

Department of Agriculture and Water Resources

Variation Agreement No. 5 to the Project Schedule to the
Water Management Partnership Agreement for NSW
IRRIGATED FARM MODERNISATION

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

The **State of New South Wales (State)** represented by the
New South Wales Department of Primary Industries
ABN 72 189 919 072

Details

Parties

Name	The Commonwealth of Australia as represented by the Department of Agriculture and Water Resources
ABN	24 113 085 695
Short form name	The department
Address details	For the department, the Director, Northern Priority Projects Section, GPO Box 858, Canberra City, ACT, 2601 18 Marcus Clarke Street, Canberra City, ACT, 2601

Name	State of New South Wales, as represented by Department of Primary Industries (DPI)
ABN	72 189 919 072
Short form name	State
Address details	For New South Wales, Director , Water and Irrigation, Agriculture NSW, Department of Primary Industries Tocal Agricultural Centre, Tocal Road, Paterson NSW 2421

(collectively 'the parties')

Background

- A On 11 January 2010 the Commonwealth (as then represented by the Department of the Environment, Water, Heritage and the Arts) and the State as represented by DPI (then known as NSW Office of Water), entered into a Water Management Partnership Agreement (the Original Agreement).
- B In accordance with the requirements of the Original Agreement, the parties have executed and subsequently incorporated into the Original Agreement, a total of four project schedules in respect of various priority projects, including the project schedule for the New South Wales State Priority Project NSW Irrigated Farm Modernisation Project (the Priority Project) on 4 June 2012.
- C The parties varied the Project Schedule to the Original Agreement in accordance with clause 16 of the Original Agreement as follows:
- (i) On 14 May 2013, the Commonwealth, represented by the Department of Agriculture and Water Resources (then known as Department of Sustainability, Environment, Water, Population and Communities) and the State, represented by DPI, signed a variation (Variation 1) to the Project Schedule.

- (ii) On 6 December 2013, the Commonwealth, represented by the Department of the Environment and the State, represented by DPI, signed a second variation (Variation 2) to the Project Schedule.
- (iii) A third variation (Variation 3) to the Project Schedule was signed by all parties on 13 August 2014
- (iv) A fourth variation (Variation 4) to the Project Schedule was signed by all parties on 21 July 2015.

Together, the Original Agreement, the Project Schedule as varied by four variations and any other project schedules incorporated and as varied in accordance with the requirements of the Original Agreement, form the 'Agreement' for the purposes of this Variation.

D Following the Administrative Arrangements Order dated 21 September 2015, the Department of Agriculture and Water Resources (the department) has had responsibility for administering the Agreement on behalf of the Commonwealth.

E The Commonwealth, as represented by the department and the State have agreed to vary the terms of the Project Schedule in accordance with this Variation and so as to:

- (i) extend the project completion date to 30 June 2019;
- (ii) include additional milestones due to the extended timeframe;
- (iii) remove the compliant meter requirement due to changes to the NSW Interim Metering Standards; and
- (iv) apply administrative amendments.

F The parties acknowledge that this Variation satisfies all requirements in clause 16 of the Original Agreement for a valid variation.

Agreed terms

1. Defined terms and interpretation

In this Variation Agreement, unless the contrary intention appears:

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

2. Variation to Agreement

On and with effect from the Effective Date, the Project Schedule to the Agreement is varied as follows:

- (a) Delete all words and items that are crossed through in the copy of the Project Schedule that forms Attachment A to this Variation.
- (b) Insert all words and items that are underlined in the copy of the Project Schedule that forms Attachment A to this Variation.

3. Effect of Variation

A clean version of the Project Schedule incorporating all variations from clause 2 of this Variation is at Attachment B of this Variation. The Parties agree that Attachment B of this Variation will be relied on as the complete and current version of the Project Schedule.

4. Affirmation of Agreement

- (a) Subject only to the amendments contained in this Variation, the parties confirm all other provisions of the Project Schedule and the Agreement.
- (b) The Agreement, as varied by this Variation, comprises the entire agreement between the parties.
- (c) The parties acknowledge and agree that the Agreement as varied by this Variation is and continues to be in full force and effect.

5. Payment Acknowledgement

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

- (a) The Parties acknowledge that the amount [REDACTED] for interest accrued has already been paid by the Commonwealth to the State as part of the Funds payable under the Project Schedule.

6. Costs and GST

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

10. Counterparts

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

Signing page

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

In the presence of:

Signature of delegate

Signature of Witness

Name of delegate (print)

Name of Witness (print)

Position of delegate (print)

Date

SIGNED for and on behalf of the **STATE OF**
NEW SOUTH WALES by the **NSW**
Department of Primary Industries by its
duly authorised delegate

In the presence of:

Signature of delegate

Signature of Witness

Name of delegate (print)

Name of Witness (Print)

Position of delegate (Print)

Date



COMMONWEALTH OF AUSTRALIA REPRESENTED BY
THE DEPARTMENT OF AGRICULTURE AND WATER RESOURCES
WATER FOR THE FUTURE
NEW SOUTH WALES STATE PRIORITY PROJECT
NSW IRRIGATED FARM MODERNISATION PROJECT

