

# Department of Agriculture and Water Resources

Variation Agreement No. 5 to the Project Schedule to the  
Water Management Partnership Agreement for the

NSW NIMMIE-CAIRA SYSTEM ENHANCED  
ENVIRONMENTAL WATER DELIVERY PROJECT

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**Commonwealth of Australia** as represented by the  
Department of Agriculture (**Commonwealth**)  
ABN: 24 113 085 695

The Crown in right of the **State of New South Wales** acting  
through the Department of Industry as an office of the  
Department of Industry (the "**State**") ABN: 72 189 919 072

# Details

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## Parties

Name	The Commonwealth of Australia as represented by the Department of Agriculture
ABN	24 113 085 695
Short form name	<b>Commonwealth</b>
Address details	The Director, Environmental Projects Section GPO Box 858, Canberra City, ACT, 2601 18 Marcus Clarke Street, Canberra City, ACT, 2601
Name	The Crown in right of the State of New South Wales acting through the Department of Industry.
ABN	72 189 919 072
Short form name	<b>State</b>
Address details	Manager Commonwealth Strategic Programs Department of Industry, Water Division MLC Centre, 19 Martin Place, Sydney NSW 2000

(collectively 'the parties')

## Background

- A On 11 January 2010, the Commonwealth (as then represented by the Department of the Environment) and the State (then known as NSW Office of Water), entered into a Water Management Partnership Agreement (the **Original Agreement**).
- B In accordance with the requirements of the Original Agreement, the parties have executed and subsequently incorporated into the Original Agreement, a total of five project schedules in respect of various priority projects, including the Project Schedule signed on 26 July 2013 (the **Project Schedule**) for the Nimmie-Caira System Enhanced Environmental Water Delivery Project (the **Priority Project**).
- C The parties varied the Project Schedule to the Original Agreement in accordance with clause 16 of the Original Agreement on 3 July 2014 (Variation One), 25 January 2017 (Variation Two), on 18 April 2018 (Variation Three) and 28 February 2019 (Variation Four).
- D Together, the Original Agreement, the Project Schedule as varied by the variation, and any other project schedules incorporated and as varied in accordance with the requirements of the Original Agreement, form the '**Agreement**' for the purposes of this Variation.

- E Following the Australian Government Administrative Arrangements Order dated 29 May 2019, the Department of Agriculture (**Department**) has had responsibility for administering the Agreement on behalf of the Commonwealth.
- F The Commonwealth, as represented by the Department and the State have agreed to vary the terms of the Project Schedule in accordance with this Variation for the main purpose of:
- (i) re-allocating project costs across the remaining milestones to reflect an extension of the project to 30 August 2019; and
  - (ii) reducing the overall project funding to take into account savings in delivering the project.
- G The parties acknowledge that this Variation satisfies all requirements in clause 16 of the Original Agreement for a valid variation.

## Agreed terms

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### 1. Defined terms and interpretation

In this Variation Agreement, unless the contrary intention appears:

- (a) a word or expression defined or referred to in the Agreement has the meaning given to it in the Agreement;
- (b) clause 18.5 of the Agreement applies to this Variation as though all references in that clause to the "Agreement" were instead references to this "Variation";
- (c) **Agreement** means the Agreement described in paragraph C of the Background;
- (d) **Effective Date** means the date on which this Variation is signed by both parties, and if signed on different dates, the latter of those dates;
- (e) **Project Schedule** means the Project Schedule to the Agreement for the Priority Project described in paragraphs B and C of the Background; and
- (f) **Variation** means this Variation Agreement, including all schedules and attachments to it.

### 2. Variation to Agreement

With effect from the date of this deed, the Agreement is varied by:

Replacing the "Project Schedule to the Water Management Partnership Agreement for the NSW Nimmie-Caira System Enhanced Environmental Water Delivery Project", Fourth Variation, dated 28 February 2019, with the Project Schedule as set out in **Attachment A** to this deed.

### 3. Affirmation of Agreement

- (a) Subject only to the amendments contained in this Variation, the parties confirm all other provisions of the Project Schedule and the Agreement.

- (b) The Agreement, as varied by this Variation, comprises the entire agreement between the parties.
- (c) The parties acknowledge and agree that the Agreement as varied by this Variation is and continues to be in full force and effect.

#### 4. Payment Acknowledgement

The parties acknowledge that the following amount(s) has previously been paid to the State in accordance with the Agreement:

- (a) The amount of [REDACTED] (GST exclusive) has already been paid by the Commonwealth to the State as part of the Funds payable under the Project Schedule.

#### 5. Costs and GST

- (a) Each party must meet or pay its own costs and expenses (including legal costs) in respect of the preparation, negotiation, execution and completion of this Variation.
- (b) If GST is payable on any supply made under or in connection with this Variation, the recipient of the supply must pay to the supplier an additional amount equal to the GST payable on the supply provided that the supplier has given the recipient a tax invoice for the supply.
- (c) The State must pay any stamp duties and registration or other fees (including fines, penalties and interest relating to such duties and fees) which are payable or are assessed by a relevant government body or other person to be payable in relation to this document or any transaction contemplated by it.

#### 6. Counterparts

This Variation may be executed in counterparts. All executed counterparts constitute one document.

# Signing page

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**Signed** for and on behalf of the  
**Commonwealth of Australia** as  
represented by the **Department of  
Agriculture** by its duly authorised delegate

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Signature of delegate

\_\_\_\_\_

Name of delegate (print)

FAS Water Division

\_\_\_\_\_

Position of delegate (print)

In the presence of:



\_\_\_\_\_

Signature of Witness

\_\_\_\_\_

Name of Witness (print)

\_\_\_\_\_

\_\_\_\_\_

Date 12 June 2019



**Signed** for and on behalf of the **State of  
NSW** as represented by the **Department of  
Industry, Water** Division by its duly  
authorised delegate

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Signature of delegate

\_\_\_\_\_

Name of delegate (print)

Corporation Delegate

\_\_\_\_\_

Position of delegate (Print)

In the presence of:



\_\_\_\_\_

Signature of Witness

\_\_\_\_\_

Name of Witness (Print)

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Date 11 June 2019



# ATTACHMENT A to Variation Agreement No. 5

## PROJECT SCHEDULE

**COMMONWEALTH OF AUSTRALIA** REPRESENTED BY  
THE DEPARTMENT OF AGRICULTURE  
(**THE DEPARTMENT**)

**NEW SOUTH WALES** REPRESENTED BY THE CROWN IN RIGHT  
OF THE STATE OF NEW SOUTH WALES ACTING THROUGH  
THE DEPARTMENT OF INDUSTRY (ABN 72 189 919 072)  
(**STATE**)

