO process a conflict of interest arises, or appears likely to arise, the Offeror must notify Sunwater immediately in writing and take such steps as Sunwater may reasonably require to resolve or otherwise deal with the conflict. If the Offeror fails to notify Sunwater or is unable or unwilling to resolve or deal with the conflict to Sunwater's satisfaction, the Offeror may be excluded from the RFO process and its Offer may be excluded from consideration.

8.7.Use of Sunwater's personnel

An Offeror must not, without written approval from Sunwater, permit a person to contribute to, or participate in, any process relating to the preparation of the Offeror's Offer or the RFO process, if:

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- a) the person was involved at any time in the planning of the acquisition of the Equipment and Services to which this Offer relates, the preparation of the RFO Documents or the management of the RFO process; or
- b) the person was employed or otherwise engaged by Sunwater at any time during the six months immediately preceding the date of issue of this RFO.

9. Alternative, Joint and Part Offers

9.1. Alternative Offers

- a) The Offeror may submit one or more Alternative Offers, if Schedule 1, Item 10 indicates that Alternative Offers are acceptable but the Offeror must also submit a Conforming Offer for Sunwater's consideration.
- b) Each Alternative Offer must be marked as such (e.g. "Offer - Alternative 1") and must be submitted as a separate Offer with separate completed Response Annexures.
- c) Sunwater reserves the right in its absolute discretion to consider and accept or reject any Alternative Offer.

9.2. Joint Offers

- a) The Offeror may submit a Joint Offer if Schedule 1, Item 10 indicates a Joint Offer is acceptable
- b) Sunwater reserves the right in its absolute discretion to consider and accept or reject any Joint Offer.

9.3. Part Offers

- a) The Offeror may submit a Part Offer if Schedule 1, Item 10 indicates a Part Offer is acceptable
- b) Sunwater reserves the right in its absolute discretion to consider and accept or reject any Part Offer.

10. Ownership and Disclosure of Offers

10.1. Ownership and retention

Sunwater will own and retain all Offers.

10.2. Intellectual property rights in Offers

- a) Copyright and any other Intellectual Property Rights in the Offer will, as between Sunwater and the Offeror, belong to the Offeror.
- b) The Offeror grants to Sunwater a non-exclusive, fully paid and royalty free, perpetual, assignable licence to use, reproduce and adapt the Offer as it sees fit for the purposes related to the Equipment and Services.

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- c) The Offeror warrants that it has all the rights necessary to grant the licence referred to in clause 10.2b) and that Sunwater's use of the Offer will not infringe the Intellectual Property Rights of any person.

10.3. Disclosure of Offers

Without limiting Sunwater's rights under clauses 10.1 and 10.2, Sunwater may disclose an Offer or any part of an Offer:

- a) to third party advisors;
- b) to any Minister and their personal and departmental advisors; and
- c) where disclosure is required by law.

10.4. Offeror's request in Response Annexure C to restrict disclosure

- a) If disclosure of the Offer (in whole or in part) under clause 10.3(c) would be of concern to an Offeror because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, this should be indicated in Response Annexure C.
- b) Sunwater will, in its absolute discretion, determine whether the designation of parts of the Offer by the Offeror in Response Annexure C justifies any restriction on Sunwater's disclosure of any part or the whole of an Offer under clause 10.3(c).
- c) Without limiting clause 10.4(b), the designation of parts of the Offer by the Offeror in Response Annexure C does not in any way limit Sunwater's rights under clauses 10.1, 10.2, 10.3(a) or 10.3(b).

11. Offeror's warranty and acknowledgement

11.1. Offeror's warranty

By submitting an Offer:

- a) the Offeror represents and warrants that:
 - i. it has done all of the things mentioned in clause 6.2;
 - ii. it prepared its Offer based on its own investigations, interpretations, deductions, information and determinations; and
 - iii. its Offer is accurate and complies in all respects with the RFO Documents and the requirements of all applicable Regulatory Requirements and any applicable Government code, policy or guideline; and
- b) the Offeror accepts and agrees (to the extent permitted by law) that neither Sunwater nor Sunwater's Representative, nor any of their respective directors, officers, employees, agents or advisors has any liability to the Offeror (whether in contract, in tort (including negligence or misrepresentation), under statute (to the extent permitted by law) or on any other basis) with respect to or as a result of or arising from:

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- i. any incompleteness or inadequacy of, or any inaccuracy or error in, or omission from; or
 - ii. any use of or reliance by the Offeror upon, any of the RFO Documents or Information Documents; and
- c) the Offeror warrants that it will promptly disclose in writing to Sunwater and prior to the execution of the Contract, details of:
- i. any litigation or proceeding whatsoever, actual or pending, against the Offeror;
 - ii. matters relating to the commercial, technical or financial capacity of the Offeror or of any sub-contractor or agent proposed to be engaged in respect of the Offer, or any other event or occurrence, actual or pending, which could materially affect the Offeror's ability to perform any of its obligations under the Offer or the Proposed Agreement;
 - iii. any planned, anticipated or actual change of control of the Offeror or of any sub-contractor or agent proposed to be engaged in respect of the Offer or any subsequent contract; and
 - iv. any planned or anticipated assignment or novation of the Offeror's rights or obligations which could materially affect the Offeror's ability to perform any of its obligations under the Offer or any subsequent contract,

of which the Offeror becomes aware during the Validity Period of Offer. The Offeror will provide any additional information requested by Sunwater relating to a disclosure under this clause 11.1c).

11.2. Offeror's acknowledgement

The Offeror acknowledges that in considering the Offer (including any Conforming Offer, not conforming, Alternative Offer, Joint Offer, Part Offer or consolidated Offer) and in Sunwater entering into any contract with the Offeror (should that happen), Sunwater will be relying upon the representations and warranties given by the Offeror in the completed Response Annexures and any response to an Information Request and in these RFO Conditions.

12. Offer validity period

Offers must remain valid until the expiry of the Validity Period of Offer.

13. Offer evaluation

13.1. Information requests

- a) After the Offer has been lodged, Sunwater's Representative may issue Information Requests.
- b) The Offeror must respond promptly to Information Requests.
- c) Information provided by the Offeror in response to an Information Request will be taken to form part of the Offer.

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13.2. Evaluation criteria

Without in any way limiting the operation of clause 15, the factors which Sunwater and Sunwater's Representative may take into account in any evaluation of Offers includes (not necessarily in order of priority) the evaluation criteria identified in Schedule 3.

13.3. Interviews

- a) Without limiting clause 5.2, after the Closing Time and Date, Sunwater may advise one or more Offerors of a place and time for an interview between the Offeror and Sunwater.
- b) If Sunwater does notify an Offeror in accordance with clause a), the Offeror must:
 - i. attend at the time and place nominated by Sunwater; and
 - ii. be represented by persons who are familiar with all details of the Offer and who are authorised to make any decisions on behalf of the Offeror.

13.4. Negotiations after Closing Time

- a) Without limiting Sunwater's discretions under clause 15, Sunwater may enter into negotiations after the Closing Time and Date with any shortlisted or preferred Offerors on the basis of their Offer. These negotiations may have the purpose of, doing any or all of the following, without limitation:
 - i. refining the Offer;
 - ii. refining the Equipment and Services;
 - iii. considering alternative funding methods proposed by the Offeror;
 - iv. negotiating the Offeror's pricing; and
 - v. settling the final terms of the Proposed Agreement and any pricing issues.
- b) Sunwater may require Offerors to submit a best and final offer as part of the negotiations described in clause a).
- c) Sunwater is not obliged to reissue the RFO, or in any other way provide an opportunity to any Offeror to amend or re-submit their Offer, irrespective of:
 - i. any Offer submitted by any Offeror;
 - ii. any best and final offer submitted by a preferred or shortlisted Offeror;
 - iii. any matter arising out of the negotiations described in clause a).
- d) If any of the negotiations described in clause a) with all or any of the preferred or shortlisted Offerors are unsuccessful, Sunwater may, without limiting its discretions under clause 15:
 - i. appoint one or more new preferred Offerors without reissuing the RFO;

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- ii. enter into any negotiations with any new preferred or shortlisted Offerors in reliance on the state of discussions with any of the previous preferred or shortlisted Offerors; and
- iii. base any such new negotiations on any element(s) of the previous preferred or shortlisted Offerors' Offers.

14. Variations and Offers that are not Conforming Offers or where the Offeror is a trustee

14.1. Right to accept or reject Offers that are not Conforming Offers

- a) Sunwater may determine, in its absolute discretion, whether an Offer is or is not a Conforming Offer.
- b) Sunwater may reject an Offer that it determines is not a Conforming Offer, and not consider it, regardless of the reason why it is not a Conforming Offer, including, without limitation, if due to:
 - i. the lateness of the Offer, irrespective of the reason for the lateness; or
 - ii. the Offer containing insufficient detail to enable Sunwater to properly evaluate it.
- c) Sunwater reserves the right in its absolute discretion to consider and accept any Offer (even one which is lodged late or is otherwise not a Conforming Offer).

14.2. Variations to Offers

An Offeror may replace, amend or supplement its Offer only if invited to do so by Sunwater. Sunwater reserves the right to ask for replacement, amended or supplemental Offers from one or more Offerors but is under no obligation to do so. Sunwater is entitled to accept a replacement, amended or supplemental Offer from an Offeror (whether requested by Sunwater or not) in its absolute discretion, without reference to any other Offerors.