PROJECT SCHEDULE 5 TO THE WATER MANAGEMENT
PARTNERSHIP AGREEMENT BETWEEN THE COMMONWEALTH
AND NEW SOUTH WALES

ANNEXURE 2 – PROJECT SCHEDULE - NSW IRRIGATED FARM MODERNISATION PROJECT

A. Terminology used in this Project Schedule

- A.1.1. Except where indicated in Item A.1.2, capitalised terms in this Project Schedule have the same meaning as in clause 18.4 of the Water Management Partnership Agreement between the Commonwealth and New South Wales dated 11 January 2010 (the Agreement).
- A.1.2. For the purpose of this Project Schedule only, the terms specified in this Item have the following meaning:
- a. Business Case Information Requirements: means the criteria set out in Schedule E of the Intergovernmental Agreement on Murray-Darling Basin Reform.
 - b. DPI: means the Department of Primary Industries, an office of the Department of Industry, Skills and Regional Development (ABN 72 189 919 072) representing the Crown in right of the State of New South Wales ("DPI") and includes its Personnel and successors.
 - c. Department: means the Commonwealth Department of Agriculture and Water Resources (formerly known as the Department of the Environment or DoTE, Department of Environment, Water, Heritage and the Arts or DEWHA; and the Department of Sustainability, Environment, Water, Population and Communities or DSEWPaC) 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.
 - d. Eligible Participant: an irrigator deemed eligible to participate in the Priority Project.
 - e. Entitlement Owner: means, in respect of a Water Entitlement, the registered legal owner of that Water Entitlement.
 - f. Grant: means the permanent grant of Water Entitlement by the State to the Commonwealth under section 63A of the Water Management Act 2000. For the purposes of this Project Schedule, a reference to the term "Transfer" in a clause of this Agreement includes a reference to a "Grant" as defined in this Project Schedule.
 - g. IFWUEA: means an Irrigation Farm Water Use Efficiency Assessment that has been certified by a suitably certified and/or accredited professional.
 - h. Land Owner: means the legal owner of land on which part of this Priority Project is or will be carried out (a Land Owner may also be a Proponent).
- [REDACTED]
- j. On-Farm Works: means those Project Activities that are carried out as part of this Priority Project by a Proponent excluding the preparation of an IFWUEA.
 - k. Progress Report: means a report received at the intervals specified in the Milestones in Item C.1.1 and as specified in Item I.2.
 - l. Project Activities: means the activities that the State is required to undertake, or to ensure is undertaken, to complete the Priority Project and includes anything that is reasonably incidental to the completion of that activity.

- m. Proponent: means an irrigator who has entered into a funding deed with the DPI in relation to On-Farm Works.
- n. Proponent Water Entitlement: means a Water Entitlement that belongs to an Entitlement owner, all or part of which is required to be Transferred or Granted to the State in part consideration for the State Funding the Proponent's On-Farm Works.
- o. Share Component: has the meaning given to that term in section 56 of the WM Act.
- p. State: means the State of New South Wales.
- q. Steering Committee: means a group comprising representatives from the State and any agreed independent members who will monitor the progress of this Priority Project, including against this Project Schedule. The Commonwealth's representatives will be observers at the meetings of the Steering Committee and will be entitled to receive all Steering Committee documentation, including its agendas and minutes.
- r. Water Access Licence Register means the Register of that name kept under the WM Act.
- s. Water Entitlement: means a 'water access entitlement' as defined in section 4 of the *Water Act 2007* (Cth) including a Share Component that once added to a Commonwealth Water Entitlement meets the conditions stated in clause 5.2.4 of the Agreement.
- t. WM Act: means the *Water Management Act 2000 (NSW)*.

B. Priority Project

B.1. Summary and duration of the Priority Project

- B.1.1. In the IGA, the Commonwealth agreed in-principle to provide funding of up to \$1.358 billion for New South Wales' proposed projects, subject to Due Diligence of each such project and compliance with the Commonwealth's Business Case Information Requirements and this Agreement.
- B.1.2. In the IGA, the Commonwealth agreed in-principle to provide funding of up to \$300 million for the New South Wales Irrigated Farm Modernisation State Priority Project.
- B.1.3. The State submitted a business case to the then Department of the Environment for a proposed NSW Irrigated Farm Modernisation State Priority Project (Proposed Project) on 11 June 2010. The Proposed Project involved a program of rolling tenders from irrigators in defined areas to undertake IFWUEAs and the On-Farm Works.
- B.1.4. The Commonwealth's Final Due Diligence assessment found that the project as proposed did not satisfy the Commonwealth's investment criteria as set out in Section 4.10 of the IGA and the Commonwealth's Business Case Information Requirements.
- B.1.5. The State submitted a re-scoped proposal for the Proposed Project as provided for in Section 4.12.5 of the IGA and section 5.1.5 of the Agreement. The Proposed Project was approved for funding of up to \$83,000,000 (excluding GST) by the Commonwealth Minister for the Environment on 16 November 2011 subject to specific conditions. These conditions were agreed by the State and are

fully satisfied through the items of this Project Schedule. This Priority Project will fund IFWUEAs, On-Farm Works and may also include supporting the development, extension, facilitation, marketing of the Priority Project and Priority Project delivery and management activities identified in this Project Schedule.

- a. On 27 August 2014, the State submitted a request for an additional \$28 million in funding for the Priority Project, from unallocated NSW State Priority Project funds. The Parliamentary Secretary to the Commonwealth Minister for the Environment offered a package of projects to the State on 9 October 2014, which included the expansion of the Priority Project, subject to State agreement. The State agreed the package of projects on 16 October 2014. The expansion of the Priority Project will allow the recovery of additional water entitlement types, expand eligible catchments, and extend the timeframe of the Priority Project to 30 June 2018 (Program extension date as agreed by all parties in Variation 4).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The State is required to obtain Other Contributions valued at \$20,581,555 from Proponents in accordance with Item D.2.1 toward the cost of the Priority Project in the form of direct in-kind or financial contributions that are equivalent to a minimum of 20 per cent of the Funding provided to Proponents for IFWUEAs and On-Farm Works. [REDACTED]

[REDACTED]

B.1.9. Project Milestones for this Priority Project are identified in Item C of this Project Schedule.

B.1.10. This Priority Project will commence on the date this Project Schedule is signed and will be completed by 30 June 2019.

B.2. Aim of Project Activities

B.2.1. The overall aim of the Priority Project is to improve irrigation water use efficiency practices on the properties of Proponents.

B.2.2. This Priority Project requires the State to Transfer or Grant the Commonwealth's Proportion of the Agreed Water Savings to the Commonwealth as set out in Item C.1.1 and in Item E.

B.2.3. This Priority Project includes Funding for On-Farm Works, IFWUEAs, marketing of the Priority Project, training and development opportunities as well as access to DPI Officers to increase the capacity of irrigators to effectively plan and implement efficient water management practices.

B.2.4. This Priority Project will result in:

- a. The Transfer or Grant of the Commonwealth's Proportion of the Agreed Water Savings to the Commonwealth as set out in Item C.1.1 and in Item E.
- b. Upgraded water use infrastructure and on-farm irrigation practices, on Proponent's farms resulting in improved water use efficiency, reduced water losses and improved productivity on Proponent's farms; and
- c. Strengthened capacity of irrigators in the identified NSW northern water management areas to increase their water use efficiency and operate and maintain on-farm irrigation systems in an efficient manner.

B.3. Irrigation Farm Water Use Efficiency Assessments (IFWUEA)

B.3.1. The provision of Funding for IFWUEAs will be implemented under the following guidelines:

- a. The Priority Project will Fund up to 80 per cent to a maximum of \$2,000 (excluding GST) of the cash cost of the IFWUEA per farming business for the assessment of on-farm irrigation water losses;
- b. Where a farm plan exists that has been created with the assistance of Commonwealth funding, Funding for an IFWUEA under this Priority Project will be limited to the amount necessary to update the farm plan to allow an Eligible Participant to proceed to On-Farm Works should the Eligible Participant so choose;
- c. IFWUEAs will be compulsory and a prerequisite for receiving Funding for On-Farm Works and must be submitted to DPI for verification. Once the IFWUEA is verified by DPI the Eligible Participant may choose to submit an application for an On-Farm Works grant; and
- d. An Eligible Participant receiving Funding for an IFWUEA is not obliged to submit an application for an On-Farm Works grant.