WATER FOR THE FUTURE  
NEW SOUTH WALES STATE PRIORITY PROJECT

**NIMMIE-CAIRA SYSTEM ENHANCED ENVIRONMENTAL  
WATER DELIVERY PROJECT**

PROJECT SCHEDULE 7 TO THE WATER MANAGEMENT  
PARTNERSHIP AGREEMENT BETWEEN THE COMMONWEALTH  
AND NEW SOUTH WALES

## PROJECT SCHEDULE 7 – NSW NIMMIE-CAIRA SYSTEM ENHANCED ENVIRONMENTAL WATER DELIVERY PROJECT

### A. Terminology used in this Project Schedule

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- A.1.1. Except where indicated in Item A.1.2, capitalised terms in this Project Schedule have the same meaning as in clause 18.4 of the *Water Management Partnership Agreement* between the Commonwealth and New South Wales dated 11 January 2010 (the Agreement).
- A.1.2. For the purpose of this Project Schedule only, the terms specified in this item have the following meaning:
- a. Activity: means an activity that the State is required to undertake, or ensure is undertaken, to complete the Priority Project and includes anything that is reasonably incidental to the completion of that activity;
  - b. Annual Workplan: means a document that states what activities will be undertaken to achieve identified outputs, deliverables and outcomes. Item B.7 outlines the minimum requirements of an Annual Workplan under this Project Schedule;
  - c. Business Case Information Requirements: means the criteria set out in Schedule E of the IGA;
  - d. CEWH: means the Commonwealth Environmental Water Holder as established under section 104 of the *Water Act 2007 (Cth)*;
  - e. Department: means the Commonwealth Department of Agriculture or other department or agency that has from time to time responsibility for this Agreement (which has previously included the Department of Agriculture and Water Resources, the Department of the Environment (DotE) which was previously known as Department of Sustainability, Environment, Water, Population and Communities (DSEWPAC), and includes its Personnel and successors;
  - f. DoI Water: means the New South Wales Department of Industry – (ABN 72 189 919 072) (formerly known as NSW Department of Primary Industries – Water or DPI Water) representing the Crown in right of the State of New South Wales, and includes its Personnel and successors;
  - g. Heads of Agreement: means the Heads of Agreement document signed between the State and the Commonwealth on 28 June 2013 or any subsequent revision, outlining the commitments of both parties and which should be read in conjunction with this Schedule;
  - h. IGA: means the 2008 Intergovernmental Agreement on Murray-Darling Basin Reform;
  - i. Interest: means interest accrued pursuant to clause 6.1.9 of the Agreement and forms part of the Funds;
  - j. Interim Land Management Arrangements – means arrangements to be applied upon transfer of land and water entitlement to the NSW Water Administration Ministerial Corporation prior to an agreed Land Management Plan being implemented;

- k. Land Management Plan: means a long-term land management plan that will provide for in perpetuity protection and management of key environmental assets in the Nimmie-Caira detailing land use, interim land management arrangements by the State and long term land management by a suitable entity. The Land and Water Management Plan (LWMP) will address the following key areas:
  - i. Land and Water Management Arrangements:
    - A. Property Management;
    - B. Commercial Management;
    - C. Aboriginal Cultural Heritage Management;
    - D. Environmental Management;
    - E. Water Infrastructure Management; and
    - F. Environmental Water Management; and
  - ii. Governance arrangements;
- l. Lowbidgee Supplementary Water Entitlement: means the 381,000 unit shares of Lowbidgee supplementary water entitlement that was created under the 2012 amendments to the Murrumbidgee Regulated River Water Sharing Plan (WSP);
- m. LTAAY: means Long Term Average Annual Yield;
- n. MDBA: means the Commonwealth Murray-Darling Basin Authority;
- o. ML: means megalitre, which is 1,000,000 litres;
- p. Parties: means the parties to this Agreement, being the Commonwealth and the New South Wales Government;
- q. Prerequisite Policy Measures Implementation Plan (PPM Implementation Plan): means a State plan to implement the unimplemented policy measures specified in s.7.15 of the Basin Plan;
- r. Project Funds: means the funds available to implement the Priority Project;
- s. Progress Report: means a report received at the intervals specified in the Milestone in Item C.1.1 and as specified in Item I.2;
- t. Project Advisory Committee (PAC): means a group comprising representatives from the State and Commonwealth and any agreed independent members who will provide advice on the delivery of the project;
- u. Project Control Group: means a group comprising representatives from the State and Commonwealth (including the CEWH), as provided by clause 11 of the Heads of Agreement, who will monitor the progress of this Priority Project, including against this Project Schedule;
- v. Proponent: means a person to whom the State provides a grant out of the project funding;
- w. (the) State: means the New South Wales Government;
- x. Sustainable Diversion Limit (SDL): means the amount of water that can be taken for town water supplies, industry, agriculture and other human or



'consumptive' uses, while ensuring there is enough water to achieve healthy river and groundwater systems, as defined in Chapter 6 of the Basin Plan;

- y. Transfer: means the permanent transfer of Water Entitlement by the State to the Commonwealth under the provisions of the WM Act;
- z. Water NSW is the government body formerly known as the New South Wales State Water Corporation (SWC). Water NSW is taken for all purposes to be a continuation of, and the same legal entity as, State Water Corporation;
- aa. WM Act: means the *Water Management Act 2000 (NSW)*;
- bb. WMPA: means the Water Management Partnership Agreement dated 11 January 2010 between the Commonwealth of Australia and the Minister for Water for and on behalf of the Crown in right of the State of NSW acting through DoI Water; and
- cc. WSP: means the Water Sharing Plan for the Murrumbidgee Regulated River Water Source 2003.

## **B. Priority Project**

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### **B.1. Summary and duration of the Priority Project**

- B.1.1. In the IGA, the Commonwealth agreed in-principle to provide funding to projects in New South Wales, subject to Due Diligence and compliance with the Commonwealth's Business Case Information Requirements and this Agreement.
- B.1.2. In the IGA, the Commonwealth agreed in-principle to provide funding of up to \$708 million for Priority Projects to be delivered by the State, subject to the proposed Priority Project's satisfying the Commonwealth's Due Diligence Assessment.
- B.1.3. The State submitted a Business Case to the Commonwealth for a proposed NSW Nimmie-Caira System Enhanced Environmental Water Delivery Priority Project on 4 July 2012 (the Business Case).
- B.1.4. The Commonwealth's Due Diligence assessment of the Proposed Project against the Business Case Information Requirements was completed in June 2013. The Proposed Project was approved for funding of up to \$180,133,974 (excluding GST) by the Commonwealth Minister for Sustainability, Water, Environment, Population and Communities on 24 June 2013, for the agreed project only, subject to conditions. The conditions of the final Due Diligence are now reflected in this Project Schedule. On 31 May 2019, the State advised the Commonwealth that due to underspends in delivering the project, the funding required for this Project is up to \$172,203,478 and this is now reflected in this Project Schedule.
- B.1.5. A Heads of Agreement for the implementation of the Nimmie-Caira System Enhanced Environmental Water Delivery Priority Project was signed by the Commonwealth Minister for Sustainability, Water, Environment, Population and Communities and was signed by the NSW Minister for Primary Industries on 28 June 2013.
- B.1.6. This Priority Project consists of the following components:

- a. The purchase of 19 irrigated farming properties with a total area of 84,417 hectares (the Nimmie-Caira Land), the ownership of which will be transferred to the State, and the transfer to the Commonwealth of 381,000 unit shares of Lowbidgee Supplementary Water Entitlement (the Nimmie-Caira Entitlement) in one single licence;
- b. Infrastructure reconfiguration activities;
- c. Land transition arrangements;
- d. Local community offset projects;
- e. Water management actions; and
- f. Project management and governance.

