

WATER MANAGEMENT PARTNERSHIP AGREEMENT

The Commonwealth of Australia

and

**The State of Queensland as represented by the
Department of Environment and Resource Management**

CONTENTS

PREAMBLE

| | | |
|------------|--|-----------|
| 1. | Objectives (ref IGA 4.2, 4.9, and 4.10) | 2 |
| 2. | Parties' responsibilities under this Agreement (ref IGA 4.6.1 and 4.13.1) | 3 |
| 2.1. | Commonwealth responsibilities | 3 |
| 2.2. | State responsibilities | 3 |
| 2.3. | Enforceability of the Agreement | 4 |
| 3. | Assessment of the Parties (ref IGA 4.7) | 4 |
| 3.1. | COAG Reform Council responsible for assessment of the parties' performance | 4 |
| 3.2. | Assessment of Reform Requirements | 4 |
| 4. | Reform Requirements (ref IGA 4.8, 4.13.3, Part 5) | 5 |
| 4.1. | Water Reform Actions and Milestones | 5 |
| 4.2. | Reform Actions – third parties | 5 |
| 4.3. | No Additional Net Costs | 5 |
| 5. | Priority Projects (ref IGA 4.12, 4.13.1 (b)) | 6 |
| 5.1. | Due Diligence process for Proposed Projects | 6 |
| 5.2. | Transfer of Water Entitlements to the Commonwealth | 7 |
| 6. | Financial Arrangements (ref IGA 4.5.5, 4.11, 4.13, 4.14 and Part 5) | 9 |
| 6.1. | Payment of Funds | 9 |
| 6.2. | Use of Funds | 11 |
| 6.3. | Unused or Misused Funds | 11 |
| 6.4. | State Contributions and Other Contributions | 12 |
| 6.5. | Reimbursement Payments for State's Additional Net Costs | 12 |
| 6.6. | Taxation | 12 |
| 7. | Records | 13 |
| 8. | Reports | 14 |
| 8.1. | Provision of progress Reports | 14 |
| 9. | Audit Requirements (ref IGA 4.5.5(f)) | 14 |
| 9.1. | Financial information | 14 |
| 9.2. | No Additional Net Costs | 14 |
| 10. | Commonwealth Material | 15 |
| 10.1. | Ownership | 15 |
| 10.2. | Handling and Return of Commonwealth Material | 15 |
| 11. | Agreement Material | 15 |
| 11.1. | Ownership | 15 |

| | | |
|------------|--|-----------|
| 11.2. | Licence of Agreement Material | 15 |
| 11.3. | Licence of Existing Material | 16 |
| 11.4. | Consent to Specified Acts | 16 |
| 12. | Communication and provision of information | 16 |
| 12.1. | Communication between the parties | 16 |
| 12.2. | Provision of Information | 17 |
| 12.3. | Freedom of Information requests | 17 |
| 13. | Confidential Information | 17 |
| 13.1. | Confidential Information not to be disclosed | 17 |
| 13.2. | Written Undertakings | 17 |
| 13.3. | Exceptions to confidentiality requirements | 18 |
| 14. | Acknowledgement and Publicity | 18 |
| 15. | Dispute resolution process (ref IGA 4.15) | 19 |
| 16. | Variations (ref IGA 4.5.5(h)) | 20 |
| 16.1. | All variations to be in writing | 20 |
| 16.2. | Incorporation of Priority Projects into this Agreement | 20 |
| 16.3. | Changes to a Priority Project | 20 |
| 16.4. | Incorporation of additional Reform Milestones and Reform Actions | 20 |
| 17. | Termination | 21 |
| 17.1. | Termination - entire Agreement | 21 |
| 17.2. | Termination - particular Priority Project(s) | 23 |
| 18. | Operation of the Agreement | 24 |
| 18.1. | Term of Agreement | 24 |
| 18.2. | Agreement is a public document (ref IGA 4.5.2) | 24 |
| 18.3. | Notices under this Agreement | 25 |
| 18.4. | Definitions | 26 |
| 18.5. | Interpretation | 32 |
| | Schedule 1 Reform Requirements | 33 |
| A. | Reform Actions and Reform Milestones | 33 |
| B. | Agreement Material and Existing Material | 36 |
| | Schedule 2 PROJECT SCHEDULE TEMPLATE | 37 |
| A. | Project Schedule Template | 37 |
| B. | Priority Project No. x: [Insert brief title of Priority Project] | 37 |
| C. | Project Milestones | 38 |
| D. | Project Cost | 39 |
| E. | Transfer of Water Entitlements | 40 |
| F. | Sharing Actual Water Savings additional to Agreed Water Savings | 41 |
| G. | Agreement Material and Existing Material relating to this Priority Project | 42 |
| H. | Indemnity | 42 |
| I. | Project Reports | 42 |

AA

| | |
|--|-----------|
| J. Payment Schedule for Funding for Priority Project | 44 |
| Schedule 3 Reform Assessment Process | 46 |
| A. Agreement on Murray-Darling Basin Reform requirements (ref IGA 4.7) | 46 |
| B. COAG Reform Council procedures | 46 |
| C. National Water Commission procedures | 47 |
| Schedule 4 Reports | 49 |
| A. Project Reports | 49 |
| B. Reform Reports | 49 |
| C. Audited Financial Reports | 49 |
| D. Other Reports | 50 |
| Schedule 5 - Publicity Protocols | 51 |

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WATER MANAGEMENT PARTNERSHIP AGREEMENT

Date

This Agreement is dated

11th January, 2010

Parties

This Agreement is made between and binds the following parties:

1. **The Commonwealth of Australia** (the Commonwealth)
2. **The State of Queensland** as represented by the Department of Environment and Resource Management (the State)

PREAMBLE

- A. On 3 July 2008 the Commonwealth and the Basin States (being the States of New South Wales, Queensland, South Australia and Victoria and the Australian Capital Territory) signed an Intergovernmental Agreement (IGA) on Murray-Darling Basin Reform. Alongside the *Water Act 2007*, the IGA progresses the objectives of the National Water Initiative (NWI) which are to increase the productivity and efficiency of Australia's water use, to service rural and urban communities and to ensure the health of river and groundwater systems. In doing so the IGA reaffirms the parties' commitment to the NWI.
- B. Part Four of the IGA provides for the parties to enter into this Agreement to give effect to the urgent need to undertake water reforms in the Murray-Darling Basin to deliver a sustainable cap on surface water and groundwater diversions across the Murray-Darling Basin to ensure the future of communities, industry and enhanced environmental outcomes.
- C. This Agreement provides for the State to undertake one or more Priority Projects that will substantially contribute to improved water use efficiency and enhance the sustainability of rural water use in the Murray-Darling Basin. The Agreement recognises the direct link between the need for the Basin States to undertake water reforms in the Murray-Darling Basin and the provision of Commonwealth funding for each Priority Project. The Commonwealth will provide this funding from its Sustainable Rural Water Use and Infrastructure program, which is a component of the Commonwealth's *Water for the Future* initiative.

- D. In entering into this Agreement, the Commonwealth and the State recognise that they have a shared responsibility and mutual interest in improving outcomes in the Murray-Darling Basin.

PART ONE - OBJECTIVES OF THE AGREEMENT

1. Objectives (ref IGA 4.2, 4.9, and 4.10)

- 1.1.1. The parties agree to work together to ensure the sustainable use of Basin water resources, and to help Basin water users adapt to the expected impacts of climate change by:
- a. their ongoing implementation of the NWI and the State's achievement of the Reform Requirements in this Agreement;
 - b. their implementation of the *Water Act 2007*, including the Basin Plan adopted by the Commonwealth Minister under section 44 of the *Water Act 2007*; and
 - c. the Commonwealth funding, and the State carrying out, Priority Projects that have passed the Due Diligence process to the Commonwealth's satisfaction.
- 1.1.2. The parties' objectives for Priority Projects are:
- a. the implementation of water saving infrastructure projects;
 - b. the return of water to the environment and restoration of river health; and
 - c. adaptation to climate change in an environment of reduced water availability.
- 1.1.3. The Commonwealth's objectives for the Priority Projects are:
- a. the securing of a long-term sustainable future for irrigation communities, in the context of climate change and reduced water availability in the future;
 - b. the delivery of substantial and lasting returns of water to the environment to secure real improvements in river health;
 - c. value for money to the Commonwealth in the context of paragraphs a and b above; and
 - d. other objectives as set out in the Due Diligence Guidelines.
- 1.1.4. The State's objectives for the Priority Projects are:
- a. the securing of a long-term sustainable future for communities, in the context of climate change and reduced water availability in the future; and
 - b. the delivery of substantial and lasting returns of water to the environment to secure real improvements in river health.



PART TWO - PARTIES' RESPONSIBILITIES

2. Parties' responsibilities under this Agreement (ref IGA 4.6.1 and 4.13.1)

2.1. Commonwealth responsibilities

- 2.1.1. The Commonwealth agrees to expeditiously meet its responsibilities under this Agreement, including:
- a. carrying out the Due Diligence assessment of a Proposed Project in accordance with the Due Diligence Guidelines in an efficient and timely manner in accordance with clause 5.1;
 - b. subject to clauses 6 and 17 and the relevant Project Schedule, promptly making a payment of Funds for a Priority Project once the State has met the Payment Preconditions for that Project; and
 - c. promptly making any Reimbursement Payment to the State that is required under clause 6.5.1 of this Agreement.
- 2.1.2. The Commonwealth agrees that Water Entitlements Transferred to the Commonwealth in respect of each Priority Project that has Agreed Water Savings under this Agreement will be managed by the Commonwealth Environmental Water Holder (CEWH).
- 2.1.3. The Commonwealth may, at its discretion, assist the State to implement certain Reform Actions and Reform Milestones and any such assistance will be set out in Schedule 1. Any such Commonwealth assistance does not, however, make the Commonwealth responsible in any way for the performance of any part of a Priority Project or the Reform Requirements.