14.3. Trustees

Sunwater reserves the right in its absolute discretion to accept or reject any Offer where the Offeror is a trustee. It is Sunwater's policy not to contract with a trustee where the price in an Offer is less than \$100,000 (exclusive of GST).

If you are a trustee and you anticipate that the price in your Offer will be less than \$100,000, (exclusive of GST) please contact the Sunwater's Representative.

15. Sunwater's discretion

- a) Sunwater (either itself or through Sunwater's Representative) reserves the right in its absolute discretion and without limiting any other rights which Sunwater may have whether under these RFO Conditions or otherwise, to do any one or more of the following without giving reasons:
 - i. withdraw its invitation to submit an Offer;
 - ii. at any time, amend the RFO Documents or the requirements of the Equipment and Services, by notice to affected Offerors;
 - iii. at any time, vary, suspend or terminate the RFO process, by notice to affected Offerors;

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- iv. extend the Closing Time and Date;
- v. change the Place for Lodgement;
- vi. receive, consider or evaluate any Offer (whether a Conforming Offer, not conforming, Alternative Offer, Joint Offer or Part Offer);
- vii. reject or refuse to consider or evaluate any Offer or all Offers or terminate at any time further participation in the process by any Offeror;
- viii. decline to accept the lowest Offer or any Offer;
- ix. at any time, vary or alter any process or procedure regarding the consideration or the evaluation of any Offer or Offers (including the evaluation criteria);
- x. adopt different approaches with different Offerors;
- xi. require additional information or further offers from any Offeror;
- xii. make enquiries of any person, company or organisation to ascertain the suitability of the Offer and the Offeror and do so without advising the Offeror;
- xiii. negotiate on any aspect of an Offer before identifying whether they accept or reject any Offer;
- xiv. invite best and final offers from any one or more Offerors;
- xv. at any time, invite further or other Offerors to submit Offers for the supply of the Equipment and Services;
- xvi. shortlist Offerors;
- xvii. select an Offeror as a preferred Offeror or elect not to select any Offeror as a preferred Offeror or having selected an Offeror as a preferred Offeror, subsequently terminate that selection;
- xviii. select one or multiple Offerors as preferred Offerors;
- xix. accept part or parts of an Offer or multiple Offers;
- xx. negotiate with one or more Offerors and enter into the Contract without prior notice to any other Offeror;
- xxi. not proceed with the Equipment and Services;
- xxii. proceed with the Equipment and Services on the basis of a different scope of work or extent or on terms different from those set out in the RFO Documents;
- xxiii. negotiate with and enter into a contract with any person (including someone other than an Offeror) for the delivery of the Equipment and Services and/or any other work;
- xxiv. self-perform the supply of the Equipment and Services;

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- xxv. hold discussions or meetings with one or more Offerors at any time during the RFO process;
 - xxvi. issue an Addendum or Information Document;
 - xxvii. waive any requirement or obligation under these RFO Conditions; and
 - xxviii. take such other action as it considers, in its absolute discretion, appropriate in relation to the RFO process.
- b) No Offeror is entitled to enquire into the basis of Sunwater's decisions under this clause 15.
 - c) To the extent permitted by law, Offerors will have no claim against Sunwater or Sunwater's Representative arising out of Sunwater's exercise, or failure to exercise, any rights under these RFO Conditions.

16. Sunwater's liability

16.1. Sunwater not bound by oral information

Without limiting clause 6.1, to the extent permitted by law, Sunwater is not bound by, and has no responsibility or liability for, any oral advice, representation or information given or furnished by or on behalf of Sunwater or Sunwater's Representative with respect to the RFO Documents, the Equipment and Services, the RFO process, any Offer or the Proposed Agreement, whether given or made before or after the Closing Time and Date.

16.2. Sunwater not liable for Offeror's costs, losses or expenses

- a) Without limiting clause 21.1, in no circumstances will Sunwater or Sunwater's Representative or any of their respective directors, officers, employees, agents or advisors be liable to the Offeror (whether the Offeror is successful or unsuccessful) whether in contract, tort (including negligence or misrepresentation), under statute (to the extent permitted by law) or otherwise for any costs, losses, expenses, liabilities or damages incurred or suffered by the Offeror:
 - i. in acting upon these RFO Conditions in preparing an Offer (whether it is a Conforming Offer, Alternative Offer, Joint Offer or Part Offer) or in otherwise acting in reliance upon these RFO Conditions;
 - ii. arising out of or in connection with:
 - A. its participation in or response to any discussions, negotiations, interviews, enquiries or requests for details or information whether before or after the Closing Time and Date; or
 - B. its participation in the RFO process generally; or
 - iii. arising out of or in connection with the exercise, or failure to exercise, by Sunwater or Sunwater's Representative, of any of their rights under these RFO Conditions, including rights under clause 15.
- b) Any Offeror not selected as the successful Offeror will have no recourse against Sunwater or Sunwater's Representative or their respective employees, agents or advisors in relation to Sunwater's decision to select another Offeror as the successful Offeror.