B.1.7. Project Milestones for this Priority Project are identified in Item C of this Project Schedule.

B.1.8. This Priority Project commences on the date this Project Schedule is signed by the Commonwealth and must be completed by 30 August 2019, unless otherwise agreed in writing by the Parties.

## **B.2. Aim of the Priority Project**

B.2.1. The purpose of this Priority Project is to:

- a. achieve water recovery which provides a substantial contribution towards 'bridging the gap' under the Basin Plan;
- b. implement management arrangements for the Nimmie-Caira area which give priority to enhancement of environmental and Aboriginal cultural outcomes within and potentially beyond the Nimmie-Caira area;
- c. implement arrangements for the future commercial use of parts of the Nimmie-Caira Land that are consistent with the environmental restoration of key areas, ecological objectives and Aboriginal cultural values;
- d. restore the floodplain health and ecosystem functions in the Nimmie-Caira area of the Lowbidgee floodplain;
- e. establish secure and lasting protection for the ecological assets, floodways and habitats in the Nimmie-Caira area; and
- f. plan and undertake activities to make an assessment against convention listing requirements with a view to a potential joint nomination of high ecological value areas of the Lowbidgee floodplain for inclusion on the List of Wetlands of International Importance under the Ramsar Convention.

B.2.2. The Priority Project will recognise the potential system level environmental benefits of Basin-scale significance which can be achieved through protecting and restoring the local environment, relaxing constraints through Nimmie-Caira Land, allowing for improved coordination of watering events between the Murrumbidgee and other rivers, and helping to 'bridge the gap' in the Murrumbidgee valley.

B.2.3. The Priority Project will assist in determining the technical feasibility of providing further SDL adjustment for the Murrumbidgee catchment under the process specified in the Basin Plan.

B.2.4. The Priority Project, through the implementation of Prerequisite Policy Measures delivered as part of the Basin Plan, will provide substantially enhanced capacity for

improved environmental watering outcomes including through relaxing constraints, shepherding and re-crediting of flows for the Nimmie-Caira Entitlement in the short term and (potentially) for other entitlements in the longer term (subject to there being no adverse third party impacts).

- B.2.5. The Priority Project will assist the State to meet its commitments to the IGA and meet Reform Requirements. The Priority Project will result in the transfer of a water entitlement to the Commonwealth.

### **B.3. Priority Project Requirements**

B.3.1. The State agrees:

- a. To facilitate the timely transfer to the Commonwealth of the 381,000 unit shares of Lowbidgee Supplementary Water Entitlement on a single water access licence;
- b. That the acquisition by the Commonwealth of the Lowbidgee Supplementary Water Entitlement complies with clause 3(h) of the NSW Access Licence Dealing Principles Order (No. 1) 2013 – Murray Darling Basin;
- c. That, concurrently to transferring the Lowbidgee Supplementary Water Entitlement, that it will arrange for and complete the purchase of 84,417 hectares of privately owned land in the Nimmie-Caira as defined in the Business Case (the Nimmie-Caira Land), the ownership of which will be transferred to the NSW Government;
- d. To establish a Project Control Group within 90 days of the date of this Project Schedule. Membership will be as per Clause 11 of the Heads of Agreement;
- e. To establish a Nimmie-Caira Project Advisory Committee within 90 days of the Project Schedule (as per Clause 12 of the Heads of Agreement) to provide advice on delivery of the project;
- f. To establish interim water management arrangements that provides for an orderly transition of the Lowbidgee Supplementary Water Entitlement from the current owners to the Commonwealth, with priority for interim water management to be on appropriate watering of environmental assets (as per Clause 10.g.i of the Heads of Agreement);
- g. To the joint development, with the Commonwealth, of an Environmental Watering Sub-Plan (EWP) for the Nimmie-Caira, as part of the LWMP, to be completed within the timeframes specified in C.1.2.;
- h. To the joint development, with the Commonwealth, of a long term water infrastructure management and operation plan, as part of the LWMP, to be completed within the timeframes specified in C.1.2.; and
- i. To plan and undertake activities to make an assessment against Convention listing requirements with a view to a potential joint nomination of high ecological value areas of the Lowbidgee floodplain for inclusion on the List of Wetlands of International Importance under the Ramsar Convention.

### **B.4. Land Management Arrangements**

- B.4.1. The State agrees that interim land management arrangements will be developed by the State in consultation with the Commonwealth, and will ensure all activities

approved on Nimmie-Caira Land are aligned with the objectives of the Heads of Agreement.

B.4.2. The State agrees:

- a. Upon signing of this Project Schedule, unless otherwise agreed by the Parties, all existing commercial operations are to cease within 12 months and no new commercial operations are to be permitted to commence in this time;
- b. Until the LWMP is agreed and subject to clause 10 (m) of the Heads of Agreement, that any lease or sale of land for commercial operations will be subject to advice from the Project Advisory Committee and will require approval by the Commonwealth. Leases will be limited to a maximum of five years;
- c. To ensure that current owners may continue to occupy their current residences only under a commercial lease arrangement at rates determined by independent valuers;
- d. To ensure that land in the Priority Project area that is vacated as a result of sale to the State may be leased to an approved commercial enterprise only by way of a process of public tender and only for activities consistent with the agreed objectives for the Priority Project; and
- e. To ensure that pest plant and animal control programs are undertaken by each lessee as a condition of lease.

B.4.3. The State agrees that the interim land management arrangements, including the arrangements for holding and use of revenue from any lease or sale of land or other activities in the Priority Project area, will be agreed within three months of the date of this Project Schedule. In implementing this requirement, the State will establish a separate interest bearing account into which all funds received by the lease or sale of Nimmie-Caira land will be deposited.

B.4.4. The State agrees to develop and implement a LWMP in consultation with and agreed by, the Commonwealth within the timeframes specified in C.1.2. The LWMP will:

- a. Ensure that the Commonwealth can undertake environmental watering in accordance with any environmental watering sub-plan, internal distribution rules or use approval (including for the inundation of land);
- b. Document the Commonwealth's rights to inundate the land for environmental watering purposes;
- c. Recognise the Commonwealth's priority use of the infrastructure and land for environmental watering purposes;
- d. Identify the location and extent of areas within the Nimmie-Caira that are to be protected or restored as environmental assets and the routes by which environmental water will be conveyed to these areas consistent with Attachment D to the Heads of Agreement;
- e. Detail plans for environmental restoration, including re-vegetation and erosion control, management and control of feral pests and weeds;
- f. Restrict the use of revenue raised by any sale or lease of land to activities required for the management of the Nimmie-Caira area for conservation and Aboriginal cultural purposes, or, if agreed by the Parties, for land management

for conservation and Aboriginal cultural purposes in the broader Lowbidgee floodplain or, if agreed by the Parties, for a contribution towards the cost of further SDL gap-bridging NSW State Priority Projects;