2.2. State responsibilities

- 2.2.1. The State agrees to expeditiously meet its responsibilities under this Agreement including:
- a. performing each Priority Project in a timely and professional manner in accordance with the Project Schedule for that Priority Project and where the State is responsible, to arrange the Transfer of Water Entitlements to the Commonwealth in respect of each Priority Project that has Agreed Water Savings and, to the extent it applies to each Priority Project, the National Code of Practice for the Construction Industry;
 - b. negotiating in good faith with a view to agreeing further Reform Requirements;
 - c. achieving the Reform Requirements in a timely and professional manner in accordance with clause 4 and Schedule 1;
 - d. providing the Reports in accordance with clause 8, Schedule 4 and the Project Schedules; and

- e. providing the State Contributions and Other Contributions for each Priority Project in accordance with clause 6 and Item D of the Project Schedules.
- 2.2.2. The State is responsible for the performance of all of its responsibilities specified in this Agreement notwithstanding that it may have subcontracted all or some of them. The State will be responsible to ensure appropriate contracts with subcontractors are in place where relevant and that its rights including termination under such contracts can be enforced.
- 2.2.3. The State is responsible for any costs it incurs in relation to:
- a. subject to clauses 2.1.3 and 6.5, the Reform Actions and Reform Milestones; and
 - b. and where the State is responsible, to arrange for the Transfer of Water Entitlements to the Commonwealth for each Priority Project that has Agreed Water Savings, such costs to be borne by the State to exclude ongoing charges associated with any Water Entitlements that have been Transferred to the Commonwealth in accordance with this Agreement.
- 2.3. **Enforceability of the Agreement**
- 2.3.1. The parties do not intend any of the provisions of this Agreement to be legally enforceable other than any indemnity that is contained in a Project Schedule in accordance with clause 2.3.2.
- 2.3.2. In accordance with Schedule E of the IGA an indemnification will be granted to the Commonwealth against any environmental or other third party damage arising from a Priority Project.

PART THREE - ASSESSMENT OF THE PARTIES' PERFORMANCE OF THE AGREEMENT

3. Assessment of the Parties (ref IGA 4.7)

3.1. COAG Reform Council responsible for assessment of the parties' performance

- 3.1.1. The COAG Reform Council is responsible for assessing the parties' performance of this Agreement as described in Schedule 3.

3.2. Assessment of Reform Requirements

- 3.2.1. The COAG Reform Council may delegate its assessment of the State's performance and achievement of its Reform Requirements to the National Water Commission (NWC).

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- 3.2.2. The process for assessing and, where necessary, re-assessing the State's completion of a Reform Milestone, and achievement of a Reform Action, is described in Schedule 3.

PART FOUR - REFORM REQUIREMENTS

4. Reform Requirements (ref IGA 4.8, 4.13.3, Part 5)

4.1. Water Reform Actions and Milestones

- 4.1.1. The Reform Actions specified in Schedule 1 are drawn from reforms identified in the NWI, IGA and COAG actions and focus on the improved management of Basin water resources.
- 4.1.2. The State agrees to complete the Reform Actions and Reform Milestones specified in Schedule 1, and those incorporated into Schedule 1 in accordance with clause 4.1.3, by the dates specified in, or agreed under, this Agreement.
- 4.1.3. The parties will negotiate in good faith for the purpose of agreeing further water reforms to be incorporated into Schedule 1 as follows:
- a. if a water reform is agreed at COAG and needs further detail in order for it to be included in Schedule 1 in the Reform Action and Reform Milestone format, the parties or representative, in accordance with clause 16 shall negotiate in good faith to agree, and incorporate into Schedule 1, new Reform Action(s) and/or Reform Milestone(s) to give effect to the COAG decisions in a timely manner;
 - b. other water reforms may also be agreed by the parties' respective Ministers with responsibility for water matters, and once the Ministers have agreed in writing the new Reform Action(s) and/or Reform Milestone(s) that give effect to each such reform, the parties will incorporate those Reform Action(s) and Reform Milestone(s) into Schedule 1 in a timely manner; and
 - c. Reform Requirements agreed under this clause 4.1.3 must be consistent with the IGA, NWI and COAG actions.

4.2. Reform Actions – third parties

- 4.2.1. The parties agree that Funds will not be withheld either fully or partially simply because the achievement of a Reform Action or a Reform Milestone has been delayed solely by the actions of another party to the IGA.

4.3. No Additional Net Costs

- 4.3.1. In accordance with Part 5 of the IGA, the parties agree to comply with the No Additional Net Costs principles, process and methodology once they are agreed between the parties, for the purposes of this Agreement.

PART FIVE - PRIORITY PROJECTS

5. Priority Projects (ref IGA 4.12, 4.13.1 (b))

5.1. **Due Diligence process for Proposed Projects**

- 5.1.1. The Commonwealth is not required to provide any Funding to the State in respect of a Proposed Project until and unless:
- a. the Commonwealth is satisfied with the outcomes of the Due Diligence assessment of the Proposed Project; and
 - b. the parties have agreed, completed and signed a Project Schedule in accordance with clause 16.2, thereby incorporating the Proposed Project into this Agreement as a Priority Project,
- 5.1.2. In conducting its Due Diligence assessment of a Proposed Project, the Commonwealth:
- a. will examine information provided by the State about the Proposed Project and consider the social, economic, environmental, financial and technical aspects of the Proposed Project in accordance with the Due Diligence Guidelines;
 - b. may seek the advice of the Murray-Darling Basin Authority regarding the Proposed Project and, where appropriate, relevant State departments or agencies; and
 - c. will provide the State with an opportunity to comment in writing on the draft results of the Commonwealth's Due Diligence assessment of a Proposed Project prior to the Commonwealth finalising its Due Diligence assessment of that Proposed Project. The State agrees to provide its comments, if any, within 20 Business Days of receiving a draft report from the Commonwealth regarding the Due Diligence assessment of the Proposed Project. The Commonwealth will consider the State's comments prior to the Commonwealth finalising its Due Diligence determination.
- 5.1.3. The State agrees to provide the Commonwealth and its Personnel with full and timely access to information (including Confidential Information) about the Proposed Project (including, where the Proposed Project has water savings, the Water Entitlements that the State proposes to Transfer to the Commonwealth in relation to the Proposed Project) to enable the Commonwealth to undertake a rigorous Due Diligence assessment of the Proposed Project.
- 5.1.4. Each party agrees to bear its own costs arising from its participation in the Due Diligence assessment of a Proposed Project.
- 5.1.5. Should the Commonwealth, acting reasonably, consider that the Due Diligence assessment has not demonstrated that the Proposed Project is economically, environmentally, financially, socially or technically viable or feasible, the parties



may enter into discussions about the possible reconfiguration or re-scoping of the Proposed Project. However, entry into any such discussions does not require:

- a. the Commonwealth to fund; or
 - b. the State to fund or perform,
- any reconfigured or other Proposed Project.

5.2. Transfer of Water Entitlements to the Commonwealth

Savings in a Proposed Project

- 5.2.1. The State will provide DEWHA with estimated water savings for each Proposed Project in the Due Diligence documentation. Where the State considers that there will be no water savings from a Proposed Project, this should be stated in the Due Diligence documentation.

Due Diligence

- 5.2.2. As part of the Due Diligence assessment for each Proposed Project, the Commonwealth will review the State's estimated water savings or verify the State's indication that there would be no water savings.

Agreed Savings

- 5.2.3. Following Due Diligence, the Parties will specify Agreed Water Savings in the Project Schedule for each Proposed Project including:
- a. the amount and characteristics (as defined by the relevant Water Plan) of the Agreed Water Savings;
 - b. the Commonwealth's Proportion of the Agreed Water Savings, which must be at least 50% of the Agreed Water Savings from that Proposed Project;
 - c. the timing of the Transfer of the Commonwealth's Proportion of the Agreed Water Savings in the form of Water Entitlements;
 - d. the agreed payment(s) that is to be linked to the Transfer of the Commonwealth's proportion; and
 - e. whether a verification process will be undertaken to determine Actual Water Savings.
- 5.2.4. The State agrees to ensure that Water Entitlements forming the Commonwealth's Proportion of the Agreed Water Savings must:
- a. not be encumbered in any way, including by a mortgage, or any condition or restriction on the use of the Water Entitlements other than arising from the

reasonable operation of the *Queensland Water Act 2000* and instruments under that Act;

- b. have the characteristics of water access entitlements specified under paragraphs 28-32 of the NWI;
- c. ensure that the Commonwealth will be able to use the water allocated under the acquired Water Entitlements on terms that are no less favourable than those provided to other holders of equivalent entitlements;
- d. be fully accounted for each year to the same extent as equivalent entitlements and allocations in the State; and
- e. provide water that can be managed by the CEWH on terms that are no less favourable than those provided to other holders of equivalent entitlements, to meet Commonwealth environmental watering objectives.

5.2.5. The State agrees to develop a draft bilateral agreement with the Commonwealth for joint Ministerial consideration by early 2010 which provides for water shepherding in the State, with the objective of optimising the use of all water for the environment, providing for the capacity to deliver water to high priority environmental assets, and, in the case of in-stream environmental watering, providing protection for environmental flows to pass through the system as far as transmission losses allow.

Entitlement Transfer

- 5.2.6. The State agrees to ensure the Transfer of the Commonwealth's Proportion of the Agreed Water Savings from that Priority Project in the form of Water Entitlements, as set out in the relevant Project Schedule.
- 5.2.7. Once the Water Entitlements have been transferred to the Commonwealth, the Commonwealth will meet all statutory charges for which it is liable including agreed charges levied by the State to recover the cost of resource management. The Commonwealth will not be required to pay any other charges for the use of Water Entitlements that the State arranges to Transfer to the Commonwealth beyond those levied on the holders of equivalent entitlements.
- 5.2.8. The State agrees to obtain any statutory or other approvals required to ensure that all Water Entitlements can be Transferred to the Commonwealth.

Actual Water Savings

- 5.2.9. A Project Schedule for a Priority Project may include a verification process to verify the State's measurement of water actually saved by that Priority Project (Actual Water Savings). If a verification process is undertaken it will be conducted by an independent person. If the parties are not able to agree on an

independent person within 60 Business Days, the Commonwealth may select an appropriately qualified person. The State agrees to give the agreed or nominated person full and timely access to its information (including Confidential Information) about a Priority Project as is necessary to enable the selected person to undertake the verification and assessment required by this clause 5.2.9.

- 5.2.10. In accordance with clause 5.2.9 where a verification process was agreed to be undertaken, and that verification process found that the amount of the Actual Water Savings for a Priority Project varied by more than 10% from the amount of the Agreed Water Savings for that Priority Project, the parties will negotiate in good faith to agree the sharing of the Actual Water Savings with a minimum starting point of 50% for each party. The exception to this provision is where the Actual Water Savings are less than the Agreed Water Savings due to a voluntary decision, act or omission of the State.