B.4. Process relating to On-Farm Works

B.4.1. As this Priority Project requires the State to provide grants to Proponents for expenditure for On-Farm Works, projects will be implemented by the State (via DPI) under the following guidelines:

- a. The State may conduct funding rounds for grants for On-Farm Works that will encourage applicants to develop cost effective, commercially based solutions for their farming businesses, encourage sustainable irrigated agriculture and deliver value for money for the Commonwealth investment [REDACTED]
- b. The State may provide Funding for On-Farm Works up to 80 per cent of the total cost of those On-Farm Works, such cost to be determined having regard to market prices for all of the activities involved in the On-Farm Works;
- c. The State must ensure that the Proponent contributes an amount of financial or in-kind resources towards its On-Farm Works that are equivalent to a minimum of 20 per cent of the total cost of the Proponent's On-Farm Works and that the value attributed to those contributions is reasonable;
- d. The Entitlement Owner of the Proponent Water Entitlement must Transfer a Water Entitlement to the State that equates to a minimum of 50 per cent of

the Agreed Water Savings from its On-Farm Works in accordance with the requirements of Item E.3.1, E.3.4 and E.3.5.

- e. In its assessment of proposals from Proponents for On-Farm Works, the State will assure itself that the water efficiency savings from the Proponents' proposed On-Farm Works are sufficient to provide the Agreed Water Savings specified in Item E.1.
- f. The State must then obtain a Proponent Water Entitlement from each Entitlement Owner (generally in the form of Share Component) and consolidate them on a State Water Entitlement before Transferring the consolidated Water Entitlement (generally in the form of a Share Component) to the Commonwealth in accordance with the requirements in Items B.5.2, C.1 and Item E.
- g. The State may also provide to Proponents undertaking On-Farm Works expert irrigation and water use efficiency training programs throughout the Priority Project, with a view to assisting Proponents to purchase, operate and maintain new or upgraded On-Farm Works according to best practice.

B.4.2. The State may only provide Funding to a Proponent for its On-Farm Works if:

- a. the Proponent:
 - i. has the capacity to enter into a legally binding contract with the State that gives effect to the relevant Items of this Project Schedule in respect of the completion of the On-Farm Works;
 - ii. has entered into such a contract with the State (to which any separate Land Owner is also a party); and
 - iii. has not breached the requirements of that contract with the State and neither has any separate Land Owner that is a party to that contract; and
- b. the:
 - i. Entitlement Owner of the Proponent Water Entitlement, which is to be Transferred to the State as part consideration for the State Funding the Proponent's On-Farm Works, has the capacity to enter, and has entered, into a legally binding contract with the State which requires the Entitlement Owner to Transfer that Proponent Water Entitlement to the State; and
 - ii. Transfer of the Proponent Water Entitlement required under that contract between the State and the Entitlement Owner has been completed.

B.4.3. The State must ensure that its On-Farm Works contract with each Proponent contains:

- a. a consent by the Proponent to the State or the Commonwealth accessing the Proponent's premises and records for the purposes of verifying expenditure of Funding on the On-Farm Works; and
- b. an agreement that neither the Proponent, nor any separate Land Owner nor Entitlement Owner, will make a claim against the State or the Commonwealth in respect of any liability the State or Commonwealth may have arising out of any injury suffered by, or death of, a Proponent, any

separate Land Owner or Entitlement Owner, or their employees, agents or contractors as a result of the performance of the On-Farm Works.

B.4.4. The State must ensure that its contract with each Proponent that is undertaking On-Farm Works:

- a. prohibits that Proponent paying more than 25 per cent of any subcontract in advance of the goods or services that are to be provided to the Proponent under that subcontract; and
- b. provides that if this Agreement, or this Project Schedule is terminated for any reason, the State will immediately terminate that contract with the Proponent and that the Proponent immediately cease expenditure of the Funding.

B.4.5. The State is required to:

- a. effectively manage each contract with a Proponent undertaking On-Farm Works and monitor the Proponent's compliance with that contract; and
- b. enforce the State's rights and Proponents', and any separate Land Owners' and/or Entitlement Owners', obligations in those contracts including if required by the department at no cost to the Commonwealth.

B.4.6. The State agrees that its contract with each Proponent undertaking On-Farm Works will, for the term of the contract, obligate the Proponent to maintain the following events-based insurance policies:

- a. workers' compensation insurance for an amount required by legislation of the state or territory in which their On-Farm Works are performed;
- b. public liability insurance for \$20 million or more per claim or occurrence giving rise to a claim, in relation to the construction of the On-Farm Works; and
- c. Insurance against any loss or damage to On-Farm Works for their full reinstatement or replacement cost.


B.5. Priority Project Requirements

B.5.1. The State agrees that:

- a. It is responsible for ensuring the proper and efficient conduct of this Priority Project, in accordance with this Project Schedule;



- c. It is responsible for ensuring Other Contributions (in cash or in kind) are provided by Proponents equivalent to a minimum of 20 per cent of the cost of the Proponents for On-Farm Works or IFWUEA as per Item D.2.1;
- d. It will ensure there is appropriate monitoring, auditing and reporting of expenditure against the Project Cost, IFWUEAs, delivery of the On-Farm Works, and Transfer or Grant of Water Entitlements equal to the Commonwealth's Proportion of the Agreed Water Savings to enable the Commonwealth to be suitably informed on the progress and outcomes of this Priority Project;

- e. It will comply, and ensure that its Eligible Participants, Proponents and their subcontractors comply, with all applicable requirements of the *Building Code 2013* as set out in Attachment 1 to this Project Schedule;
- f. It will ensure that its Eligible Participants, Proponents and subcontractors comply with all applicable requirements of the *Australian Government Building and Construction OHS Accreditation Scheme* as set out in Attachment 2 to this Project Schedule;
- g. It will ensure that the Project Activities, including the On-Farm Works and IFWUEAs, will be carried out in accordance with all applicable laws (including, but not limited to, all required planning, environmental, development, building, occupational health and safety and regulatory approvals and all applicable Australian standards);
- h. If requested, the State will provide the Commonwealth with access to the State's records and Personnel to enable the Commonwealth to conduct its own independent audit or review of any aspect of this Priority Project;
- i. The State is responsible for meeting the Project Milestones specified in Item C of this Project Schedule;
- j. The Transfer or Grant of Water Entitlements to the Commonwealth will not adversely affect the rights of any other holders of Water Entitlements;
- k. 
and
- l. In the eventuality that the State considers that the scope of work should change, the State may propose a variation to this Project Schedule consistent with Clause 16 of the Agreement but no such change is effective until agreed by the parties in accordance with clause 16.