- g. Require flood easements to be registered and included on the land title for those lands in the Priority Project area which have the potential to be inundated through any managed environmental watering events. Land title documents must contain permanent conservation covenants or conservation agreements or restrictions on use or easements as appropriate to ensure long-term land management practices align with the LWMP and the Environmental Watering Sub-Plan;
- h. Set out requirements for fencing management agreements so as to protect and manage ecological and Aboriginal Cultural assets where necessary.
- i. Provide for the potential for the long term ownership and management of the land (including permanent funding arrangements for land management), particularly the environmental and Aboriginal cultural assets within Nimmie-Caira, to be undertaken by a suitable non-government entity whose business objectives are the long term conservation of ecological and Aboriginal cultural assets and protection of these assets. This includes potential management by the entity as a Ramsar site in the future in the event of a successful joint nomination, consistent with Paragraph B.5.12.; and
- j. Include, as a minimum, the following:
  - i. Environmental Watering Sub-Plan;
  - ii. Long term water infrastructure management and operation Plan;
  - iii. Infrastructure Reconfiguration Program, comprised of:
    - A. E-Water Infrastructure and Bridge Works;
    - B. Local Community Offsets (Road Works);
    - C. Land Transition Infrastructure Modifications; and
    - D. Other works;
  - iv. Commercial Management Plan;
  - v. Aboriginal Cultural Heritage Management Plan; and
  - vi. Environmental Management Plan.

B.4.5. The State agrees to ensure that all activity within the Nimmie-Caira area remains consistent with the LWMP once it is completed, and that the following key principles in relation to the continued use/occupation of Nimmie-Caira land are adhered to:

- a. Until the LWMP is in place, Nimmie-Caira Land cannot be leased for greater than five years, or sold, without the prior agreement of the Commonwealth;
- b. The State may approve commercial use of the Nimmie-Caira Land (for example, leasing for dry land cropping or other farming activities) only if the proposed activities are consistent with the environmental restoration, ecological objectives and Aboriginal cultural values of the Heads of Agreement and the interim land management arrangements or the LWMP (once it is in place);

- c. Nimmie-Caira Land can be sold or leased by the State only where this is consistent with the objectives of the LWMP, which are to protect and maintain the environmental and Aboriginal cultural assets of the Nimmie-Caira area and integrate where possible with long term objectives for environmental watering in Yanga National Park;
- d. As part of the development of the LWMP the scope and design requirements of a stock and domestic system for Nimmie-Caira will be determined; and
- e. Appropriate protection against liability will be included in sale or lease arrangements whereby the Commonwealth is not liable to maintain the land, including management of feral pests and weeds.

B.4.6. In the event that the LWMP cannot be agreed, the State and the Commonwealth will seek to resolve the issues which remain to be settled in the plan through the dispute resolution process provided in Part 10 of the Water Management Partnership Agreement. The Parties further agree that if the LWMP has not been agreed within six years of the date of this Project Schedule, the State may then sell or lease the Nimmie-Caira land where the terms of that sale or lease are consistent, by means of easements, covenants and caveats, with the objectives in Clause 9 of the Heads of Agreement, the environmental outcomes incorporated into the Heads of Agreement, and the interim land management arrangements.

## **B.5. Other Priority Project Activities**

B.5.1. By 30 June 2014, the State will:

- a) develop and implement a policy on accessibility of the area to the public;
- b) complete a comprehensive Aboriginal Heritage Survey to ensure adequate protection is afforded to sites of significance, excepting those properties which have already been the subject of a previous Commonwealth survey. This should include engagement with the local Aboriginal community;
- c) complete a comprehensive ecological survey to ensure aquatic and terrestrial values and conditions are documented, including the extent and condition of the land/vegetation cover and landform/contours of the entire Priority Project area. The findings of these surveys will be incorporated as appropriate into the LWMP; and
- d) develop and undertake appropriate pest plant and animal control programs where required.

B.5.2. The State agrees to use its best endeavours to make changes to relevant state laws and statutes, including the Water Sharing Plan and land tenure arrangements, to enable full implementation of this Project Schedule and the Heads of Agreement.

B.5.3. The State agrees that, in consultation with the Commonwealth, to use its best endeavours to develop and implement water shepherding and return flow arrangements for the Murrumbidgee catchment, through implementation of Prerequisite Policy Measures.

B.5.4. Through the implementation of Prerequisite Policy Measures, the State agrees to assess opportunities for water that is shepherded, or return flows that are re-credited that would otherwise not occur, to contribute to the NSW proportion of

downstream shared requirements by way of a 'supply measure' under the SDL Adjustment Mechanism in the Basin Plan.

- B.5.5. The State agrees to ensure that policy and rules that may be developed for water shepherding and re-crediting of return flows, through the implementation of Prerequisite Policy Measures, are implemented in such a way as to ensure that the characteristics of licensed entitlements held for environmental use will not be diminished relative to like entitlements held and used for other purposes.
- B.5.6. The State agrees that in consultation with the Commonwealth, and within the agreed budget, to undertake the design and construction of works necessary to enable the efficient delivery of environmental water as per Clause 19.e of the Heads of Agreement.
- B.5.7. The State agrees to ensure that the current and any future Nimmie-Caira water infrastructure is available as required to facilitate environmental watering within and through the Nimmie-Caira area.
- B.5.8. The State agrees to develop internal water distribution rules in consultation with the CEWH and consistent with the EWP for the Nimmie-Caira area.
- B.5.9. The State agrees that, consistent with New South Wales laws, the CEWH will determine how environmental water holdings will be distributed in the Nimmie-Caira area, and through adjacent areas, subject to no adverse third party impacts, consistent with any approved environmental watering plans, internal distribution rules or use approvals.
- B.5.10. The State agrees to establish flood easements on all land titles acquired under this Priority Project, within the agreed budget, to enable the Commonwealth to inundate those lands that have the potential to be inundated through any managed environmental watering events.
- B.5.11. The State confirms that all liabilities and responsibilities associated with the ownership and maintenance of land and water infrastructure (excluding regulated water charges for Water NSW infrastructure related to the use of the entitlement) will reside with the owner of the land and water infrastructure.
- B.5.12. During the life of this Schedule, the State and the Commonwealth will consider the potential for joint nomination of high ecological value areas of the Lowbidgee floodplain. This will include planning and undertaking activities to make an assessment against convention listing requirements required for inclusion on the List of Wetlands of International Importance under the Ramsar Convention.

## **B.6. Delivery of the Priority Project**

- B.6.1. The State will be responsible for ensuring the proper and efficient conduct and management of this Priority Project in accordance with this Project Schedule and it will carry out each Activity, including the management of the land, in accordance with all applicable laws (including, but not limited to, all required planning, environmental, development, building, occupational health and safety and regulatory approvals and all applicable Australian standards) while under state ownership.
- B.6.2. In this clause B.6.2.:

- a) ‘**ABCC**’ means the Australian Building and Construction Commission referred to in subsection 29(2) of the Act;
- b) ‘**Act**’ means the *Building and Construction Industry (Improving Productivity) Act 2016*;
- c) ‘**Building Code 2013**’ means the *Building Code 2013* which is available through the following webpage <http://employment.gov.au/building-code>;
- d) ‘**Building Code 2016**’ means the *Code for the Tendering and Performance of Building Work 2016*, which is available through the following webpage <http://employment.gov.au/building-code>; and
- e) ‘**Commonwealth funded building work**’ means work which falls within the scope of the relevant building code legislation.