PART SIX - FUNDS

6. Financial Arrangements (ref IGA 4.5.5, 4.11, 4.13, 4.14 and Part 5)

6.1. Payment of Funds

- 6.1.1. Subject to the terms of clauses 6 and 17, the Commonwealth agrees to make a payment of Funds to the State for a Priority Project in accordance with Item J of the relevant Project Schedule once the State has satisfied the Payment Preconditions for that payment of Funds.
- 6.1.2. The Commonwealth is not required to provide any amount for a Priority Project in excess of the Funds for that Priority Project.
- 6.1.3. The Commonwealth is not required to make a payment of Funds to the State for a Priority Project unless:
- a. the State has completed, to the Commonwealth's reasonable satisfaction, all of the Payment Preconditions that are specified in the Project Schedule for:
 - i. that payment of Funds for that Priority Project (for the purpose of this clause referred to as the 'Subject Payment'); and
 - ii. any other payment of Funds relating to that Priority Project, where such payment was scheduled in this Agreement to be made prior to the Subject Payment,in accordance with any applicable performance measures specified in the Project Schedule;

- b. the State has no outstanding Project Reports for that Priority Project and no outstanding Reform Reports or audited financial Reports.
- 6.1.4. In addition, the Commonwealth may, at its discretion and following notification to the State, withhold part or all of the Funds that remain payable under this Agreement in the following circumstances:
- a. where an amount of Funds paid to the State is required under clause 6.3 to be repaid to the Commonwealth - until that amount is repaid to the Commonwealth;
 - b. where the State has not provided an amount of State Contributions or obtained an amount of Other Contributions for a Priority Project by the date specified in Item D of the Project Schedule for that Priority Project - until those State Contributions or Other Contributions are provided;
 - c. where an amount is required to be paid by the State to the Commonwealth under any indemnity specified in a Project Schedule in respect of a Priority Project - until that amount is paid to the Commonwealth unless it notifies the State that the Commonwealth will reduce a future payment of Funds by that amount under clause 6.1.11.
- 6.1.5. Subject to clause 4.2 and any other rights the Commonwealth has to withhold or reduce a payment of Funds under this clause 6, the Commonwealth may, at its absolute discretion, withhold up to 10% of each payment of Funds that is payable under this Agreement during the period that:
- a. commences once a Reform Action is assessed under clause 3 and Schedule 3 as not having been satisfactorily completed, according to the agreed timelines indicated for the relevant Reform Milestone in Schedule 1; and
 - b. continues until that Reform Milestone is subsequently assessed in accordance with clause 3 and Schedule 3 as having been satisfactorily completed.
- 6.1.6. If the Commonwealth intends to withhold all or part of a payment of the Funds for any reason it must give the State prior written notice of that intention. Upon receipt of such notice the State will have 20 Business Days to provide the Commonwealth with a written submission and the Commonwealth will consider this submission before deciding whether to continue the withholding of those Funds.
- 6.1.7. Where the Commonwealth has withheld all or part of a payment of Funds under this clause 6, it agrees to pay the State the withheld Funds within 30 Business Days after the 1st of a month that next occurs after the date that the basis for the withholding is assessed as having ceased to exist and provided that no other basis for withholding or deducting those Funds exists under this clause 6.

- 6.1.8. For the avoidance of doubt a decision to withhold Funding under this clause 6 may be subject to the dispute resolution process in clause 15.
- 6.1.9. The State agrees that:
- a. it will notify DEWHA in its Project Report for a Priority Project as to the amount of any interest the State has earned on the Funding provided for that Priority Project to date;
 - b. any interest it earns on the Funds provided in respect of a Priority Project may be treated as part of the Funds for that Priority Project and may only be used to complete that Priority Project;
 - c. the Commonwealth, after notification to the State, may reduce the amount of the Funds that remain payable under this Agreement in respect of a Priority Project by any interest earned by the State on the Funds the Commonwealth has paid in respect of that Priority Project.
- 6.1.10. The State agrees to use all reasonable efforts to achieve cost savings in its performance of each Priority Project, being savings as compared to the Project Cost for the entire Priority Project. The State agrees to notify DEWHA of any such cost savings and the Commonwealth may then, after notification to the State, reduce the amount of Funding that remains payable under this Agreement for that Priority Project by a proportion of the cost savings for that Priority Project that reflects the Funding as a proportion of the total costs of that Priority Project as specified in the Project Cost for the entire Priority Project. Alternatively, the parties may agree to apply any cost savings to the Priority Project.
- 6.1.11. If the State is required to pay an amount to the Commonwealth under any indemnity specified in a Project Schedule in respect of a Priority Project, the Commonwealth may deduct that amount from any future payment of Funds instead of requiring the State to make that payment.
- 6.2. Use of Funds**
- 6.2.1. The State may only use the Funds provided by the Commonwealth in respect of a Priority Project for that Priority Project and may only do so in accordance with the Project Cost for the Project.
- 6.2.2. The State agrees that, while the amounts of the Funding, State Contributions and any Other Contributions for a Priority Project may be different, it will spend the State Contributions and any Other Contributions at the same rate over the life of the Priority Project as it spends the Funds unless otherwise agreed in a Project Schedule.
- 6.3. Unused or Misused Funds**
- 6.3.1. If at any time the Commonwealth reasonably determines that the State:

- a. has Funding that it no longer requires to perform a Priority Project; or
- b. has spent an amount of Funds other than in accordance with this Agreement,

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 the 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.

6.3.2. Interest will accrue (at the Reserve Bank of Australia's 90 day bank-accepted bill rate less 10 base points) on a daily compounding basis on any part of an amount that the State is required to repay under clauses 6.3, 17.1.4 or 17.2.3 and does not repay within 20 Business Days. The State acknowledges that any interest payable in accordance with clauses 6.3, 17.1.4 or 17.2.3 is a reasonable pre-estimate of the loss incurred by the Commonwealth due to the delay in the repayment of the outstanding amount.

6.3.3. If, at the completion of a Priority Project, the State has not spent all of the Funding that was provided for that Priority Project, the State agrees to return that unused Funding to the Commonwealth within 20 Business Days after the date that the Priority Project is completed.

6.4. State Contributions and Other Contributions

6.4.1. The State agrees to provide and use the State Contributions for each Priority Project in the amounts, and by the dates, specified in the Project Schedule for that Priority Project.

6.4.2. The State agrees to obtain and use any Other Contributions for each Priority Project in the amounts, and by the dates, specified in Item D.4 of the Project Schedule for that Priority Project.

6.5. Reimbursement Payments for State's Additional Net Costs

6.5.1. The Commonwealth agrees to pay the State any Reimbursement Payment that is required to be paid under this Agreement. The State may use a Reimbursement Payment for any purpose.

6.6. Taxation

6.6.1. Unless otherwise indicated:

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- a. the State agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement; and
 - b. any consideration for a supply made under this Agreement is exclusive of any GST imposed on the supply.
- 6.6.2. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Agreement, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 6.6.3. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

PART SEVEN - RECORDS, REPORTS AND AUDIT

7. Records

- 7.1.1. The State agrees to create and maintain, full and accurate accounts and records of its conduct of this Agreement including the:
- a. conduct and completion of each Priority Project and the Reform Requirements, including all of the Milestones;
 - b. receipt and use of Funding, State Contributions and any Other Contributions;
 - c. estimation of the Agreed Water Savings for each Priority Project;
 - d. any measurement and verification of the Actual Water Savings from a Priority Project and negotiated outcomes required under clauses 5.2.9 and 5.2.10;
 - e. all Water Entitlements that have been or are required to be Transferred to the Commonwealth for management by the CEWH;
 - f. creation, acquisition, use and disposal of Intellectual Property;
 - g. creation, acquisition, use and disposal of any Construction Assets; and
 - h. Additional Net Costs (if any).
- 7.1.2. The State agrees to retain records and accounts under clause 7.1.1 for a period of no less than 7 years after the achievement of all of the Priority Projects and Reform Requirements.

8. Reports

8.1. Provision of progress Reports

8.1.1. The State agrees to provide DEWHA with:

- a. Project Reports for each of the State's Priority Project;
- b. Reform Reports;
- c. audited financial Reports; and
- d. other Reports,

at the times, and containing the information, specified in Schedule 4 and the relevant Project Schedule.

8.1.2. The State acknowledges and agrees that DEWHA will provide all of the Reform Reports to the COAG Reform Council and/or the NWC for the purpose of assessing the State's achievement of its Reform Requirements in accordance with clause 3.

8.1.3. Where the State uses the Funding to provide a grant to a Proponent, the State agrees to ensure that it:

- a. obtains a report from the Proponent that contains substantially the same information, in respect of the Proponent's:
 - i. performance of a Priority Project; and
 - ii. receipt and expenditure of the grant provided by the State,as the State is required to provide to DEWHA under this Agreement; and
- b. reflects the relevant information from the Proponents' reports in the relevant Report the State is required to provide to the Commonwealth under this Agreement.

9. Audit Requirements (ref IGA 4.5.5(f))

9.1. Financial information

9.1.1. The State agrees to provide annual audited financial Reports to the Commonwealth at the times, and containing the information, specified in Item C of Schedule 4 and the relevant Project Schedule.

9.2. No Additional Net Costs

9.2.1. The parties agree to comply with the No Additional Net Costs principles, processes and methodology, for the purposes of this Agreement once they have been agreed between the parties.

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**PART EIGHT - INTELLECTUAL PROPERTY, COMMUNICATION AND
PROVISION OF INFORMATION (ref IGA 4.5.5(g))**

10. Commonwealth Material

10.1. Ownership

10.1.1. Ownership of all Commonwealth Material, including Intellectual Property in that material, remains vested at all times in the Commonwealth but the Commonwealth grants the State a licence to use, reproduce, adapt and exploit that Commonwealth Material for the purposes of this Agreement and in accordance with any conditions or restrictions of which the State is notified by DEWHA.

10.2. Handling and Return of Commonwealth Material

10.2.1. The State agrees to keep safely and maintain Commonwealth Material provided to it for the purposes of this Agreement.

10.2.2. Upon the expiration or earlier termination of the Agreement or a Priority Project, the State may retain all Commonwealth Material in the State's possession, unless otherwise notified by DEWHA.

11. Agreement Material

11.1. Ownership

11.1.1. Subject to this clause 11, and unless otherwise specified in Schedule 1 or a Project Schedule, Intellectual Property in Agreement Material vests immediately in the State.

11.1.2. Clause 11.1.1 does not affect the position between the State and any third party.

11.2. Licence of Agreement Material

11.2.1. Except to the extent Schedule 1 or a Project Schedule specify otherwise, and subject to clause 11.2.2, the State grants to, or agrees to procure for, the Commonwealth a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt and exploit Intellectual Property in the Agreement Material for any purpose related to the IGA or *Water Act 2007* or this Agreement.

11.2.2. The State may not impose any restrictions or conditions in respect of Agreement Material that is a Report.

11.3. Licence of Existing Material

- 11.3.1. This clause 11 does not affect the ownership of any Intellectual Property in any Existing Material contained in the Agreement Material.
- 11.3.2. Except to the extent Schedule 1 or a Project Schedule specify otherwise, and subject to clause 11.3.3, the State agrees to use its best endeavours to grant to, or procure for the Commonwealth a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sub licence) to use, reproduce, communicate, adapt and exploit the Intellectual Property in Existing Material incorporated in or supplied with the Agreement Material for any purpose related to the IGA or *Water Act 2007* or this Agreement.
- 11.3.3. The State may not impose any restrictions or conditions in respect of Existing Material that is contained in a Report.