B.5.2. The process for preparing for and effecting the Transfer or Grant of a Water Entitlement by the State to the Commonwealth as part of a Project Milestone in Item C will be as follows:

- a. the parties agree that the Transfer of a Water Entitlement for this Priority Project will be effected by a s71Q Transfer of Share Component under the WM Act from the State to the Commonwealth.
- b. three months prior to the due date for completion of a Project Milestone that involves the Transfer of a Water Entitlement (including in the form of a Share Component) to the Commonwealth, the State will provide to the department information about the Share Component that the State intends to Transfer to the Commonwealth. The required information includes, but is not limited to, details of the volume, security, water source, and any conditions or other restrictions applying to the Share Component and details of the State's Water Entitlement that contains that Share Component.
- c. the department will review the details provided by the State in respect of each such Water Entitlement and undertake any necessary checks to confirm that those details are acceptable to the Commonwealth and accord with the requirements of this Project Schedule;
- d. once the department has satisfied itself of the matters in Item B.5.2.c. it will engage a Legal Service Provider (LSP) to prepare the s71Q transfer

application and send it to the State and the department. Once the State has signed and returned the s71Q to the LSP, the department will sign and return to the LSP who will lodge the Transfer application with WaterNSW; and

- e. if, for any reason, it is not possible for the State to Transfer, or the Commonwealth to receive, some or all of the Commonwealth's Proportion of the Agreed Water Savings in the form of a Share Component, the State agrees to instead Grant that part of the Commonwealth's Proportion of the Agreed Water Savings to the Commonwealth under s63A of the WM Act as a complete Water Entitlement as opposed to a Share Component.

B.5.3. The State acknowledges that the department is not required to perform any aspect of this Priority Project, other than undertaking the activities required to receive Water Entitlements from the State and approving the Priority Project being implemented in additional water sources in accordance with Item E.1.2.

B.5.4. In undertaking this Priority Project, the State will comply with the requirements, where relevant, of the *Environment Protection and Biodiversity Conservation Act 1999*.

B.5.5. In delivering the Priority Project, the State agrees to the following conditions of Funding:

- a. Consistent with clause 14 of the Agreement, the State agrees that it will seek the agreement of the department before the release of any publicity material by the State in relation to the Priority Project. The department will provide its agreement on the release of such publicity material within 10 Business Days, excluding any which require approval by the Commonwealth Minister;
- b. The State is responsible for ensuring that the Funding is spent for the purposes of the Priority Project in accordance with the Project Budget and in accordance with this Project Schedule;
- c. Commonwealth Funding provided under this Priority Project can be spent on legal advice regarding the implementation of this Priority Project but must not be spent on legal advice:
 - i. regarding the development of the Project Schedule;
 - ii. for any dispute or action against or involving the Commonwealth except where that dispute or action involves the Commonwealth, the State and a third party to the extent that the department, at its sole discretion, gives its prior written consent to the State using the Funds for that purpose; or
 - iii. in relation to any dispute or action against or involving the State except to the extent that the department, at its sole discretion, gives its prior written consent to the State using the Funds for that purpose.
- d. The use of any interest that the State earns on the Commonwealth Funds will be consistent with clause 6.1.9 of the Agreement. The prior approval of the Commonwealth will be obtained for the use of any interest on the Priority Project.

B.5.6. The State will develop a project implementation plan for the Priority Project and detailed annual budgets for each financial year before Project Milestone 2 can be paid. The budgets must be consistent with this Project Schedule, including the Project Cost.

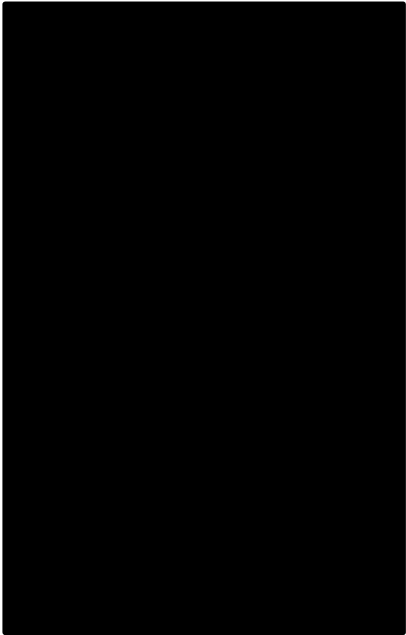

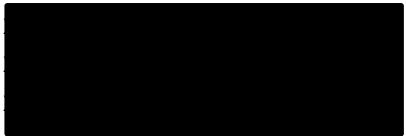

- B.5.7. As this Project requires the State to provide grants from the Funds to Proponents, any amount that the Commonwealth may recover from the State under clause 6.3 and/or clause 17 of the Agreement includes any amount that the State has provided to a Proponent for:
- a. an IFWUEA minus the sum of the Funds spent, legally due and payable and legally and irrevocably committed by the Proponent in accordance with its contract with the State for work done on the IFWUEA up to the earlier of the expiry or termination of that contract; and
 - b. On-Farm Works minus the greater of:
 - i. the value of the Water Entitlement Transferred to the State in respect of those On-Farm Works
 and
 - ii. the sum of the Funds spent, legally due and payable and legally and irrevocably committed by the Proponent in accordance with its contract with the State for work done on the On-Farm Works up to the earlier of the expiry or termination of that contract.
- B.5.8. The State agrees not to make a payment of Funds to a Proponent until and unless that Proponent has demonstrated that it has spent (or will in the next 10 Business Days spend) all of the Funds previously paid to it (under its contract with the State for the conduct of an IFWUEA or On-Farm Works) in accordance with that contract.