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17. Notification and debrief

- a) Sunwater will notify the Offeror in writing if its Offer was unsuccessful.
- b) If the Offeror requires a debrief, the request must be lodged within 14 days of receipt of a notice from Sunwater under clause 17a).
- c) If requested within the timeframe required under paragraph (b), Sunwater will provide a debrief at a suitable time. Sunwater will only provide a verbal debrief.
- d) The Offeror acknowledges that the purpose of the debrief is to discuss the reasons why the Offeror's Offer was unsuccessful, and that Sunwater is not obliged to make any comparison with or provide any information about any other Offeror or Offer.
- e) Except as provided for in this clause 17, Sunwater will not enter into any correspondence, oral or written, about its selection decision(s).

18. Formal contract required

- a) No contract for the delivery of the Equipment and Services or any part thereof will come into existence unless and until Sunwater and the successful Offeror execute a Contract.
- b) Before any Contract is entered into, Sunwater may require that a formal document be prepared which takes into account any changes to the RFO Documents and the outcome of post-Offer negotiations.

19. Information Privacy

If the Offeror collects or has access to Personal Information as a result of the RFO process, the Offeror must:

- a) comply with the *Privacy Act 1988* (Cth), as if it were Sunwater; and
- b) take reasonable steps to ensure that Personal Information held by it is protected against misuse, loss, unauthorised access, unauthorised modification and unauthorised disclosure; and
- c) not disclose Personal Information outside of Australia without the consent of Sunwater.

20. Probity

- a) Sunwater may appoint an independent probity advisor to oversee the RFO process. The Probity Advisor's details are included at Schedule 1, Item 14.
- b) The role of the Probity Advisor is to observe and audit the integrity of the RFO process.
- c) Offerors who have any concerns about the conduct or probity of the RFO process should promptly bring their concerns to the attention of the Probity Advisor.

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21. Miscellaneous

21.1. Offeror bears costs

No reimbursement, payment or compensation will be made or given by Sunwater to any Offeror for any costs, losses or expenses, whether directly or indirectly incurred by that Offeror:

- a) in preparing its Offer; or
- b) otherwise in connection with the RFO process, and Offerors will bear their own such cost, losses and expenses.

21.2. No solicitation

If the Offeror or any person on its behalf makes any attempt to canvass, solicit or approach:

- a) Sunwater;
- b) any employee, consultant or agent of Sunwater (other than Sunwater's Representative pursuant to the process in clause 4.3);
- c) Sunwater's shareholding Ministers; or
- d) any employee, consultant or agent of the shareholding Ministers' respective departments,

in respect of any matter relating to or arising out of its Offer, the Offer may be rejected.

21.3. No collusion

- a) The Offeror must not engage in any consultation, communication, contract, arrangement or understanding with any competitor (including any other Offeror) regarding:

- i. prices;
- ii. methods, factors or formulas used to calculate prices;
- iii. the intention or decision to submit or not to submit an Offer;
- iv. the quality, quantity, specifications or delivery particulars of the Equipment and Services to which the Offer relates; or
- v. the terms of its Offer or a competitor's offer.

- b) If an Offeror engages in conduct in breach of clause 21.3a), Sunwater may reject any Offer lodged by that Offeror.

21.4. No implied terms

To the extent permitted by law, these RFO Conditions:

- a) embody the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and

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- b) supersede any prior written or other agreement of the parties,
with respect to the conduct of the RFO process.

21.5. Public announcements

An Offeror must not make any public announcement or advertisement in relation to the RFO process without the prior written consent of Sunwater.

21.6. Address for notices to Offeror

Notices given to the Offeror after the Closing Time and Date may be posted or transmitted by facsimile or email to the Offeror's address for notices given in Response Annexure A, and such posting or transmission will be taken to be good service of such notices.

21.7. Governing law and jurisdiction

- a) These RFO Conditions and the Offeror's agreement to be bound by them, are governed by and are to be construed according to the laws of Queensland.
- b) Each Offeror will irrevocably submit to the non-exclusive jurisdiction of the courts of Queensland (and the courts to which appeals from those courts may be made) with respect to matters arising under or in connection with these RFO Conditions and the Offeror's agreement to be bound by them.
- c) Each Offeror irrevocably waives any objection it may now or in the future have to the venue of any proceedings in connection with these RFO Conditions and the Offeror's agreement to be bound by them, and any claim it may now or in the future have that any such proceeding has been brought in an inconvenient forum, where that venue falls within clause 21.7b).