11.4. Consent to Specified Acts

- 11.4.1. The State agrees to use its best endeavours to obtain from each author of any Agreement Material relating to the IGA or *Water Act 2007* or this Agreement a written consent to the following acts and omissions (whether occurring before or after the consent is given) which extends directly or indirectly to those acts and omissions by the Commonwealth or any person claiming under or through the Commonwealth:
- a. using, reproducing, adapting or exploiting all or any part of the Agreement Material, with or without attribution of authorship;
 - b. supplementing Agreement Material with any other material; or
 - c. using Agreement Material in a different context to that originally envisaged,
- but excluding the false attribution of authorship.

12. Communication and provision of information

12.1. Communication between the parties

- 12.1.1. Each party agrees to promptly comply with any reasonable request from the other party for information relating to the implementation or conduct of this Agreement.
- 12.1.2. The parties agree to:
- a. regularly meet in person or by teleconference to discuss; and
 - b. provide the other party with timely, full and accurate information, and all reasonable assistance, in response to any reasonable questions from the other party or their Personnel regarding,
- any of the matters listed in clause 7.1.1.

12.2. Provision of Information

- 12.2.1. Notwithstanding any other provision of this Agreement, DEWHA may provide Agreement Material (including any Existing Material incorporated into that Agreement Material) to the COAG Reform Council and/or another Commonwealth department or agency (including but not limited to the NWC, the Australian Government's Bureau of Meteorology, the Murray-Darling Basin Authority and a Commonwealth department or agency's Personnel) for the COAG Reform Council or that other department or agency to use for assessment of a Priority Project, Reform Requirement or other water reform purposes.
- 12.2.2. Notwithstanding any other provision of this Agreement, the State may provide Agreement Material (including any Existing Material incorporated into that Agreement Material) to the COAG Reform Council and/or the State's departments or agencies for that other department or agency to use for assessment of a Priority Project, Reform Requirement or other water reform purposes.
- 12.2.3. Subject to sufficient notice and the State's reasonable security procedures, the State agrees to give the Commonwealth (including a representative from the office established under the *Auditor-General Act 1997 (Cth)*) access to the State's accounts and records relating to this Agreement to enable the Commonwealth to confirm that the State's completion of Milestones, performance of its Priority Project(s) and Reform Requirements and expenditure of the Funding, State Contributions and Other Contributions accords with the terms of this Agreement.

12.3. Freedom of Information requests

- 12.3.1. If a party receives a request from a third party under its Freedom of Information legislation regarding information relating to this Agreement, that party agrees to expeditiously consult the other party, within the prescribed statutory timeframe, in determining whether to release the information sought to the third party.

13. Confidential Information

13.1. Confidential Information not to be disclosed

- 13.1.1. Subject to clause 13.3, a party will not, without the prior written consent of the other party (which may be given subject to conditions), disclose any Confidential Information of the other party to a third party.

13.2. Written Undertakings

- 13.2.1. Each party (first party) agrees, on request by the other party (second party), to arrange for the first party's Personnel to give a written undertaking in a form

acceptable to the second party relating to the use and non disclosure of second party's Confidential Information.

13.3. Exceptions to confidentiality requirements

13.3.1. This clause 13 will not be taken to have been breached to the extent that Confidential Information is:

- a. disclosed by a party to its Personnel solely in order to give effect to the provisions of this Agreement;
- b. disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
- c. disclosed by a party to its responsible Minister;
- d. disclosed by a party in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia or of the State's Parliament;
- e. disclosed by DEWHA to another Commonwealth department or agency in accordance with clause 12.2.1;
- f. disclosed by the State to the COAG Reform Council and/or the State's departments or agencies in accordance with clause 12.2.2;
- g. authorised or required by law to be disclosed; or
- h. in the public domain otherwise than due to a breach of this clause 13.

13.3.2. Where a party discloses Confidential Information to another person pursuant to clauses 13.3.1.a -13.3.1.f, the disclosing party agrees to notify the receiving person that the information is confidential.

13.3.3. In the circumstances referred to in clauses 13.3.1.a, b, e and f the disclosing party agrees not to provide the information unless the receiving person agrees to keep the information confidential.

PART NINE - ACKNOWLEDGEMENT AND PUBLICITY

14. Acknowledgement and Publicity

14.1.1. The State agrees to acknowledge the financial and other support provided by the Commonwealth under this Agreement in any publication or announcement made in relation to this Agreement.

14.1.2. The parties agree to adopt and comply with the publicity protocols set out in Schedule 5, or otherwise agreed in writing between the parties, prior to the making of any publication or announcement in relation to the Agreement.

- 14.1.3. Each party may publicise and report on the awarding of the Funding to the State.
- 14.1.4. The parties agree to consult with one another about any major promotional and media opportunities relating to this Agreement to ensure that each party has sufficient time to participate in those opportunities.
- 14.1.5. Where the State has received a payment under this Agreement to produce a publication, the State agrees to provide a copy of the final version of that publication to DEWHA prior to its publication for Commonwealth comment. DEWHA undertakes to provide any such comments in a timely manner.
- 14.1.6. The parties will use all reasonable endeavours to respond to each other in respect of urgent and brief media releases in a timely manner.

PART TEN - DISPUTE RESOLUTION AND VARIATION

15. Dispute resolution process (ref IGA 4.15)

- 15.1.1. The parties agree that any dispute arising in relation to this Agreement shall be dealt with as follows:
- a. The party claiming that there is a dispute will send the other party a written notice setting out in detail the nature of the dispute.
 - b. The parties will try to resolve the dispute through direct negotiation by their respective departmental officers to whom the parties have given authority to resolve the dispute.
 - c. If the parties' departmental officers are unable to resolve the dispute within 10 Business Days (or such longer period as agreed between the parties before the expiration of the 10 Business Days) after the receipt of the notice, the dispute shall be referred to the parties' relevant senior executive officers as soon as practicable for the purpose of resolving the dispute.
 - d. If the parties' senior executive officers are unable to resolve the dispute within 20 Business Days (or such other period as is agreed to by the parties) after the dispute is referred to them, the dispute shall be referred to the Secretary of DEWHA and the Chief Executive Officer of the Department of Environment and Resource Management as soon as practicable for the purpose of resolving the dispute.
 - e. If the persons specified in paragraph d. are unable to resolve the dispute within 20 Business Days (or such other period as is agreed to by the parties) after the dispute is referred to them, the dispute shall be referred to the parties' respective Ministers for resolution.

- 15.1.2. Despite the existence of a dispute, each party agrees to continue to perform its responsibilities under this Agreement other than the responsibility to make a payment of Funds where that payment is the subject of a dispute under this clause 15.

16. Variations (ref IGA 4.5.5(h))

16.1. All variations to be in writing

- 16.1.1. The parties may agree variations to this Agreement. Except as otherwise expressly provided in this Agreement, each variation to this Agreement must be agreed in writing and signed by the parties.
- 16.1.2. For the avoidance of doubt, a variation referred to in clauses 16.1, 16.2, 16.3 and 16.4 may be signed for and on behalf of the Commonwealth by its relevant Minister or a DEWHA official.

16.2. Incorporation of Priority Projects into this Agreement

- 16.2.1. The parties agree:
- a. to complete and sign a Project Schedule in respect of each Proposed Project that the Commonwealth considers satisfies its Due Diligence assessment conducted under clause 5.1; and
 - b. that each Project Schedule that they sign is to be incorporated into, and form part of, this Agreement on and from the date that the Commonwealth signs the Project Schedule.

16.3. Changes to a Priority Project

- 16.3.1. Both parties acknowledge that there may be a need from time to time to vary some of the details that are specified in a Project Schedule for a Priority Project including in response to circumstances that may affect the scope, cost (and the various funding contributions) and expected timeline for the Priority Project. If the State considers there is a need to vary a material aspect of the Priority Project, including the dates by which the Project Milestones are to be achieved, the State agrees to promptly notify DEWHA in writing of the variation it wishes to propose, the reasons for it and its likely impact on the Priority Project. DEWHA will discuss with the State any variation proposed by the State, however, no variation notified or discussed under this clause will be effected until it is agreed by both parties in accordance with clause 16.1.

16.4. Incorporation of additional Reform Milestones and Reform Actions

- 16.4.1. The parties may agree in writing to incorporate additional Reform Milestones and Reform Actions in this Agreement in accordance with clause 4.1.3.

PART ELEVEN - TERMINATION

17. Termination

17.1. Termination - entire Agreement

Termination by the Commonwealth

- 17.1.1. The Commonwealth may immediately terminate this Agreement, by giving written notice to the State, if:
- a. a Project Milestone for each and every of the Priority Projects has not been completed for a period of 9 months or more after the agreed completion date for that Project Milestone;
 - b. a Reform Milestone has not been completed for a period of 12 months or more after the agreed completion date for that Reform Milestone;
 - c. the State withdraws from its commitments under, or fails to participate in, any of the following agreements:
 - i. The IGA;
 - ii. The Agreement on Murray-Darling Basin Reform - Referral 2008; or
 - iii. The Murray-Darling Basin Agreement 2008 (Schedule 1 of the *Water Act 2007* as amended in December 2008); or
 - d. following the process set out in clause 15, the parties' Ministers are unable to resolve a dispute and the Commonwealth, acting reasonably, considers the unresolved dispute affects the operation of the entire Agreement.
- 17.1.2. Where the Commonwealth reasonably considers that a withdrawal or failure by the State referred to in clause 17.1.1c is able to be rectified by the State to the Commonwealth's reasonable satisfaction, and the State does not rectify that withdrawal or failure within 20 Business Days (or such longer period agreed in writing by the parties) of receiving a written notice from DEWHA to do so, the Commonwealth may immediately terminate this Agreement by giving written notice to the State.

Termination by the State

- 17.1.3. The State may immediately terminate this Agreement, by giving written notice to the Commonwealth, if:
- a. the Commonwealth has failed, for 9 months or more, to make a payment of Funds in respect of each and every Priority Project and the State has completed the Payment Preconditions for each such payment and the Commonwealth's non-payment is not permitted under this Agreement; or

- b. following the process set out in clause 15, the parties' Ministers are unable to resolve a dispute and the State, acting reasonably, considers the unresolved dispute affects the operation of the entire Agreement.