C. C. Project Milestones

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

Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Payment Value
	Project Milestone 1	All elements of Project Milestone 1 are completed to the reasonable satisfaction of the department.	8 June 2012	<div style="background-color: black; width: 100%; height: 1.2em;"></div>
1.1	Signing of the Project Schedule by both Parties.	Execution of Project Schedule.		
	Project Milestone 2	All elements of Project Milestone 2 are completed to the reasonable satisfaction of the department	31 August 2012	<div style="background-color: black; width: 100%; height: 1.2em;"></div>

Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Payment Value
2.1	State provides an implementation plan for the Priority Project describing how it will implement the Priority Project to achieve its aims as specified in this Project Schedule including detailed annual budgets and timelines.	Detailed implementation plan provided.		
2.2	Completion of assessment process to select suitably qualified irrigation consultants to complete Irrigated Farm Water Use Efficiency Assessments (IFWUEA).	Report demonstrating that the State has selected suitably qualified irrigation consultants.		
2.3	State establishes the Steering Committee with the Commonwealth represented as an observer.	Minutes from the first meeting of the Steering Committee.		
2.4	State submits Progress Report to the department.	Progress Report that meets the requirements of Item I.2.1		
	Project Milestone 3	All elements of Project Milestone 3 are completed to the reasonable satisfaction of the department.	5 October 2012	██████████
3.1	Completion of first round of Irrigated Farm Water Use Efficiency Assessments (IFWUEA).	List of all completed IFWUEA.		
3.2	State submits Progress Report to the department.	Progress Report that meets the requirements of Item I.2.1		

Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Payment Value
	Project Milestone 4	All elements of Project Milestone 4 are completed to the reasonable satisfaction of the department.	24 May 2013	As derived from Project Milestone 4.1.*
4.1		Issue of certificate of title that shows that the Water Entitlement has been Transferred or Granted to the Commonwealth or Water Access Licence Register Search showing that the relevant Commonwealth Water Entitlement has been increased by the amount of any Water Entitlement that is a Share Component.		
4.2	State submits Progress Report to the department.	Progress Report that meets the requirements of Item I.2.1		
	Project Milestone 5	All elements of Project Milestone 5 are completed to the reasonable satisfaction of the department.	25 October 2013	As derived from Project Milestone 5.2*
5.1	Completion of second round of Irrigated Farm Water Use Efficiency Assessments (IFWUEA).	List of completed IFWUEA		
5.2		Issue of certificate of title that shows that the Water Entitlement has been Transferred or Granted to		

Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Payment Value
		the Commonwealth or Water Access Licence Register Search showing that the relevant Commonwealth Water Entitlement has been increased by the amount of any Water Entitlement that is a Share Component.		
5.3	State submits Progress Report to the department.	Progress Report that meets the requirements of Item I.2.1		
	Project Milestone 6	All elements of Project Milestone 6 are completed to the reasonable satisfaction of the department.	23 May 2014	As derived from Project Milestone 6.1*
6.1		Issue of certificate of title that shows that the Water Entitlement has been Transferred or Granted to the Commonwealth or Water Access Licence Register Search showing that the relevant Commonwealth Water Entitlement has been increased by the amount of any Water Entitlement that is a Share Component.		
6.2	State submits Progress Report to the department.	Progress Report that meets the requirements of Item I.2.1		


Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Payment Value
	Project Milestone 7	All elements of Project Milestone 7 are completed to the reasonable satisfaction of the department.	24 October 2014	As derived from Project Milestone 7.2*
7.1	Completion of third round of Irrigated Farm Water Use Efficiency Assessments (IFWUEA).	List of completed IFWUEA.		
7.2		Issue of certificate of title that shows that the Water Entitlement has been Transferred or Granted to the Commonwealth or Water Access Licence Register Search showing that the relevant Commonwealth Water Entitlement has been increased by the amount of any Water Entitlement that is a Share Component.		
7.3	State submits Progress Report to the department..	Progress Report that meets the requirements of Item I.2.1		
	Project Milestone 8	All elements of Project Milestone 8 are completed to the reasonable satisfaction of the department.	21 May 2015	As derived from Project Milestone 8.1*

Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Payment Value
8.1		<p>Provision of a signed 71Q (trade approval)</p> <p>or</p> <p>Issue of certificate of title that shows that the Water Entitlement has been Transferred or Granted to the Commonwealth</p> <p>or</p> <p>Water Access Licence Register Search showing that the relevant Commonwealth Water Entitlement has been increased by the amount of any Water Entitlement that is a Share Component.</p>		
8.2	State submits Progress Report to the department.	Progress Report that meets the requirements of Item I.2.1		
8.3	<p>An Evaluation Report from the State of the value for money outcomes achieved to date and a plan of how the State intends to deliver value for money for the remainder of the Priority Project consistent with the requirements of Item I.5.1</p> <p>The State must amend the plan with any changes required by the Commonwealth and implement the amended Plan for the rest of the Priority Project.</p>	<p>The Commonwealth will review the Evaluation Report and advise of any changes required to the implementation of the Priority Project.</p> <p>Plan amended to the reasonable satisfaction of the Commonwealth.</p>		

Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Payment Value
	Project Milestone 9	All elements of Project Milestone 9 are completed to the reasonable satisfaction of the department.	July 2015	██████████
9.1	Signing of Variation 4 to the Project Schedule by both Parties, incorporating \$28,073,206 of additional funding and expanding the Priority Project .	Execution of Variation 4 to the Project Schedule.		
	Project Milestone 10	All elements of Project Milestone 10 are completed to the reasonable satisfaction of the department..	4 September 2015	As derived from Project Milestone 10.1*
10.1	██████████	Provision of a signed 71Q (trade approval) or Issue of certificate of title that shows that the Water Entitlement has been Transferred or Granted to the Commonwealth or Water Access Licence Register Search showing that the relevant Commonwealth Water Entitlement has been increased by the amount of any Water Entitlement that is a Share Component.		██████████

Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Payment Value
10.2	State submits Progress Report to the department.	Progress Report that meets the requirements of Item I.2.1		
	Project Milestone 11	All elements of Project Milestone 11 are completed to the reasonable satisfaction of the department..	1 April 2016	As derived from Project Milestone 11.1*
11.1		<p>Provision of a signed 71Q (trade approval)</p> <p>or</p> <p>Issue of certificate of title that shows that the Water Entitlement has been Transferred or Granted to the Commonwealth</p> <p>or</p> <p>Water Access Licence Register Search showing that the relevant Commonwealth Water Entitlement has been increased by the amount of any Water Entitlement that is a Share Component.</p>		
11.2	State submits Progress Report to the department..	Progress Report that meets the requirements of Item I.2.1		
	Project Milestone 12	All elements of Project Milestone 12 are completed to the	2 September 2016	As derived from Project Milestone 12.1*

Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Payment Value
		reasonable satisfaction of the department..		
12.1		Provision of a signed 71Q (trade approval) or Issue of certificate of title that shows that the Water Entitlement has been Transferred or Granted to the Commonwealth or Water Access Licence Register Search showing that the relevant Commonwealth Water Entitlement has been increased by the amount of any Water Entitlement that is a Share Component.		
12.2	State submits Progress Report to the department..	Progress Report that meets the requirements of Item I.2.1		
	Project Milestone 13	All elements of Project Milestone 13 are completed to the reasonable satisfaction of the department..	7 April 2017	As derived from Project Milestone 13.1*
13.1		Provision of a signed 71Q (trade approval) or Issue of certificate of title that shows that the Water Entitlement has been		

Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Payment Value
		<p>Transferred or Granted to the Commonwealth</p> <p>or</p> <p>Water Access Licence Register Search showing that the relevant Commonwealth Water Entitlement has been increased by the amount of any Water Entitlement that is a Share Component.</p>		
13.2	State submits Progress Report to the department.	Progress Report that meets the requirements of Item I.2.1		
	Project Milestone 14	All elements of Project Milestone 14 are completed to the reasonable satisfaction of the department..	1 September 2017	
14.1		<p>Provision of a signed 71Q (trade approval)</p> <p>or</p> <p>Issue of certificate of title that shows that the Water Entitlement has been Transferred or Granted to the Commonwealth</p> <p>or</p> <p>Water Access Licence Register Search showing that the relevant Commonwealth Water Entitlement has been</p>		

Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Payment Value
		increased by the amount of any Water Entitlement that is a Share Component.		
14.2	State submits Progress Report to the department.	Progress Report that meets the requirements of Item I.2.1		
	Project Milestone 15	All elements of Project Milestone 15 are completed to the reasonable satisfaction of the department.	6 April 2018	As derived from Project Milestone 15.1*
15.1		Provision of a signed 71Q (trade approval) or Issue of certificate of title that shows that the Water Entitlement has been Transferred or Granted to the Commonwealth or Water Access Licence Register Search showing that the relevant Commonwealth Water Entitlement has been increased by the amount of any Water Entitlement that is a Share Component.		
15.2	State submits Progress Report to the department.	Progress Report that meets the requirements of Item I.2.1		

Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Payment Value
	Project Milestone 16	All elements of Project Milestone 16 are completed to the reasonable satisfaction of the department.	7 Sept 2018	As derived from Project Milestone 16.1*
16.1		Provision of a signed 71Q (trade approval) or Issue of certificate of title that shows that the Water Entitlement has been Transferred or Granted to the Commonwealth or Water Access Licence Register Search showing that the relevant Commonwealth Water Entitlement has been increased by the amount of any Water Entitlement that is a Share Component.		
16.2	State submits Progress Report to the department.	Progress Report that meets the requirements of Item I.2.1		
	Project Milestone 17	All elements of Project Milestone 17 are completed to the reasonable satisfaction of the department.	30 April 2019	

Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Payment Value
17.1	State provides final Report to the Commonwealth.	Final Report that meets the requirements of I.3		
	Project Milestone 18	All elements of Project Milestone 18 are completed to the reasonable satisfaction of the department.	30 June 2019	■
18.1	State provides the final Audit Report to the Commonwealth.	Audit Report that meets the requirements of I.4		

■

■

D. D. Project Cost

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

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

**TABLE HAS BEEN REMOVED
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D.2. Contributions for Priority Project

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

Contribution	Maximum Contribution (\$ exc GST)
Commonwealth Funding	\$111,073,206
State Contribution to Project Cost	See Item D
Other Contributions from Proponents to Project Cost	\$20,581,555

D.3. State Contributions

D.3.1. The State agrees that any Priority Project costs in excess of the sum of the Other Contributions and the Funding must be met by the State.

D.3.2. The State agrees that it will make up any shortfall in Other Contributions in the event these do not reach the amount specified in Item D.2.1.

D.4. Other Contributions

D.4.1. The State is required to ensure that the Other Contributions specified in Item D.2.1 are provided for this Priority Project.

D.4.2. Other Contributions will be provided by Proponents in the form of direct in-kind or financial contributions that are equivalent to a minimum of 20 per cent of the Funding provided to Proponents for IFWUEAs and On-Farm Works.

D.4.3. If the Commonwealth does not provide full Funding the total value of the Other Contributions to be provided is to be 20 per cent of the total Funding provided to Proponents for IFWUEAs and On-Farm Works.

E. Transfer or Grant of Water Entitlements

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



E.1.1.

[REDACTED]

E.1.2. The Agreed Water Savings are to result from the implementation of this Priority Project in the Border Rivers, Gwydir, Namoi, Barwon-Darling and Macquarie Regulated River water sources, and any other water source that the department approves in writing as a location for the implementation of the Priority Project.

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

E.2.1. The Commonwealth's Proportion of the Agreed Water Savings is 50 per cent of the Agreed Water Savings.

Commonwealth's Proportion of Agreed Water Savings	Water Characteristics
	Any Water Entitlement that the department approves in writing 

E.3. Transfer or Grant of Water Entitlements to the Commonwealth (clauses 5.2.6 to 5.2.8)

- E.3.1. The State agrees that the Water Entitlements that it is required to Transfer or Grant to the Commonwealth under this Project Schedule will:
 - a. meet the requirements in clause 5.2.4 of the Agreement;
 - b. meet the requirements specified in Item E.2.1;
 - c. be of like character to existing equivalent Water Entitlements within the relevant catchment; and
 - d. have the same characteristics (i.e. of the same proportion, type, security and catchments) as the water used at the locations where On-Farm Works have been conducted under this Priority Project.
- E.3.2. The State agrees to Transfer or Grant the Commonwealth's Proportion of Agreed Water Savings to the Commonwealth as set out in the table at Item C.1.1.
- E.3.3. The State agrees that it will only Transfer Water Entitlements to the Commonwealth from its own Water Entitlements or Grant new Water Entitlements to the Commonwealth, and will not seek to Transfer Water Entitlements owned by third party water entitlement holders.
- E.3.4. The State will consolidate Water Entitlements from individual Entitlement Owners in each water source or water management zone prior to the Transfer or Grant of Water Entitlements to the Commonwealth at each applicable Project Milestone.
- E.3.5. The State agrees that all Water Entitlements Transferred or Granted to the Commonwealth under this Project Schedule are to be sourced from water savings achieved by this Priority Project and are not to include water that is already allocated or being used for environmental purposes.
- E.3.6. The Commonwealth will accept the volume of water offered by the State from this Priority Project, if the provisions of Items C and E are satisfied.