B.6.3. Where the Funding relates to Commonwealth funded building work for which an expression of interest or tender (however described) was submitted before 2 December 2016, the Building Code 2013 will apply; and

- a) the State must ensure that any head contractors who submitted a bid for the work before 2 December 2016:
  - i. are provided with the ABCC Information Statement available at <https://www.abcc.gov.au/building-code/building-code-resources/contractor-resources>; and
  - ii. are provided with the *Model Clauses Type C (Model Clauses for Code Covered Entities when engaging Subcontractors on Head Contractor Building Code 2013 Projects)* available from <https://www.abcc.gov.au/building-code/building-code-resources/contractor-resources> for use if they further subcontract the building work; and
  - iii. are otherwise made aware of any other relevant transitional guidance made available by the ABCC.

B.6.4. Where the Funding relates to Commonwealth funded building work for which an expression of interest or tender (however described) was submitted on or after 2 December 2016, the Building Code 2016 will apply, and the State must satisfy any relevant requirements set out in the model clause documentation in respect of the Building Code 2016.

B.6.5. Notwithstanding this clause B.6.2., the State agrees to comply with the applicable building code legislation which may be in force from time to time and that this clause B.6.2. may be updated to accommodate any changes to the relevant building code legislation.

B.6.6. The State agrees that

- a. it will comply, and ensure its subcontractors comply, with all requirements of the Work Health and Safety Act 2011; and
- b. it will ensure the requirements of the WHS Accreditation Scheme under the section 43 of the Building and Construction Industry (Improving Productivity) Act 2016, and the Office of the Federal Safety Commissioner are met.



- B.6.7. If requested, the State will provide the Commonwealth with access to the State's records and Personnel to enable the Commonwealth to conduct its own independent audit or review of any aspect of this Priority Project.
- B.6.8. The State is responsible for:
- a. meeting the Priority Project Milestones specified in Item C of this Project Schedule;
  - b. managing Priority Project delivery for all aspects in a way which supports the achievement of the objectives at Section B.2 and considers the views of the Project Control Group and the advice of the Project Advisory Committee; and
  - c. managing Priority Project delivery and risks in a way that ensures that all Priority Project and budget milestones are delivered in a timely and cost effective manner.
- B.6.9. The State will provide regular reports on the Priority Project's progress in-line with Project Schedule milestone requirements. This includes:
- a. reporting on the purchase transactions for the Nimmie-Caira Land and Nimmie-Caira Entitlement components and other relevant outcomes, including any revenue from the sale or lease back of land. The reporting framework will be consistent with the relevant provisions of the WMPA;
  - b. ensuring there is appropriate monitoring, auditing and reporting of Priority Project expenditure against the Project Cost to enable the Commonwealth to be suitably informed on the progress and outcomes of this Priority Project; and
  - c. Provision of Project Control Group and Project Advisory Committee meeting records.
- B.6.10. The State will ensure that the Project Control Group and Project Advisory Group meets according to Clauses 11 and 12 of the Heads of Agreement and that all relevant meeting documentation, where possible, is circulated to all members at least five working days in advance.
- B.6.11. No additional funding will be provided by the Commonwealth to the State if the costs of the Priority Project exceed the Funding.
- B.6.12. In the eventuality that the State considers that the scope of the Priority Project should change, the State may propose a variation to this Project Schedule consistent with clause 16 of the WMPA but no such change is effective until agreed by the Parties in accordance with clause 16.
- B.6.13. The State acknowledges that the Commonwealth is not required to perform any aspect of this Priority Project.
- B.6.14. In undertaking this Priority Project, the State will comply with the requirements, where relevant, of the *Environment Protection and Biodiversity Conservation Act 1999*.
- B.6.15. Both Parties acknowledge that:

- a. On the 28 June 2013 the Commonwealth agreed to make a payment of [REDACTED] to be held in trust by the State for the Commonwealth;
- b. These funds were paid into the NSW Treasury operating bank account on 8 July 2013;
- c. These funds will be paid into a Department of Trade and Investment Trust Account until they are required to meet purchase requirements. Account details will be provided in accordance with the Milestone requirements at clause C.1.1.;
- d. These funds are to be used solely for the acquisition by the State of:
  - i. the Lowbidgee Supplementary Water Entitlement; and
  - ii. the Nimmie-Caira Land,
 in accordance with this Project Schedule;
- e. These funds may only be drawn upon by the State for the acquisition of the Lowbidgee Supplementary Water Entitlement and all the properties that make up the Nimmie-Caira Land as a package;
- f. In the event that the State is unable to acquire:
  - i. the Lowbidgee Supplementary Water Entitlement; or
  - ii. any one of the properties that make up the Nimmie-Caira Land,
 consistent with this Project Schedule, by 30 June 2014, the State will promptly return all funds with interest to the Commonwealth unless otherwise agreed in writing (in accordance with clause 22 of the Heads of Agreement);
- g. The State may draw upon these funds, in accordance with the requirements of this clause B.6.15, in order to meet Project Milestones 1 and 2 at clause C.1.1.;
- h. The State will notify the Commonwealth in writing at least 48 hours in advance of its intention to draw on the funds and the purpose for which it plans to use those funds;
- i. If requested by the Commonwealth, the State will provide evidence to account for the expenditure of the funds; and
- j. In relation to both the Nimmie-Caira Land and the Lowbidgee Supplementary Water Entitlement, the State will notify the Commonwealth in writing within 24 hours of the completion of key steps in the transaction process:
  - i. exchange of contracts;
  - ii. settlement; and
  - iii. registration.

B.6.16. In delivering the Priority Project, the State agrees to the following:

- a. Consistent with clause 14 of the Agreement, the State agrees that it will seek the agreement of the Department before the release of any publicity material by the State in relation to the Priority Project. The Department will provide any agreement on the release of such publicity material within 10 Business Days, excluding any which require approval by the Commonwealth Minister;

- b. The State is responsible for ensuring that the Funding is spent for the purposes of the Priority Project in accordance with the Project Budget and in accordance with this Project Schedule; and
- c. Commonwealth Funding provided under this Priority Project can be spent on legal advice regarding the implementation of this Priority Project but must not be spent on legal advice:
  - i. regarding the development of the Project Schedule;
  - ii. for any dispute or action against or involving the Commonwealth except where that dispute or action involves the Commonwealth, the State and a third party to the extent that the Department, at its sole discretion, gives its prior written consent to the State using the Funds for that purpose; or
  - iii. in relation to any dispute or action against or involving the State except to the extent that the Department, at its sole discretion, gives its prior written consent to the State using the Funds for that purpose.

B.6.17. The use of any interest that the State earns on the Commonwealth Funds will be consistent with clause 6.1.9 of the WMPA. The prior approval of the Commonwealth will be obtained for the use of any interest on the Priority Project.