Effect of Termination of entire Agreement

- 17.1.4. Where this Agreement is terminated by a party giving written notice under this clause 17.1, the State must immediately cease expenditure of the Funds (other than as outlined in clause 17.1.4.b.i) and the Commonwealth will:
 - a. not be required to make any further payment of Funds or any Reimbursement Payment to the State;
 - b. be entitled to recover from the State any part of the Funding which, in the Commonwealth's reasonable opinion,:
 - i. as at the date of termination:
 - A. has not been spent by the State; and
 - B. is not legally due and payable by the State in accordance with this Agreement; and/or
 - ii. has been spent by the State other than in accordance with this Agreement;and
 - c. retain Water Entitlements that have been Transferred to the Commonwealth in accordance with clause 5.2.
- 17.1.5. Notwithstanding the termination of this Agreement, the Commonwealth will give the State written notification of the total amount that is required to be repaid by the State under clause 17.1.4.b (Repayment Notice) within 30 Business Days of the termination date and the State must repay that amount to the Commonwealth within 30 Business Days of the date of the Repayment Notice.
- 17.1.6. Notwithstanding the termination of this Agreement, the State agrees where the State is responsible, to arrange for the Transfer, within 60 Business Days after the Commonwealth's termination notice, to the Commonwealth any Water Entitlements that were required to be Transferred to the Commonwealth under this Agreement prior to the date of the Commonwealth's termination notice. The State also agrees not to undertake any action that would have the result of blocking such a Transfer.

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17.2. Termination - particular Priority Project(s)

Termination by the Commonwealth

17.2.1. If:

- a. a Project Milestone for a particular Priority Project has not been completed for a period of 12 months or more after the agreed completion date for that Project Milestone; or
- b. following the process set out in clause 15, the parties' Ministers are unable to resolve a dispute and the Commonwealth, acting reasonably, considers the unresolved dispute affects one or more, but not all of, the Priority Projects,

the Commonwealth may, at its discretion, give the State written notice that the Priority Project(s) is immediately severed from this Agreement and terminated.

Termination by the State

17.2.2. If:

- a. the Commonwealth has failed, for 12 months or more, to make a payment of Funds in respect of a particular Priority Project, the State has completed the Payment Preconditions for that payment of Funds and the Commonwealth's non-payment of those Funds is not permitted under this Agreement; or
- b. following the process set out in clause 15, the parties' Ministers are unable to resolve a dispute and the State, acting reasonably, considers the unresolved dispute affects one or more, but not all of, the Priority Projects.

the State may, at its discretion, give the Commonwealth written notice that the Priority Project(s) is immediately severed from this Agreement and terminated.

Effect of Termination of particular Priority Project(s)

17.2.3. Where a Priority Project is severed and terminated by a party giving written notice under this clause 17.2, the State must immediately cease expenditure of the Funds (other than as outlined in clause 17.2.3.b.i) in respect of that Priority Project and the Commonwealth will:

- a. not be required to make any further payment of Funds to the State in respect of that Priority Project;
- b. be entitled to recover from the State any part of the Funding which was provided for that Priority Project and, in the Commonwealth's reasonable opinion:
 - i. as at the date of termination:
 - A. has not been spent by the State for that Priority Project; and

- B. is not legally due and payable by the State in accordance with this agreement; and/or
 - ii. has been spent by the state other than for that Priority Project in accordance with this Agreement; and
 - c. retain Water Entitlements that have been Transferred in accordance with clause 5.2.
- 17.2.4. Notwithstanding the termination of this Agreement, the Commonwealth will give the State written notification of the total amount that is required to be repaid by the State under clause 17.2.3.b (Repayment Notice) within 30 Business Days of the termination date and the State must repay that amount to the Commonwealth within 30 Business Days of the date of the Repayment Notice.
- 17.2.5. Notwithstanding the termination of a Priority Project, where the State is responsible, the State agrees to arrange for the Transfer to the Commonwealth, within 60 Business Days after the Commonwealth's termination notice, of any Water Entitlements for that Priority Project that were required to be Transferred to the Commonwealth under this Agreement prior to the date of the Commonwealth's termination.

PART TWELVE - OPERATION OF THE AGREEMENT

18. Operation of the Agreement

18.1. Term of Agreement

- 18.1.1. This Agreement commences on the date written on page one of this Agreement, or if no date is written on page one of this Agreement, then the date on which the Agreement is signed by the last party to do so.
- 18.1.2. Unless terminated earlier, the Agreement expires when the State has:
 - a. completed each Priority Project (excluding any Priority Project terminated in accordance with clause 17.2);
 - b. completed all of the Reform Requirements;
 - c. returned to the Commonwealth any Funds that the State has not used in accordance with this Agreement; and
 - d. provided all of the Reports required under this Agreement.

18.2. Agreement is a public document (ref IGA 4.5.2)

- 18.2.1. Each party agrees to make a copy of the current executed version of this Agreement (for the avoidance of doubt, including each Project Schedule but

excluding any Confidential Information of either party) publicly available on the website of its relevant department or agency.

18.3. Notices under this Agreement

18.3.1. A notice under this Agreement is to be in writing and dealt with as follows:

- a. *if given by the State to the Commonwealth* - addressed to DEWHA at the following address:

Assistant Secretary, Water Efficiency Division
Irrigation Efficiency Northern Branch
Department of the Environment, Water, Heritage and the Arts
John Gorton Building, King Edward Terrace, Parkes, ACT, 2600
Ph: (02) 6275 9063 Fax: (02) 6274 2515

or

- b. *if given by the Commonwealth to the State* - addressed to the Department of Environment and Resource Management at the following address:

Executive Director Strategic Water Initiatives
Department of Environment and Resource Management
Level 11, 400 George Street, Brisbane, QLD, 4000
GPO Box 2454, Brisbane Q 4001
Ph: (07) 3330 6109; Fax: (07) 3330 6116

A party may change its address for notices at any time by giving written notice of the change to the other party.

18.3.2. A notice is to be:

- a. signed by the person giving the notice and delivered by hand;
b. signed by the person giving the notice and sent by pre-paid post; or
c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

18.3.3. A notice is deemed to be effected:

- a. if delivered by hand - upon delivery to the relevant address;
b. if sent by post - upon delivery to the relevant address; or
c. if transmitted electronically - upon actual receipt by the addressee.

18.3.4. A notice received after 5.00 pm, or on a weekend or public holiday in the place of receipt, is deemed to be effected on the next Business Day in that place.

18.4. Definitions

18.4.1. Unless the contrary intention appears a term in bold type has the meaning shown opposite it:

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| Actual Water Savings | means the amount of water that was saved as a result of a Priority Project as measured and verified in accordance with clause 5.2.9. |
| Additional Net Costs | means additional net costs, referred to in Part 5 of the IGA, incurred by the State in accordance with the No Additional Net Costs principles, processes and methodology, once they have been agreed between the parties. |
| Agreed Water Savings | means, in relation to a Priority Project, the amount and the characteristics (including the reliability) of the water that the parties agree is expected to be saved as a result of the completion of that Priority Project as specified in Item E.1 of the Project Schedule for the Priority Project. |
| Agreement | means this document, including the Schedules and any annexures or attachments. |
| Agreement Material | means any material created by the State or its Personnel in the course of performing this Agreement and includes all of the Reports but excludes any Commonwealth Material. |
| Auditor | means a person who is: a. an auditor employed by the Audit Office of Queensland as established under the <i>Auditor-General Act 2009</i> ; or b. registered as a company auditor under the <i>Corporations Act 2001 (Cth)</i> or an appropriately qualified member of the Institute of Chartered Accountants in Australia or of CPA Australia; and whose firm or organisation did not prepare the financial statements that are the subject of the audit. |
| Basin | means the Murray-Darling Basin. |
| Business Day | means in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in that place. |
| COAG | means the Council of Australian Governments. |

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| COAG Reform Council | means the council of that name that COAG agreed to establish on 10 February 2006 to annually report to COAG on governmental progress in implementing national reform agenda items. |
| Commonwealth | means the Commonwealth of Australia. |
| Commonwealth Environmental Water Holder or CEWH | means the Commonwealth Environmental Water Holder established under section 104 of the <i>Water Act 2007</i> (Cth). |
| Commonwealth Material | means material: <ul style="list-style-type: none"> a. provided by the Commonwealth to the State for the purposes of this Agreement; or b. derived at any time from the material referred to in paragraph a. |
| Commonwealth Minister | means the Commonwealth Minister for Climate Change and Water or such other Commonwealth Minister who is, from time to time, responsible for this Agreement. |
| Commonwealth's Proportion | means, in relation to a Priority Project, the percentage of any Agreed Water Savings from that Priority Project that are allocated to the Commonwealth as specified in Item E.2 of the Project Schedule for the Priority Project. |
| Component | means, in relation to a Priority Project, any component of that Priority Project that is specified in Item B.3 of the Project Schedule for the Priority Project. |
| Confidential Information | means information that the parties agree in writing is confidential information for the purposes of this Agreement for the period specified in that written agreement. |
| Construction Asset | means any works constructed for a Priority Project with the Funds. |
| DEWHA | means the Commonwealth Department of the Environment, Water, Heritage and the Arts ABN 34 190 894 983, or other department or agency that has from time to time responsibility for this Agreement, and includes its Personnel and successors. |

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| Due Diligence | means the assessment process in clause 5.1 that is undertaken by the Commonwealth to determine whether to Fund a Proposed Project under this Agreement. |
| Due Diligence Guidelines | means the guidelines set out in Schedule E to the IGA, which the Commonwealth will use to conduct its Due Diligence assessment of a Proposed Project. |
| Existing Material | means all material that was in existence prior to the date on which this Agreement commenced and that is incorporated in, or supplied with, the Agreement Material. |
| Funds or Funding | means the amount payable by the Commonwealth to the State to complete a Priority Project and includes any interest the State earns on that amount but excludes any Reimbursement Payment. |
| GST | has the same meaning as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth). |
| IGA | means the Intergovernmental Agreement on Murray-Darling Basin Reform that was signed by the parties on 3 July 2008. |
| Intellectual Property | <p>includes:</p> <ul style="list-style-type: none"> a. all copyright (including rights in relation to phonograms and broadcasts); b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs, circuit layouts; and c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields; <p>but does not include:</p> <ul style="list-style-type: none"> d. the rights of performers; e. rights in relation to Confidential Information; or f. the following moral rights: <ul style="list-style-type: none"> a) the right of attribution of authorship; b) the right of integrity of authorship; and c) the right not to have authorship falsely attributed. |

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| Milestones | means the Project Milestones and Reform Milestones. |
| Murray-Darling Basin Authority | means the authority of that name established under section 171 of the <i>Water Act 2007</i> (Cth). |
| National Code of Practice for the Construction Industry | means the National Code of Practice for the Construction Industry available at www.workplace.gov.au/building . |
| National Water Commission or NWC | means the National Water Commission established under section 6 of the <i>National Water Commission Act 2004</i> (Cth). |
| National Water Initiative or NWI | means the Intergovernmental Agreement on a National Water Initiative between the Australian Government and the Governments of New South Wales, Victoria, Queensland, South Australia, the Australian Capital Territory, Tasmania, Western Australia and the Northern Territory, which contains the objectives, outcomes and actions for the ongoing process of Australia's national water reform. |
| Other Contributions | means, in respect of a Priority Project, the financial or in-kind resources (with in-kind resources valued at cost) for that Priority Project (other than the Funds, the State Contributions and any Reimbursement Payments), which the State is required to obtain for that Priority Project and which are specified in Item D.4 of the Project Schedule for that Priority Project. |
| Payment Preconditions | means, in respect of a payment of Funds for a Priority Project, the requirements (including the Milestone(s)) that are specified in the Project Schedule for that Priority Project as being a pre-condition for that payment of Funds. |
| Personnel | means a party's officers, employees, agents, contractor staff or professional advisers engaged in the performance or management of this Agreement and, in the case of the State, includes its subcontractors and any Proponents. |