F. Sharing Actual Water Savings additional to Agreed Water Savings

F.1. Differences between Actual and Agreed Water Savings

- F.1.1. Where Actual Water Savings exceed the Agreed Water Savings, the amount of that excess may be retained by the Entitlement Owners.
- F.1.2. The verification process in clauses 5.2.9 and 5.2.10 does not apply to any Actual Water Savings in excess of the Agreed Water Savings.

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

Not used.

H. Indemnity

- H.1.1. Notwithstanding any other provision of this Agreement, the State agrees to indemnify, and keep indemnified, the Commonwealth against any cost, liability, loss or expense incurred by the Commonwealth:
- a. in rectifying any environmental damage; or
 - b. in dealing with any third party (including Commonwealth Personnel) claims against the Commonwealth, which includes without limitation the Commonwealth's legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used and disbursements paid by the Commonwealth,
- arising from any act or omission by State or its Personnel in connection with the Priority Project specified in this Project Schedule.
- H.1.2. The State's liability to indemnify the Commonwealth under this Item H will be reduced proportionally to the extent that any fault on the Commonwealth's part contributed to the relevant cost, liability, loss or expense. In this Item H.1.2, 'fault' means any reckless, negligent or unlawful act or omission or wilful misconduct.
- H.1.3. The right of the Commonwealth to be indemnified in this Item H is in addition to, and not exclusive of, any right, power or remedy provided to the Commonwealth by law, but the Commonwealth is not entitled to be compensated in excess of the relevant cost, liability, loss or expense.

I. Project Reports

I.1. Project Reports

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

I.2. Progress Reports

- I.2.1. Each Progress Report must demonstrate evidence of the State's project management and contract management activities, and financial management, and must contain the following information:
- a. a description of actual performance of the Priority Project to date against the aim of the Priority Project (as specified in this Project Schedule), including information and evidence to demonstrate the State's completion of the Project Milestones (see Item C.1.1 of this Project Schedule) that were due for completion during the period that is the subject of this Progress Report (Period);
 - b. a description of the activities, if any, undertaken for the Priority Project to date;
 - c. a description of the process used and the decisions made to select Eligible Participants for IFWUEAs and On-Farm Works, the outcomes to be delivered; the Funding provided to Proponents; and the Funding yet to be provided to Proponents;
 - d. a statement of irrigator participation rates;

- e. number of IFWUEAs undertaken during the reporting period and to date;
- f. the number of contracts with Proponents for On-Farm Works entered into, and the number of contracts completed, together with a description of the On-Farm Works completed;
- g. a statement on income and expenditure of the Funding and Other Contributions for the Priority Project to date against the Project Cost in Item D.1.1 and detailed annual budget required in Project Milestone 2 of Item C.1.1;
- h. an estimate of the interest earned by the State to date on the Funds provided for the Priority Project;
- i. promotional activities undertaken in relation to, and media coverage of, the Priority Project during the period and proposed Project Activities during the next period;
- j. the Agreed Water Savings for the Priority Project to date and the volume of Water Entitlements that have been Transferred or Granted to the Commonwealth in respect of the Agreed Water Savings; and
- k. any other items that are agreed by the State and the Commonwealth to be included in the Progress Report.

I.3. Final Report

- I.3.1. The final Report will be a stand-alone document that can be used for public information dissemination purposes regarding this Priority Project.
- I.3.2. The final Report for the Priority Project is due at the earliest of:
 - a. Milestone 17 as set out in Item C.1.1; or;
 - b. three months after the completion of the Priority Project; or
 - c. three months after the termination of this Project Schedule or the Priority Project; or
 - d. 30 June 2019.
- I.3.3. The final Report will contain information that:
 - a. describes the conduct, benefits and outcomes of the Priority Project as a whole;
 - b. evaluates the Priority Project, including assessing the extent to which the outcomes and Project Milestones of the Priority Project (as specified in Items B and C of this Project Schedule) have been achieved and explaining why any aspect of the Priority Project was not achieved;
 - c. confirms that all of the Water Entitlements that are required to be Transferred or Granted to the Commonwealth in respect to this Priority Project have, as at the date of the final Report, been Transferred or Granted to the Commonwealth;
 - d. details any Commonwealth's Proportion of Agreed Water Savings which have not been Transferred or Granted to the Commonwealth, and the reasons why this Transfer or Grant has not occurred, and when, if at all, this Transfer or Grant will occur;

- e. provides detailed financial information regarding the total Project Cost, Funding, and Other Contributions for the Priority Project;
- f. summarises all promotional activities undertaken in relation to, and media coverage of, the Priority Project;
- g. assessment of the improvements in water use efficiency and farm productivity as a result of the implementation of On-Farm Works, and an assessment of the overall water savings achieved by the Priority Project as well as the Water Entitlements Transferred or Granted to the Commonwealth;
- h. includes a discussion of any other matters, relating to the Priority Project, which the department notifies the State should be included in the final Report at least 30 Business Days before it is due; and
- i. any other items that are agreed by the State and the Commonwealth will be included in the final Report.

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

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


I.4. Independent Audit Report

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

I.5. Evaluation Report for Project Milestone 8

I.5.1. The State agrees to provide the evaluation Report required in Project Milestone 8 which must contain the following information:

- a. the extent to which the Priority Project has met, exceeded or not achieved the Priority Project aim to date;
- b. a summary of irrigator interest and participation in the Priority Project;
- c. a detailed summary of the value for money outcomes delivered from each instance of On-Farm Works and from the Priority Project as a whole;

- 
- e. any other items that are agreed by the State and Commonwealth to be included in the evaluation Report.

J. Payment Schedule for Funding for Priority Project

- J.1.1. The maximum Funding payable by the Commonwealth to the State in respect of this Priority Project is \$111,073,206 (excluding GST).
- J.1.2. Subject to the terms of this Project Schedule and clauses 6 and 17 of the Agreement, the Funding will be paid in instalments, and on the completion of the Payment Preconditions, set out in Item C. Each such payment of Funds is due within 32 Business Days after the date that the State is assessed as having completed all of the Payment Preconditions relating to that payment and has provided the department with an invoice for that payment of Funds

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K. Contact Officer

- K.1.1. The nominated Contact Officers for this Priority Project are:
- I. For the Commonwealth, the Director, Northern_Priority Projects Section, Department of Agriculture and Water Resources, GPO Box 858 Canberra City, ACT 2601, Ph: 02 6272 4737 ; and
 - II. For New South Wales, Director Water and Irrigation, Agriculture NSW, Department of Primary Industries, Tocal Agricultural Centre, Tocal Road, Paterson NSW 2421, Ph: 02 4939 8968.
- K.1.2. Either Party signatory to this Project Schedule may change its Contact Officer at any time by notice in writing to the other Party.