B.6.18. On 31 May 2019, the State notified the Commonwealth that it would not access the contingency funds of up to [REDACTED] established for the purpose of allowing for increases in the project costs specified in D1. The overall Project Funds have been reduced by [REDACTED] and there are no contingency funds available for this Priority Project.

## **B.7. Annual Workplans**

B.7.1. The State is required to prepare Annual Workplans for Activities, to be used as the basis for progress reporting outlined in item I for the project period, which together will cover the period from 1 December 2017 to the end of this Priority Project.

B.7.2. The Annual Workplans at a minimum must include:

- a. a description of how the work is to achieve the Priority Project aims and outcomes specified in the Heads of Agreement;
- b. outputs for the reporting period that contribute to the achievement of the Priority Project deliverables specified in Item B.1.6 including delivering:
  - i. Protection, maintenance and enhancement of Aboriginal cultural heritage and of environmental flows;
  - ii. Management plan/arrangements in place that ensure enhancement, protection and maintenance of ecological assets and Aboriginal cultural heritage; access to, and maintenance of, e-watering infrastructure in perpetuity;
  - iii. Legislation, regulation and infrastructure in place to allow protection and re-use /and delivery of e-water for the best environmental outcomes;
  - iv. Local community offsets; and
  - v. SDL adjustment considerations;
- c. detailed budget for the relevant year that complies with the relevant Activities;
- d. indicative budget for the subsequent period(s) of this Priority Project;

- e. financial reporting template that meets the requirements of Items I.2.1.c and I.2.1.d and I.2.2 b; and
- f. an overview that provides certainty that the timing of planned Activities for the relevant financial year contributes to both Activities achieved to date and for the subsequent period(s) of this Priority Project.

- B.7.3. Annual Workplans for the purposes of this Project Schedule must be approved by the Commonwealth.
- B.7.4. The State agrees to provide to the Annual Workplans for the relevant management actions by March of each year for the work to be undertaken in the following financial year.
- B.7.5. The Commonwealth agrees to consider the Annual Workplan and provide the State with a response within 20 business days of the receipt of the workplan.
- B.7.6. If there is any inconsistency between an Annual Workplan and this Project Schedule, the Project Schedule prevails to the extent of the inconsistency.

**C. Project Milestones**

C.1.1. Land and Water purchase milestones

Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Funding (excl GST)
1	First Stage of legal process for purchase of land and water	Notification by the State within 48 hours of the date set for exchange of contracts for purchase of the land and water entitlement.	within 6 months of the signing of this Schedule	\$ [REDACTED] Completed Jun 2013
2	Meeting contractual obligations for land and water purchase	Provision of copies of the exchanged contracts and notification by the State of date set for settlement of the purchase of the land and water entitlement.	within 12 months of the exchange of contracts	\$ [REDACTED] Completed Jun 2013
3	Details of separate financial management accounts	Account details of separate financial management accounts.  Evidence in the form of statements showing the establishment and deposit of funds in the Trust Account for the purchase of land and water entitlement;  Evidence of a separate account to deposit all funds received from the lease or sale of Nimmie-Caira land;	Within 1 month of the signing of this Schedule	Completed Aug 2013

		Evidence of a separate account to deposit all project funds received from the Commonwealth;  The State will report on interest earned on all funds provided by the Commonwealth.		
4	Registration of ownership of land and water entitlement	Notification that the Water Administration Ministerial Corporation has been registered as the legal owner of the Nimmie-Caira Land and that the Commonwealth has been registered as the legal owner of the Lowbidgee Supplementary Water Entitlement.	within 12 months of the exchange of contracts	Completed Jun 2014

C.1.2. Project Milestones for this Priority project

Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Funding (excl GST)
	<b>Project Milestone 1</b>		8 Sep 2013	\$ [REDACTED] Completed 3 Sep 2013
1.1	Signing of the Project Schedule	Project Schedule signed by both Parties.		
1.2	Basin Pipe Project Schedule variation	Agreement to an amendment to the Basin Pipe Project Schedule to ensure that the total water entitlement to be held by the Commonwealth from compliant projects will be increased up to a maximum of 75% of the total water savings commensurate with the extent of funding provided for the Nimmie-Caira Project.		

Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Funding (excl GST)
	<b>Project Milestone 2</b>		15 Sep 2013	Completed 28 Feb 2014
2.1	Nimmie-Caira Project Advisory Committee formed	Appointment of representatives for committees and Terms of Reference developed and agreed by both Parties. First meeting held and minutes provided.		
2.2	Nimmie-Caira Project Control Group formed	Appointment of representatives for committees and Terms of Reference developed and agreed by both Parties. First meeting held and minutes provided.		
2.3	Submit progress report to the Commonwealth	Provision of Progress Report to the reasonable satisfaction of SEWPAC. Subject to Item 1.2 of schedule.		
	<b>Project Milestone 3</b>		15 Jan 2014	\$ <span style="background-color: black; color: black;">██████████</span> Completed 24 Jun 2014
3.1	Interim Land Management Arrangements implemented	Finalised copies of signed lease agreements and copies of independent valuations for occupation of land at commercial rates upon finalisation of land and water transfer.		
3.2	Cultural Heritage Survey and report	Evidence of tender to engage consultant to commence survey.		
3.3	Environmental Water Plan	Evidence of tender to engage consultant to commence environmental water plan.		
3.4	Ecological survey and report	Evidence of tender to engage consultant to commence ecological survey.		

Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Funding (excl GST)
3.5	Project Agreement for the Protection and Re-use of Commonwealth Environmental Water held in the Murrumbidgee Catchment	Finalised copy of the Project Agreement.		
3.6	Hay Shire Community Development Coordinator	Evidence of completion of agreement on implementation for milestone based grant process and role of development coordinator and report on future role and responsibilities. Evidence of employment contract.		
3.7	Balranald Shire Interpretive Centre Nimmie-Caira Module	Evidence of agreement on implementation for milestone based grant process and creation of the Nimmie-Caira module and report detailing use and outcomes.		
3.8	Project Advisory Committee	Minutes of meetings of Project Advisory Committee and provision of advice to Project Control Group.		
3.9	Submit progress report to the Commonwealth	Provision of Progress Report to the reasonable satisfaction of SEWPAC. Subject to Item I.2 of schedule.		
	<b>Project Milestone 4</b>		Nov-2016	\$ <span style="background-color: black; color: black;">██████████</span> Completed on 29 Mar 2017.
4.1	Land Management Plan development.	Revised Project Methodology agreed		

Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Funding (excl GST)
4.2	Foundation Studies	Completion of the following Foundation Studies: Cultural Heritage Survey and report; Ecological Survey and report; Land Capability Assessment report, Market Sounding Report		
4.3	Local Community Offsets - Balranald Shire Interpretive Centre Nimmie-Caira Module	90% Completion of Balranald Shire Interpretive Centre Nimmie-Caira Module		
4.4	Local Community Offsets - Hay Shire Community Development Co-ordinator	Progress and Outcomes Report on Hay Shire Community Development Coordinator activities and outcomes		
4.5	Basin Pipe Project contribution	25% of State co-contribution provided		
4.6	Interim Land Management Arrangements	Report on Interim Land Management activities to November 2016		
4.7	Submit progress report to the Commonwealth	Provision of Progress Report consistent with Item 1.2 of schedule.		
	<b>Project Milestone 5</b>		Apr-2017	\$ <span style="background-color: black; color: black;">██████████</span> Completed on 29 Jun 2017
5.1	Basin Pipe	50% of State co-contribution provided		
5.2	Local Community Offsets - Balranald Shire Interpretive Centre Nimmie-Caira Module	Completion of Balranald Shire Interpretive Centre Nimmie-Caira Module and report detailing use and outcomes of module.		
5.3	Land Management Plan	Stage 1 Land Management Plan (as defined in Revised Project Methodology) Agreed		



Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Funding (excl GST)
5.4	Interim Land management	Report on Interim Land Management activities to March 2017.		
5.5	Non-Government Entity (NGE) Engagement / Nimmie-Caira Land Divestment	Expression of Interest advertised		
5.6	PPM Implementation Plan that meets requirements of the Basin Plan	Copy of submitted PPM Implementation Plan.		
5.7	Submit progress report to the Commonwealth	Provision of Progress Report consistent with Item 1.2 of schedule.		
	<b>Project Milestone 6</b>		Mar 2018	\$ <span style="background-color: black; color: black;">██████████</span> Completed Apr 2018
6.1	Land Management Plan	Stage 2 Land Management Plan (as defined in Revised Project Methodology) agreed		
6.2	Interim Land management	Report on Interim Land Management activities to November 2017.		
6.3	E-water Infrastructure	E-water Preliminary Environmental and Planning Overview (PEPO), Review of Environmental Factors completed;		
6.4	NGE Engagement / Nimmie-Caira Land Divestment	Request for Proposals advertised		

Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Funding (excl GST)
6.5	Identification of Water Management Act (2000) and Regulation amendments required to implement PPMs as part of broader Basin Plan implementation requirements	Report on identified amendments		
6.6	Submit progress report to the Commonwealth	Provision of Progress Report consistent with Item I.2 of schedule		

### C.1.3. Phase Two

To improve project management efficiency, as of 1 December 2017, progress reports will describe achievements against the Annual Workplan (**Attachment 1**) and be delivered in accordance with the following table:

Project Milestone Number	Project Milestone	Indicator/Evidence	Due Date	Funding (excl GST)
7	Payment on signing	Incorporation of an approved workplan in the Project Schedule.	31 Mar 2018	\$ ██████████ Completed Apr 2018
8	Progress Report	Provision of a Progress Report in accordance with Item I.2 of this Project Schedule for the period 1 December 2017 to 31 June 2018 to the satisfaction of the Department	31 Aug 2018	\$ ██████████ Completed Aug 2018
9	Progress Report	Provision of a Progress Report in accordance with Item I.2 of this Project Schedule for the period 1 July 2018 to 31 December 2018 to the satisfaction of the Department.	30 Apr 2019	\$ ██████████ Completed Mar 2019
10	Progress Report  100% of Basin Pipe	Provision of a Progress Report in accordance with Item I.2 of this Project Schedule for the period 1 Jan 2019 to 30 April 2019 to the satisfaction of the Department.	31 May 2019	Up to \$ ██████████

Project Milestone Number	Project Milestone	Indicator/Evidence	Due Date	Funding (excl GST)
	contribution provided to the Commonwealth.			
11	Final Report	Provision of a Final Project Report in accordance with Item I.3 of the Project Schedule.  Independently audited financial report to the satisfaction of the Department.  Notification Sale of the Property.	30 Aug 2019	Up to \$ [REDACTED]
		TOTAL PROJECT FUNDING		Up to \$ [REDACTED]

**D. Project Cost**

**D.1. Project Cost for the Priority Project**

D.1.1. The Project Cost for this Priority Project is set out in the following table:

A.1.1. Item	TOTAL (\$)
[REDACTED]	
<b>Total</b>	\$ [REDACTED]

**D.2. Contributions for Priority Project**

D.2.1. The parties' contributions for the Priority Project are set out in the following table:

Contribution	Maximum Contribution (\$ excl. GST)
1. Commonwealth Funding	\$172,203,478
2. State Contributions to Project Cost	1. Consistent with clause 10(s) of the Heads of Agreement, the State will make a ten per cent co-contribution to the project. The Commonwealth accepts

	<p>that the State ten per cent co-contribution to the Project will comprise:</p> <ol style="list-style-type: none"> <li>1) the State providing additional water entitlements to the Commonwealth from the Basin Pipe State Priority Project, in respect of which the total entitlement to be held by the Commonwealth from compliant projects will amount to \$12,906,951 million value of water savings; and</li> <li>2) Commonwealth recognition of an in kind contribution, recognising the State's previous actions over the long term to realise the environmental potential of the Nimmie-Caira area, valued at \$ [REDACTED].</li> </ol>
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**D.3. State Contributions**

D.3.1. The State agrees that any Priority Project costs in excess of the Funding detailed in D.2.1 must be met by the State.

**E. Transfer of Water Entitlements**

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**E.1. Agreed Water Savings**

E.1.1. The State agrees that the water entitlement to be transferred to the Commonwealth under this Priority Project is 381,000 unit shares of Lowbidgee Supplementary Water Entitlement.

**E.2. Arrangements between the State and a third party**

E.2.1. Not applicable.

**F. Sharing of water savings**

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**F.1. Additional Water Savings**

F.1.1. Not used.

**F.2. Shortfall in Agreed Water Savings**

F.2.1. Not used.

**G. Agreement Material and Existing Material relating to this Priority Project**

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**G.1. Agreement Material**

G.1.1. Not used.

**G.2. Existing Material**

G.2.1. Not used.

**H. Indemnity**

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H.1.1. Notwithstanding any other provision of this Agreement, the State agrees to indemnify, and keep indemnified, the Commonwealth against any cost, liability, loss or expense incurred by the Commonwealth:

- a. in rectifying any environmental damage or change in the value of the land referred to in paragraph B1.6.a above resulting from action taken by the State under clause B.4.4.g above; or
- b. in dealing with any third party (including Commonwealth Personnel) claims against the Commonwealth, which includes without limitation the Commonwealth's legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used and disbursements paid by the Commonwealth;

arising from any act or omission by State or its Personnel in connection with the Priority Project specified in this Project Schedule.

H.1.2. The State's liability to indemnify the Commonwealth under this Item H will be reduced proportionally to the extent that any fault on the Commonwealth's part contributed to the relevant cost, liability, loss or expense. In this Item H.1.2 'fault' means any reckless, negligent or unlawful act or omission or wilful misconduct.

H.1.3. The right of the Commonwealth to be indemnified in this Item H is in addition to, and not exclusive of, any right, power or remedy provided to the Commonwealth by law, but the Commonwealth is not entitled to be compensated in excess of the relevant cost, liability, loss or expense.