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| Priority Project | means a project (including all of its Components and Project Milestones) described in a Project Schedule. |
| Project Cost | means, in relation to a Priority Project, the total expenditure of the Funding, the State Contributions and Other Contributions for that Priority Project as set out in, or agreed in accordance with, Item D of the Project Schedule for that Priority Project. |
| Project Milestone | means, in relation to a Priority Project, a stage in the completion of that Priority Project as specified in Item C of the Project Schedule for that Priority Project. |
| Project Report | means, in relation to a Priority Project, a Report regarding the State's implementation of that Priority Project that is required to be provided at the time, and to contain the information specified in the Project Schedule for that Priority Project. |
| Project Schedule | means a document setting out the requirements for a Priority Project that is in the form of, and contains the information required by, Schedule 2 and which: <ul style="list-style-type: none"> a. is headed 'Project Schedule X' where 'X' is the Project Schedule number and short identification of the Priority Project; and b. has been executed by the parties. |
| Proponent | means a person to whom the State provides a grant out of the Funding. |
| Proposed Project | means a project that the State proposes to undertake as a Priority Project under this Agreement and which is specified in clause 4.11 of the IGA and described in more detail in the 3 July 2008 COAG Communiqué available at: http://www.coag.gov.au/coag_meeting_outcomes/2008-07-03/index.cfm#water . |
| Reform Action | means a water reform action specified in, or incorporated into, Schedule 1 in accordance with clause 4.1.3, which the State is required to undertake and which includes the Reform Milestones for that water reform action. |

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| Reform Milestone | means a stage in the completion of a Reform Action as specified in, or incorporated into Schedule 1 in accordance with clause 4.1.3. |
| Reform Report | means a Report regarding the State's implementation of its Reform Actions and achievement of Reform Milestones as required by clause 8 and containing the information specified in Item B of Schedule 4. |
| Reform Requirements | means the Reform Actions and the Reform Milestones. |
| Reimbursement Payment | means any payment from the Commonwealth to the State that is required to be paid by the Commonwealth to off-set the State's Additional Net Costs (if any) as agreed in accordance with clause 4.3. |
| Report | means each document and item of information that the State is required to provide to DEWHA for reporting purposes under clause 8 and containing the information specified in Schedule 4. |
| Schedule | refers to a schedule to this Agreement and includes the Project Schedules and any annexures or attachments to a schedule. |
| State Contributions | means, in respect of a Priority Project, the financial or in-kind resources (with in-kind resources valued at cost) for the Priority Project (other than the Funding, any Reimbursement Payment or Other Contributions), which the State is required to provide for that Priority Project under this Agreement and which are specified in Item D of the Project Schedule for that Priority Project. |
| Term of the Agreement | The term of the Agreement is the period specified in clause 18.1. |
| Transfer or Transferred | means, in respect of a Water Entitlement, to permanently transfer all right, title and interest in that Water Entitlement. |
| Water Act | means the <i>Water Act 2007</i> (Cth). |
| Water Entitlement | means a 'water access entitlement' as defined in section 4 of the <i>Water Act 2007</i> (Cth). |

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| Water Plans | means any State water planning instrument that governs water rights. |
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18.5. Interpretation

18.5.1. In this Agreement, unless the contrary intention appears:

- a. words in the singular include the plural and words in the plural include the singular;
- b. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- c. words importing a person include a partnership, a body whether corporate or otherwise and a Proponent;
- d. a reference to dollars is a reference to Australian dollars;
- e. the term 'includes' in this Agreement is not a term of limitation;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. a reference to an Item is a reference to an Item in a Schedule;
- i. the Schedule and any annexures and attachments form part of the Agreement;
- j. if any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of the Schedule (and attachments if any), the terms and conditions of the clauses prevail;
- k. if any conflict arises between any part of the Schedule and any part of an annexure or attachment, the Schedule prevails;
- l. a reference to the Schedule (or an attachment), is a reference to the Schedule (or an attachment) to the Agreement, including as amended or replaced from time to time in accordance with clause 16;
- m. a reference to writing is a reference to any representation of words, figures or symbols; and
- n. a provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

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SCHEDULE 1 REFORM REQUIREMENTS

A. Reform Actions and Reform Milestones

A.1.1 The State agrees to complete the Reform Actions and Reform Milestones set out in the following table.

| Reform Actions | Reform Milestones |
|--|---|
| Water Planning and Management | |
| <p>A. <u>Developing NWI consistent water plans</u></p> | |
| <p>1. Complete Lower Balonne water resource plan subject to resolution of current legal issues over the resource operations plan for the Lower Balonne part of the Murray-Darling Basin (MDB)</p> <ul style="list-style-type: none"> • The plan will relate to surface water and include overland flow water. The plan will not create tradable water allocations for overland flow water. | <p>1. 30 June 2011</p> |
| <p>2. For the Central Condamine Alluvium area in the Upper Condamine-Balonne part of the Murray Darling Basin</p> <p>(a) draft water resource plan for the Central Condamine Alluvium</p> <p>(b) final water resource plan for the Central Condamine Alluvium</p> <ul style="list-style-type: none"> • The plan will not convert existing groundwater entitlements to tradable water allocations. Rather the entitlements will be relocatable licences – thus allowing trading. Conversions to tradable water allocations will occur under a future amendment once a suitable hydrological model becomes available. | <p>2.</p> <p>(a) 30 June 2011</p> <p>(b) 30 June 2013</p> |



| Reform Actions | Reform Milestones |
|--|---|
| <p>B. <u>Risk assessments for priority water resources</u></p> <p>1. For the Condamine-Balonne (excluding the Toowoomba South Basalt GMU), Border Rivers and Moonie priority water resources (surface water and groundwater), as identified in the CSIRO's <i>Murray-Darling Basin Sustainable Yields</i> project:</p> <p>(a) Conduct risk assessments of the factors that may lead to the potentially excessive water use, and of the impacts of that water use, including catchment and downstream impacts; and</p> <p>(b) Implement appropriate measures to address the high risk issues identified in (a) above, so that environmental outcomes as stated in the water resource plans for these areas are not further compromised.</p> <p>2. For the Toowoomba South Basalt GMU -</p> <p>(a) Conduct risk assessments of the factors that may lead to the potentially excessive water use, and of the impacts of that water use, including catchment and downstream impacts; and</p> <p>(b) Implement appropriate measures to address the high risk issues identified in (a) above, so that environmental outcomes as stated in the water resource plan for this area are not further compromised.</p> | <p>1.</p> <p>(a) Completed risk assessments by 30 June 2010</p> <p>(b) Report on implementation of measures by 30 June 2011</p> <p>2.</p> <p>(a) Completed risk assessments by 31 December 2009</p> <p>(b) Report on implementation of measures by 30 June 2010</p> |

| Reform Actions | Reform Milestones |
|---|--|
| Water Markets and Trading | |
| <p>C. Progressively improve trade times by adopting service standards and a monitoring and evaluation framework for allocation trades</p> <ol style="list-style-type: none"> 1. Implement monitoring and evaluation framework based on the agreed service standards terms of reference (refer DEWHA file 2009/23709) 2. Intra-state - complete 90% of allocation trades within 5 Business Days 3. Inter-state – complete 90% of allocation trades within 10 Business Days 4. 90% of all allocation trades (intra-state and inter-state) completed within 5 Business Days. | <p>C 1, 2, & 3 – Immediately</p> <p>4 – When National Water Market System is established (expected May 2011)</p> |
| <p>D. Progressively improve trade times by adopting service standards and a monitoring and evaluation framework for entitlement trades</p> <ol style="list-style-type: none"> 1. <i>Registration stage:</i> <ol style="list-style-type: none"> i) 90% of entitlement trades within 10 Business Days ii) Agree and implement monitoring and evaluation framework | <p>D. Immediately</p> |

Notes:

1. 'NWI consistency' means in particular that the above plans are developed and approved by the Queensland Minister according to the Water Act 2000 by the due date and contain:
 - a clear assessment of the available water resource
 - reliability of tradable water allocations (Water Allocation Security Objectives);
 - clearly described environmental and other public benefit outcomes and the appropriate water management arrangements to achieve those outcomes including:
 - if there is identified overuse, a clear pathway to correct this within the life of the plan;
 - any necessary measures to ensure that interception activities within the water resource area are managed so as not to compromise the above outcomes



- clearly described levels for consumptive use;
- arrangements exist for the monitoring, compliance and enforcement of the plan (whether through the plan itself or related legislation).

It is also expected that consultation will occur for the abovementioned plans in Schedule 1 with the MDB Authority prior to the completion of plans, in accordance with the Water Act 2007.

2. *Risk assessments should be consistent with any relevant guidelines approved by First Ministers or Water Ministers. If, at the commencement of the review process, there are no such guidelines in place, then the risk assessments should follow these principles:*

- *Set transparent levels of acceptable risk and indicators for action based on available knowledge;*
- *Identify measures, including existing controls, to address risk factors and impacts; and*
- *Clearly identify performance indicators to measure progress in addressing risk factors and impacts.*

The implementation of appropriate measures to address high risk will need to be consistent with existing water resource plans.

3. *Jurisdictions will 'stop the clock' while the application is back with the buyer or seller due to incorrect/incomplete information when calculating time taken to approve the trade.*

A.1. Commonwealth assistance for Reform Activities

A.1.1. Nil

B. Agreement Material and Existing Material

B.1. Agreement Material

B.1.1. In relation to clause 11.2, no conditions or restrictions apply to Agreement Material relating to the Reform Requirements.

B.2. Existing Material

B.2.1. In relation to clause 11.3, no conditions or restrictions apply to Existing Material relating to the Reform Requirements.

SCHEDULE 2 PROJECT SCHEDULE TEMPLATE

A. Project Schedule Template

- A.1.1. The parties recognise that this template provides a base-level of minimum information required for the population of the Project Schedule. The template contains prompts for recording this minimum level of information but the parties recognise that further customisation, containing relevant additional information, is likely for each project.
- A.1.2. Capitalised terms in this Project Schedule have the same meaning as in clause 18.4 of the Agreement.

B. Priority Project No. x: [Insert brief title of Priority Project]

B.1. Summary and duration of Priority Project

- B.1.1. [Insert a brief summary of the Priority Project]
- B.1.2. [Insert the start and end date for the Priority Project, noting the end date should provision of the final Project Report]

B.2. Aim of Priority Project

- B.2.1. [Insert goals or aims of the Priority Project]

B.3. Priority Project Requirements

- B.3.1. [Describe what the State is required to do to perform the Priority Project in as much detail as possible using precise language. Provide an outline of any components.]