By signing this document, the Parties to this Agreement dated 11th January 2010, agree that this document will be incorporated into the Agreement as a Project Schedule on and from the date the Commonwealth signs this document.

Dated the _____ day of _____ 2016.

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 NSW by:)

_____)

Name of signatory

_____)
Signature

In the presence of:

_____)

Name of witness

_____)
Signature of witness

ATTACHMENT 1: REQUIREMENTS RELATING TO THE BUILDING CODE 2013

1.1 Interpretation

1.1.1 In this Attachment 1:

Commonwealth funded building work	means work in items 1-8 of Schedule 1 of the Building Code.
the Building Code	means the Building Code 2013 . The Building Code can be downloaded from www.employment.gov.au/BuildingCode
the Guidelines	means the Supporting Guidelines for Commonwealth Funding Entities to the Building Code 2013. The Supporting Guidelines can be downloaded from www.employment.gov.au/BuildingCode
Project Parties	means all Proponents, Eligible Participants, contractors, subcontractors, consultants and employees who perform on-site work in relation to the Priority Project.

1.2 Compliance with the Building Code

1.2.1 Where the Funding relates to Commonwealth funded building work, the State must comply and ensure that the Project Parties comply with the Building Code and the Guidelines.

1.2.2 The State must ensure that:

- a. all requests for application or tender, expressions of interest, submissions and invitations to join 'Common Use Arrangements' in relation to the Priority Project made by it or any of the Project Parties, contain the commitment to apply the Building Code and Guidelines as set out in the model tender documents available at: <https://docs.employment.gov.au/documents/building-code-2013-supporting-guidelines-commonwealth-funding-entities>
- b. all contracts entered into in relation to the Priority Project by it or any of the Project Parties contain the commitment to apply the Building Code and Guidelines as set out in the model contract clauses available at: <https://docs.employment.gov.au/documents/building-code-2013-supporting-guidelines-commonwealth-funding-entities> .

1.1.2. The State must notify the Commissioner of the Australian Building and Construction Commission (ABCC) when the tender process for work in relation to the Project is complete and a building contractor or building industry participant has been awarded a contract to undertake Commonwealth funded building work. The notification should include:

- a. the name and contact details of the building contractor or building industry participant; and
- b. a description of the work; and
- c. the location of the proposed work; and
- d. the cost of the project; and

- e. the proposed project start and completion dates.

1.3 State must maintain Records and permit access

1.3.1 The State must maintain adequate records of compliance by it, and each of the Project Parties, with the Building Code and the Guidelines. The State must permit the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, full access to premises and records of the State and the Project Parties to:

- a. inspect any work, material, machinery, appliance, article or facility;
- b. inspect and copy any record relevant to the Priority Project and works governed by this Project Schedule;
- c. interview any person,

as is necessary to monitor compliance with the Building Code and the Guidelines.

1.3.2 Additionally, the State undertakes that it and each of the Project Parties will agree to a request from the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, to produce a specified document within a specified period, in person, by fax, or by post.

1.3.3 The Commonwealth, the Commissioner of the ABCC and Minister for Employment may publish or otherwise disclose information in relation to compliance by the State and the Project Parties with the Building Code and the Guidelines. The State must obtain the consent of the Project Parties to the publication or disclosure of information under this clause.

1.4 Appointment of sub-contractors

1.4.1 While acknowledging that value for money is the core principle underpinning decisions on government procurement, when issuing tenders the State may preference Proponents, contractors, subcontractors and consultants that have a demonstrated commitment to:

- a. adding and/or retaining trainees and apprentices;
- b. increasing the participation of women in all aspects of the industry; or
- c. promoting employment and training opportunities for Indigenous Australians in regions where significant Indigenous populations exist.

1.4.2 The State must not appoint a Proponent, contractor, subcontractor or consultant in relation to the Priority Project where:

- a. there are reasonable grounds to believe the building contractor or building industry participant is covered by an enterprise agreement that is inconsistent with the Building Code; or
- b. there are reasonable grounds to believe that the building contractor or building industry participant is a party to an agreement of a kind described in subsection 10(1) of the Building Code; or
- c. an exclusion sanction applies to the building contractor or building industry participant; or

- d. an adverse decision, direction or order of a court or tribunal has been made in relation to the building contractor or building industry participant and a contravention of any of the following in respect of building work:
 - i. a designated building law; or
 - ii. the *Work Health and Safety Act 2011* or a corresponding WHS law; or
 - iii. the *Competition and Consumer Act 2010*; and

there are reasonable grounds to believe that the building contractor or building industry participant has failed to comply with the decision, direction or order.

ATTACHMENT 2: REQUIREMENTS RELATING TO THE AUSTRALIAN GOVERNMENT BUILDING AND CONSTRUCTION WHS ACCREDITATION SCHEME

1.1 Interpretation

1.1.1 In this Attachment 2:

the Act	means the <i>Fair Work (Building Industry) Act 2012 (Cth)</i> .
Builder	has the meaning given in section 35(8) of the Act.
Building Work	has the meaning given to it in section 5 of the Act
Regulations	means the <i>Fair Work (Building Industry – Accreditation Scheme) Regulations 2005</i> .
Scheme	means the Scheme described at section 35 of the Act.

1.2 Scheme requirements

1.2.1 Subject to the exclusions specified in the Regulations, construction projects that utilise funds provided under this Project Schedule are bound by the application of the Scheme.

1.2.2 The State must ensure it complies with item 1.2.3 below for all contracts that it enters into as part of the Priority Project, and all contracts that its subcontractors enter into as part of the Priority Project, where:

- a. the head contracts for Building Work are greater than \$4 million or more (GST inclusive); or
- b. the value of the Commonwealth's contribution is at least \$6 million and represents at least 50 per cent of the total construction project value; or
- c. the Commonwealth's contribution is \$10 million or more, irrespective of the proportion of the Commonwealth funding.

1.2.3 For contracts that are subject to the above item 1.2.2, the following conditions must be satisfied:

- a. those contracts are notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity; and
- b. contain a requirement that the Builder:
 - i. is accredited under the Scheme;
 - ii. maintains Scheme accreditation for the life of the contract; and
 - iii. must comply with all conditions of the Scheme accreditation.

1.2.4 The State agrees to notify the Commonwealth immediately if that Builder has ceased, or is likely to cease, to meet the accreditation requirements in paragraph 1.2.3(b) above.

1.2.5 The State must maintain adequate records of compliance by it, and each of its subcontractors, with the Scheme.

[REDACTED]

[REDACTED]

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