

DEED OF VARIATION

Second Deed of Variation to the
Project Schedule for the South
Australian Priority Project SA – 10:
Flows for the Future Project

Commonwealth of Australia as represented by
the Department of Agriculture, Water and the
Environment ABN 34 190 894 983
(Commonwealth)

The Minister for Environment and Water, a body
corporate pursuant to section 7 of the
Administrative Arrangements Act 1994 (SA) as
represented by the Department for Environment
and Water ABN 36 702 093 234 **(State)**

Table of Contents

Details	3
Parties	3
Recitals	3
Agreed terms	4
1. Defined terms and interpretation	4
1.1 Defined terms	4
1.2 Interpretation	4
2. Variation to Agreement	5
3. Reason for Variation	5
4. Payment acknowledgement	5
5. Continued force and effect of Agreement	5
6. Miscellaneous	5
6.1 Counterparts	5
6.2 Governing law and jurisdiction	5
6.3 Date of effect	5
Execution page	6

Details

Parties

1. Commonwealth of Australia as represented by the **Department of Agriculture, Water and the Environment** ABN 34 190 894 983 of 18 Marcus Clarke Street, Canberra City ACT 2601, Australia (**Commonwealth**).
2. **The Minister for Environment and Water**, a body corporate pursuant to section 7 of the *Administrative Arrangements Act 1994* (SA) as represented by the Department for Environment and Water ABN 36 702 093 234 of Level 10, 81-95 Waymouth Street, Adelaide SA 5000, Australia (**State**).

Recitals

- A. The Commonwealth and the State (then using the name of the Minister for Water Security for and on behalf of the Crown in right of the State of South Australia acting through the Department of Water, Land and Biodiversity Conservation) are parties to a Water Management Partnership Agreement dated 4 November 2009 (**Agreement**).
- B. In accordance with clauses 5.1.1.b and 16.2.1 of the Agreement, the Commonwealth and the State are parties to the *Flows for the Future Project Schedule SA-10* dated 15 February 2017 (**Original Project Schedule**), thereby incorporating the Project Schedule into the Agreement.
- C. The parties varied the Original Project Schedule to the Agreement in accordance with clause 16 of the Agreement as follows. On:
 - i. 13 June 2019 (**First Variation**) to extend the program for six months from 30 June 2019 to 31 December 2019 and reallocate funding across activity lines to cover the project extension.
- D. This is the second variation to the Original Project Schedule by the Commonwealth and the State.
- E. This second variation incorporates phase 2 of the Project. Phase 2 of the Project was subject to the Commonwealth Gateway Review which was accepted on 13 September 2019 and recommended additional funding of \$20,424,132.
- F. Collectively phase 1 and phase 2 forms part of the package of notified supply and constraint measures endorsed by the Murray-Darling Basin Ministerial Council for the Sustainable Diversion Limits (SDL) adjustment mechanism and for the relaxation of constraints to the delivery of environmental water (chapter 7 of the Murray-Darling Basin Plan 2012, Adjustment of Sustainable Diversion Limits). Both phase 1 and phase 2 of the Project form the program of works to be undertaken in this Project Schedule.
- G. The parties have agreed to amend the terms of the First Variation to the Project Schedule in accordance with this deed of variation.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this deed, except where the context otherwise requires, defined terms have the same meaning as given to them in the Agreement.

1.2 Interpretation

In this deed, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or attachment is to a clause or paragraph of, or schedule or attachment to, this deed, and a reference to this deed includes any schedule or attachment;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to AUD, A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to the local time in Canberra, Australia;
- (g) a reference to a party is to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) headings are for ease of reference only and do not affect interpretation;
- (j) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (k) a word or expression defined in the *Corporations Act 2001* (Cth) has the meaning given to it in the *Corporations Act 2001* (Cth);
- (l) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (m) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (n) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally; and
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it.

2. Variation to Agreement

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

Replacing the “Flows for the Future Project Schedule SA-10”, dated 13 June 2019 with the Project Schedule as set out in Attachment A to this deed.

3. Reason for Variation

The variation will incorporate Phase 2 of the Project and extend the completion date to 31 December 2023.

4. Payment acknowledgement

The parties acknowledge that the amount of \$ [REDACTED] (GST exclusive) has already been paid to the State as part of the Funds payable under the Agreement.

5. Continued force and effect of Agreement

The Agreement continues in full force and effect, as amended by this deed.

6. Miscellaneous

6.1 Counterparts

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

6.2 Governing law and jurisdiction

This deed is governed by the law of the Australian Capital Territory and each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

6.3 Date of effect

The date of this deed will be on and from the date that the Commonwealth signs the deed.

Execution page

Executed as a deed

SIGNED SEALED AND DELIVERED for and on behalf of the Commonwealth of Australia as represented by the **Department of Agriculture, Water and the Environment** by a duly authorised representative

██████████

Name of authorised representative (print)

██████████

Signature of authorised representative

21/04/20

Date

██████████

Name of witness (print)

██████████

Signature of witness

21 APR 2020

Date

SIGNED SEALED AND DELIVERED for and on behalf of the **Minister for Environment and Water**, a body corporate pursuant to section 7 of the *Administrative Arrangements Act 1994* (SA) as represented by the Department for Environment and Water by a duly authorised representative

██████████

Name of authorised representative (print)

██████████

Signature of authorised representative

17 April 2020

Date

██████████

Name of witness (print)

██████████

Signature of witness

17 April 2020

Date