Priority Project Components

[The following item should be included where the Priority Project involves a grant being paid by the State to a Proponent from the Funds]

- B.3.2. As this Priority Project requires the State to provide grants from the Funds to Proponents, any amount that the Commonwealth may recover from the State under clause 6.3 and/or clause 17 includes any amount that the State has provided to a Proponent that has either:
- not been spent by the Proponent; or
 - been spent by the Proponent other than for the Priority Project and in accordance with the Proponent's agreement with the State.

C. Project Milestones

C.1.1. The Project Milestones for this Priority Project are set out in the following table:

[The delivery of the Project Reports and Financial Reports should be included as project milestones. Note the Project Milestone table can be used to create the Payment Schedule to ensure linkages between milestones/deliverables and payments.]

| Project Milestone Number | Project Milestone | Completion Date for Project Milestone | Evidence of Completed Project Milestone or Performance Measure |
|--------------------------|--|---------------------------------------|--|
| 1 | [List the Project Milestones for the Priority Project in chronological order in this table] E.g contract signature | | |
| 1 | [Where applicable the Transfer of the Water Entitlement in respect of the Certain Component should be listed as one or more Project Milestones e.g.: X GL Transferred by X date. | | |

C.1.2. [where relevant to the project, the model clauses for the National Code for the Construction Industry should form an attachment to the Project Schedule. More information about the model clauses can be obtained from the Australian Government Department of Education, Employment and Workplace Relations].

D. Project Cost

D.1. Project Cost for Priority Project

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

| Project Title | | | | |
|--------------------------|-------------------|-------------------|-------------------|--------------------|
| Item | FYxx (exc GST) | FYxx (exc GST) | FYxx (exc GST) | Total (exc GST) |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Project Total (excl GST) | | | | |

D.2. Contribution Components of Priority Project

| Party | Contribution (\$xx exc GST) |
|---------------------------|---|
| Commonwealth | ^Identify GST excl amount of total financial contribution the Commonwealth is making toward the Priority Project. |
| State | ^Identify GST excl amount of total financial contribution the State is making toward the Priority Project. |
| Other Contributions | ^Identify GST excl amount of any other contributions. |
| Total Project Cost | \$xxx |

D.3. State Contributions

D.3.1. The State agrees to provide the following cash contributions to this Priority Project at the following times:

| GST-exclusive amount of State Contribution | Date by which State Contribution is to be provided |
|--|--|
| ^Identify GST excl amount of each | ^Specify the date on which the State will |

| | |
|---|-------------------------------------|
| financial contribution that the State is required to make to this Priority Project [^] | make each contribution [^] |
|---|-------------------------------------|

D.3.2. Any financial assistance that the State has received from the Commonwealth is not to be included as State Contributions in Item D.3.1.

D.4. Other Contributions

D.4.1. The State agrees to ensure that the following persons provide the following cash contributions to this Priority Project at the following times:

| Source of each Other Contribution | Purpose of each Other Contribution | GST-exclusive amount of each Other Contribution | Date by which each Other Contribution will be provided |
|---|--|--|--|
| e.g. Local Government funding or in-kind assistance [^] State Name [^] | [^] State purpose of each Other Contribution that is to be made to this Priority Project [^] | [^] State amount of each Other Contribution that is to be made for this Priority Project [^] | [^] Due date for each Other Contribution for this Priority Project [^] |
| e.g. Industry funding or in-kind assistance [^] State Name, ABN [^] | | | |

E. Transfer of Water Entitlements

E.1. Agreed Water Savings (clauses 5.2.3 and 5.2.4)

E.1.1. The Agreed Water Savings from this Priority Project are: [specify amount of water and characteristics of the water that is expected to be saved as a result of the completion of the Priority Project].

| Agreed Water Saving (GL) | Water Characteristic |
|--------------------------|----------------------|
| | E.g. reliability |

E.2. The Commonwealth's Proportion of Agreed Water Savings (clause 5.2.3)

E.2.1. The Commonwealth's Proportion of the Agreed Water Savings from this Priority Project is [insert a percentage of the Agreed Water Savings which should be at least 50% of the Agreed Water Savings].

E.3. Transfer of Water Entitlements (clauses 5.2.6 - 5.2.8)

E.3.1. The State agrees to ensure the Transfer of one or more Water Entitlements to the Commonwealth that together equal the Commonwealth's Proportion of the

Agreed Water Savings for the Priority Project in accordance with the following table:

| Water Entitlement Licence Number | Volume of Water | Water Source | Security of Water Entitlement | Restrictions on Water Entitlement | Date for Transfer/ Project Milestone of which this Transfer is a part |
|----------------------------------|-----------------|--------------|-------------------------------|-----------------------------------|---|
| | | | | | |

E.4. Arrangements between the State or a third party and its Proponents

E.4.1. [insert details about arrangements to be established between the State and/or a third party and its Proponents such as requirements:

- for Proponents to enter into Water Entitlement assignment contracts where entitlements are to be transferred to the Commonwealth;
- that no Funds are provided to a Proponent until they have signed a valid Water Entitlement assignment contract; and
- that the contract include provisions as set out in this Agreement relating to the characteristics of Water Entitlements to be transferred to the Commonwealth.]

E.5. Verification of Actual Water Savings (clauses 5.2.9 and 5.2.10)

E.5.1. [Insert here whether Actual Water Savings from the Priority Project are to be verified and if so, when and how and any requirements regarding that verification that is to be undertaken by the independent person referred to in clause 5.2.9]

| Agreed Water Saving (GL) | Testing Milestone | Testing Method | Actual Water Saving (GL) | Timeframe for Negotiation of Risk Sharing arrangements |
|--------------------------|-------------------|----------------|--------------------------|--|
| | | | | |

F. Sharing Actual Water Savings additional to Agreed Water Savings

F.1. [while clause 5.2.10 provides for the parties to negotiate in good faith regarding Actual Water Savings which the verification process finds are above the Agreed Water Savings, where relevant you could outline a process for sharing these water savings here.]



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

G.1. Agreement Material

G.1.1. In relation to clause 11.2, the following conditions apply to the following Agreement Material that relates to this Priority Project:

| Item of Agreement Material (excluding a Report) | Condition or restriction on Commonwealth's use of that Agreement Material |
|---|---|
| | |
| | |

G.2. Existing Material

G.2.1. In relation to clause 11.3, the following conditions apply to the following Existing Material that relates to this Priority Project:

| Item of Existing Material (excluding that which is contained in a Report) | Condition or restriction on Commonwealth's use of that Existing Material |
|---|--|
| | |
| | |

H. Indemnity

H.1. [Insert indemnity, if required, that the Commonwealth seeks from the State in relation to this Priority Project]

I. Project Reports

I.1. Progress Project Reports

I.1.1. The following reports are to be completed:

| Project Reports | | | |
|---|---|-----------------|--|
| Type e.g. overall Progress Report, milestone report, or other type | Information Report is to Contain final Project Report | Date Report Due | Whether Report is a Project milestone or Payment Milestone or both |
| | | | |

I.1.2. An overall Project Report should contain the following information about the Priority Project:

[Set out the content requirements for the Project Reports, which may vary depending on the Priority Project and when they are due. The following is an example only and will need amending to cater for the particular Priority Project]

- a. *a description of actual performance of the Priority Project to date against the aim of the Priority Project (as specified in this Project Schedule) including information regarding the completion of the Priority Project's Components and Project Milestones;*
- b. *a description of the work, if any, undertaken for the Priority Project by each Proponent (if any);*
- c. *the extent to which Water Entitlements that represent the Commonwealth's Proportion of any Agreed Water Savings for the Priority Project have been Transferred to the Commonwealth;*
- d. *an income and expenditure statement of the Funding, State Contributions and Other Contributions for the Priority Project for the financial year to date;*
- e. *where the Priority Project involves the State making grants to Proponents, an income and expenditure statement of Proponents' use of the Funding, State Contributions and Other Contributions for the Priority Project for the financial year to date;*
- f. *a statement as to whether the Priority Project is proceeding within the Project Cost and if it is not, an explanation as to why the Project Cost is not being met and the action the State proposes to take to address this;*
- g. *a statement of the interest earned by the State on the Funds provided for the Priority Project;*
- h. *promotional activities undertaken in relation to, and media coverage of, the Priority Project during the last reporting period;*
- i. *a description of the work that will be undertaken to complete the Priority Project's Milestone(s), and any expected promotional opportunities, during the next reporting period of the Priority Project; and*
- j. *the Agreed Water Savings (if any) and Actual Water Savings (if any) achieved by the Priority Project to date.*

1.2. Final Project Report

- 1.2.1. The final Project Report for the Priority Project is due within 60 Business Days or the earliest of:
 - a. the completion of the Priority Project; or
 - b. the termination of this Agreement or the Priority Project.

- I.2.2. The final Project Report will be a stand-alone document that can be used for public information dissemination purposes regarding the Priority Project 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 aim of the Priority Project (as specified in this Project Schedule) including the Agreed Water Savings (if any) have been achieved and explaining why any aspect of the Priority Project was not achieved;
 - c. specifies the Actual Water Savings (if any) achieved by the Priority Project;
 - d. confirms that all of the Water Entitlements that are required to be Transferred to the Commonwealth in respect of the Priority Project as at the date of the report have been so Transferred to the Commonwealth; and
 - e. includes a discussion of any other matters, relating to the Priority Project, which DEWHA notifies the State should be included in this final Project Report at least 20 Business Days before it is due.

J. Payment Schedule for Funding for Priority Project

J.1.1. Subject to the terms of clauses 6 and 17, the maximum GST exclusive amount of Funds payable by the Commonwealth to the State in respect of this Priority Project is **\$(insert)** which shall be paid in instalments, and on the completion of the Payment Preconditions, specified in the following table. Each payment of Funds is due 30 Business Days after the 1st of a month that next occurs after the date that the State is assessed as having completed all of the Payment Preconditions relating to that payment and has provided the Commonwealth with an invoice for that payment of Funds.

| Funding Payment Number | GST-exclusive amount of the Funding instalment | Payment Preconditions for Funding instalment |
|------------------------|--|---|
| 1 | \$(insert) | E.g. Completion of the following to the Commonwealth's reasonable satisfaction: <ul style="list-style-type: none"> • Project Milestone 1 and 2 |
| 2 | \$(insert) | E.g. Water entitlement transfer Completion of the following to the Commonwealth's reasonable satisfaction: <ul style="list-style-type: none"> Project Milestone 2 and 3 |
| ... 10 etc | \$(insert) | Provision of final Project Report |

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J.2. By signing this document, the parties to the Agreement dated [Insert] agree that this document will be incorporated into the Agreement as a Project Schedule on and from the date the Commonwealth signs this document.