## **I. Project Reports**

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### **I.1. Project Reports**

I.1.1. Further to clause 8 and Schedule 4 of the Agreement, the State agrees to provide the Commonwealth with all of the Reports specified in Item C at the times specified in Item C.

### **I.2. Progress Reports**

- I.2.1. Each Progress Report for Milestones 1 to 5 inclusive must demonstrate evidence of the State's project management and contract management activities and financial management, and must contain the following information:
- a. a description of the actual performance of the Priority Project to date against the aim of the Priority Project (as specified in this Project Schedule), including information and evidence to demonstrate the State's completion of the Project Milestones (see Item C.1.1 of this Project Schedule) that were due for completion during the period that is the subject of this Progress Report (Period);
  - b. a description of the Activities undertaken for the Priority Project to date;
  - c. a statement of income and expenditure of the Funding to date against the Project Cost, for all accounts as described in Item C1.1;
  - d. an estimate of the interest earned by the State to date on the Funds provided for the priority Project;
  - e. promotional activities undertaken in relation to, and media coverage of, the Priority Project during the Period and those proposed activities during the next Period; and
  - f. any other items that are agreed by the State and the Commonwealth to be included in the Progress Report.

- I.2.2. Each Progress Report for Milestones 6 to 10 inclusive must include the following (at a minimum):
- a. a description of Activities undertaken in respect of the Priority Project up to and including the completion of the Project Milestone to which the Report relates that includes:
    - i. Achievements to date, including evidence that each of the Project Milestones, including deliverables, have been met and where relevant is in accordance with agreed outputs as contained in the approved Annual Workplans;
    - ii. the outcomes that have been achieved to date. This includes a discussion of the extent to which the completed Activities are being used for the purpose of the Priority Project's outcomes; and
    - iii. an explanation of any difficulties or delays encountered to date in the performance of the Priority Project, including the extent to which the Heads of Agreement's objectives have not been met.
  - b. a detailed statement of the State's receipt and expenditure of the Funds and the State Contributions to date for the Priority Project, in an approved Annual Workplan that meets the requirement of Item B.7, including Interest earned by the State on the Funds or State Contributions;
  - c. details of all promotional activities undertaken in relation to, and media coverage of, the Priority Project during the period that is the subject of the Report and any expected promotional opportunities, during the next reporting period of the Priority Project;
  - d. a description of the work that will be undertaken to complete the Priority Project;
  - e. a statement as to whether the Priority Project is proceeding within the Project Cost as per the table at D 1.1. and if it is not, an explanation as to why the Project Cost is not being met and the action the State proposes to immediately take to address this; and
  - f. any other items that are agreed by the State and the Commonwealth to be included in the Progress Reports.

### **I.3. Final Project Report**

- I.3.1. The final Project Report will be a stand-alone document that can be used for public information dissemination purposes regarding this Priority Project.
- I.3.2. The final Project Report for the Priority Project is due at the earliest of:
- a. Milestone 11 as set out in Item C.1.2; or
  - b. three months after the completion of the Priority Project; or
  - c. three months after the termination of this Project Schedule or the Priority Project.
- I.3.3. The final Project Report will contain information that:
- a. describes the conduct, benefits and outcomes of the Priority Project as a whole;

- b. Evaluates the Priority Project, including assessing the extent to which the outcomes and Project Milestones of the Priority Project, as specified in Item B of this Project Schedule, have been achieved, and explaining why any aspect of the Priority Project was not achieved.
- c. confirms the extent to which all of the Water Entitlements that are required to be Granted to the Commonwealth in respect to this Priority Project have, as at the date of the Final Report, been Granted to the Commonwealth,;
- d. provides detailed financial information regarding the total Project Cost, Funding, and State Contributions for the Priority Project;
- e. summarises all promotional activities undertaken in relation to, and media coverage of, the Priority Project;
- f. includes a discussion of any other matters, relating to the Priority Project, which the Department notifies the State should be included in this final Project Report at least 40 Business Days before it is due; and
- g. any other items that are agreed by the State and the Commonwealth will be included in the Final Report.

I.3.4. The final Project Report should be accompanied by a separate certified income and expenditure statement signed by a delegated officer of DoI Water that clearly identifies:

- a. the amount of interest earned by the State on the Funding for all financial management accounts operated for, or in support of, the project;
- b. confirmation that all Funding paid to the State (including any interest earned by the State on the Funds and approved for expenditure on this Priority Project by the Commonwealth) was spent by the State in accordance with this Project Schedule;
- c. any State Contributions;
- d. any Other Contributions that were provided for the Priority Project;
- e. any cost savings or cost overruns for the Priority Project; and
- f. advice as to the amount of any Funds that the State is required to return to the Commonwealth under the Agreement.

#### **I.4. Independent Audit Report**

I.4.1 Annual audited financial Reports from an independent auditor are to be provided for the Priority Project as specified in Schedule 4, Item C of the Agreement.

#### **J. Payment Schedule for Funding for Priority Project**

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J.1.1. The maximum Funding payable by the Commonwealth to the State in respect of this Priority Project is \$172,203,478 (excluding GST).

J.1.2. Subject to the terms of this Project Schedule including clause J.1.5 below and clauses 6 and 17 of the Agreement, the Funding will be paid in instalments, and on the completion of the Payment Preconditions, set out in Item C. Each such payment of Funds is due within 30 Business Days after the date that the State is assessed as having completed all of the Payment Preconditions relating to that payment and has provided the Department with an invoice for that payment of Funds.

- J.1.3. The Payment Preconditions for a payment of Funds under this Project Schedule are completion of the Project Milestones at Item C.
- J.1.4. Each Payment also has the Payment Precondition that all preceding Project Milestones have been achieved.
- J.1.5. Clauses J.1.1., J.1.2 and J.1.3 do not apply to the payment of funding to meet project milestone C.1.1. Payment of those funds will be made as set out in that clause.
- J.1.6. In line with the Water Management Partnership Agreement, if the Commonwealth reasonably determines that the State:
- a. Has funding that it no longer requires for the Priority Project; or
  - b. Has spent an amount of funds other than in accordance with the WMPA;
- then the Commonwealth may, at its sole discretion and after notification to the State:
- c. Reduce further payments of Funding to the State by up to that amount;
  - d. Require the State to repay that amount of Funds to the Commonwealth within 20 Business Days after the State receives a notice requiring that repayment; or
  - e. Require the State to apply that amount of Funds to another Priority Project.
- J.1.7. Any interest that the State earns on the Commonwealth Funds is to be managed in accordance with clause 6.1.9 of the WMPA.

**K. Contact Officer**

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- K.1.1. The nominated Contact Officers for this project are:
- I. For the Commonwealth,  
The Director, Environmental Projects Section, Department of Agriculture,  
18 Marcus Clarke St, Canberra City, ACT 2601, Ph: 02 6272 4383;
  - II. For New South Wales,  
Manager Commonwealth Strategic Programs, Department of Industry,  
Lands and Water Division, 10 Valentine Ave Parramatta, NSW 2124, Ph:  
02 8838 7845.
- K.1.2. Either Party signatory to this Schedule may change its Contact Officer at any time by notice in writing to the other Party.