SIGNED for and on behalf of the
Commonwealth of Australia by:

)

)

)

Name of signatory

Signature

In the presence of:

Name of witness

Signature of witness

SIGNED for and on behalf of the
State of Queensland as represented
by the Department of Environment
and Resource Management by:

)

)

)

Name of signatory

Signature

In the presence of:

Name of witness

Signature of witness

SCHEDULE 3 REFORM ASSESSMENT PROCESS

A. Agreement on Murray-Darling Basin Reform requirements (ref IGA 4.7)

- A.1.1. Clause 4.1 of the Agreement on Murray-Darling Basin Reform (IGA) states that the "Commonwealth-State Water Management Partnership arrangements will be consistent with the National Partnership Payments arrangements announced as part of the 2008-09 Commonwealth Budget." The COAG Reform Council will conduct its performance reporting role in accordance with the Agreement on the IGA, and in accordance with any framework approved by COAG.
- A.1.2. Clause 4.7.1 of the IGA provides that the COAG Reform Council is responsible for assessing the performance of the Commonwealth and the Basin States in relation to Water Management Partnerships. Clause 4.7.2 of the IGA provides that the COAG Reform Council will undertake the assessment of the performance of the Commonwealth.
- A.1.3. Clause 4.7.3 of the IGA provides that the COAG Reform Council may delegate responsibility for the assessment of the Basin States to the NWC. Clause 4.7.4 provides that the NWC will be responsible for assessing Basin State Government performance on achieving water reform outcomes.

B. COAG Reform Council procedures

- B.1.1. The Commonwealth will provide advice to the COAG Reform Council on the progress of Basin States with projects and water savings. This advice must be provided to the COAG Reform Council no more than three months after the deadline for State Reform Reports.
- B.1.2. The Reform Reports to be provided by the State, in accordance with Item B of Schedule 4, will be forwarded by the Commonwealth to the COAG Reform Council (and to the NWC under any delegation) as an input to the assessment process.
- B.1.3. The Commonwealth will provide an annual report to the COAG Reform Council on the Commonwealth's responsibilities under the Agreement. This report must be provided to the COAG Reform Council no more than three months after the deadline for State Reform Reports.
- B.1.4. The State may separately provide advice to the COAG Reform Council on the Commonwealth's or the State's performance against the Agreement. Any such advice must be provided to the COAG Reform Council no more than three months after the deadline for Reform Reports.
- B.1.5. If the COAG Reform Council exercises a delegation to the NWC in accordance with clause 4.7.3 of the IGA, the NWC will provide an annual report on an

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assessment of the progress of the State on the water reform obligations specified in this Agreement. The NWC's report to the COAG Reform Council will be prepared in accordance with the provisions of the IGA and in accordance with Item C to this Schedule.

- B.1.6. The COAG Reform Council will consult with the Basin States, Commonwealth agencies, and the NWC in conducting its overall assessment task. The COAG Reform Council (in collaboration with the NWC under any delegation) will consult with Basin States prior to the preparation of Reform Reports to establish a common understanding of the key issues for the reporting cycle.
- B.1.7. The COAG Reform Council's assessment process will be evidence based and will draw on the State, Commonwealth and NWC inputs set out above.
- B.1.8. The COAG Reform Council must consult with the Basin States and the Commonwealth for a period of one month prior to completing its assessment.
- B.1.9. The COAG Reform Council will provide an annual report on an overall assessment of the performance of the Commonwealth and the Basin States under Water Management Partnerships to the Prime Minister, as Chair of COAG. This report to COAG will comprise a compendium of reports on up to five bilateral Water Management Partnership agreements that may exist from time to time between the Commonwealth and the Basin States.
- B.1.10. The COAG Reform Council will have up to six months from the receipt of Basin State Reform Reports to provide its report to COAG (not counting January).

C. National Water Commission procedures

- C.1.1. The provisions of this Item C will operate if the COAG Reform Council exercises a delegation to the NWC in accordance with clause 4.7.3 of the IGA.
- C.1.2. The NWC will be responsible for assessing the State's performance on achieving water reform outcomes.
- C.1.3. Section 7(1)(e) of the *National Water Commission Act 2004* (Cth) empowers the NWC to advise COAG on whether a State or Territory is implementing its commitments under any agreement (other than the NWI or the Water Reform Framework) between the Commonwealth and the State or Territory relating to the management or regulation of water resources. This section provides the NWC with the appropriate head of power to assist the COAG Reform Council to assess progress on water reform under Water Management Partnerships.
- C.1.4. The NWC and the COAG Reform Council will establish liaison arrangements to facilitate dialogue on processes and approaches to assessments.

- C.1.5. The NWC will establish a framework for its part of the assessment task. The NWC will prepare the framework in consultation with the Basin States (including in accordance with clause 4.7.4 (c) of the IGA), the COAG Reform Council and Commonwealth agencies, including DEWHA and the Murray-Darling Basin Authority.
- C.1.6. The NWC will provide Basin States, the COAG Reform Council and Commonwealth agencies, including DEWHA and the Murray-Darling Basin Authority, an opportunity to comment on its draft assessment prior to providing its report to the COAG Reform Council.
- C.1.7. The NWC will report on its assessment of the Basin States' progress on water reform to the COAG Reform Council as an input to the COAG Reform Council's overall assessment task. Sections 7(4) and 7(4A) of the *National Water Commission Act 2004* (Cth) require the NWC to provide its assessment report to the Commonwealth Minister and to the Basin States at the same time that it is provided to the COAG Reform Council.

SCHEDULE 4 REPORTS

A. Project Reports

- A.1.1. The State is required to provide a Project Report regarding each of its Priority Project(s) by each of the dates, and containing the information, specified in the Project Schedule for that Priority Project.

B. Reform Reports

B.1. Due Dates

- B.1.1. The State is required to provide an annual Reform Report regarding its achievement of the Reform Actions and completion of the Reform Milestones. The due date for the first report is yet to be settled. It will be determined to align with broader COAG Reform Council processes.

B.2. Contents of Reform Reports

- B.2.1. Each Reform Report is to contain detailed information regarding the extent to which the State has completed the Reform Milestones and achieved the Reform Actions to date, including information that specifically addresses the content and reporting requirements specified in Schedule 1 and its attachments, in a form that complies with the Assessment Framework that will be finalised in accordance with the process set out in Schedule 3.

C. Audited Financial Reports

- C.1.1. Within 90 Business Days after:
- a. the completion of each financial year in which a payment of Funds is made or used by the State or a Proponent, or the State contributes State Contributions or receives any Other Contributions under this Agreement, except the financial year in which subparagraph b. applies; and
 - b. the completion of all Priority Projects and Reform Requirements or the termination or expiry of this Agreement, whichever is the earlier,

the State agrees to provide to DEWHA:

- c. audited financial statements in respect of the Funding (including any interest the State has earned on the Funds), State Contributions and Other Contributions, which:
 - i. separately identifies the Funding (including any interest the State has earned on the Funds), State Contributions and Other Contributions for each Priority Project; and

- ii. includes a definitive statement as to whether the financial information in those statements represents the financial transactions fairly and is based on proper accounts and records;
- d. the confirmation specified in Item C.2; and
- e. a copy of a letter to the State from the Auditor, or a report from the Auditor, including specific comment on:
 - i. the adequacy of financial controls being maintained by the State; and
 - ii. where there are any qualifications or limitations on the audit, an outline of the reason(s) for the qualifications or limitations and the remedial action recommended.

C.1.2. Where the State engages a Proponent under this Agreement, the audited financial report specified in Item C.1.1 are required to clearly show how each such Proponent spent the Funds, the State Contributions and any Other Contributions.

C.2. Confirmation

- C.2.1. The Chief Finance Officer of the State's Department of Environment and Resource Management is required to provide a letter that confirms that:
- a. all Funding and State Contributions and Other Contributions were spent in accordance with this Agreement; and
 - b. the State has complied with this Agreement; and
 - c. any unspent portion of Funding for a Priority Project is available for the State to use to complete the next Project Milestone(s) for that Priority Project.

C.3. Audit and financial statement requirements

- C.3.1. The financial statements referred to in item C.1.1.c are required to be:
- a. prepared in accordance with Australian Accounting Standards (as described in section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth)); and
 - b. audited by the Auditor in accordance with Australian Auditing Standards (as described in section 227A of the *Australian Securities and Investments Commission Act 2001* (Cth)).

D. Other Reports

- D.1.1. The State agrees to provide a verbal report regarding its implementation of the Priority Projects and the Reform Requirements as and when requested by the Commonwealth.

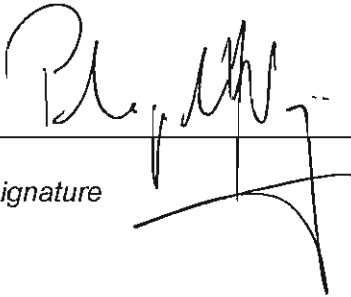
SCHEDULE 5 - PUBLICITY PROTOCOLS

- A.1.1. Any publication or promotional and advertising materials or articles, developed in relation to this Agreement, the Reform Requirements or a Priority Project are required to display the form of the DEWHA logo, which must appear in a place of prominence in all publication, promotional and advertising materials and public announcement. The guidelines for the use of the department's logo are:
- a. The Commonwealth Coat of Arms must be reproduced at a minimum width of 20mm across.
 - b. The accepted position of the logo should always have prominence over and above other images and graphic elements. Where possible the logo should be placed on the top left of a document's front cover. It is not appropriate for the logo to be placed on the back of a document.
 - c. When used with other logos an isolation zone should be established to ensure that the dignity of the department's logo is not jeopardised through crowding.
 - d. The logo should be reproduced in one colour only, preferably black. However, the logo can be reversed – white on black or another dark colour. The logo should not appear in a pastel or light colour on a light background colour, or as a tint or stipple of any colour. The logo should not appear as a dark colour on a dark background.
- A.1.2. The placement and use of the logo must be approved by the DEWHA prior to use.
- A.1.3. At launches, conferences and other public forums relating to this Agreement, signs and posters approved by DEWHA are to be used to acknowledge the support provided by the Commonwealth under this Agreement.

Signatures

SIGNED for and on behalf of the Commonwealth of Australia by:)


Senator the Hon Penny Wong,
Minister for Climate Change and Water)


Signature

In the presence of:

Laura Anderson

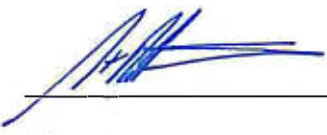
Name of witness


Signature of witness

SIGNED for and on behalf of the State of Queensland by:)

STEPHEN ROBERTSON

Name of signatory


Signature

In the presence of:

Laura J. Cotton

Name of witness


Signature of witness

