

PROJECT SCHEDULE

COMMONWEALTH OF AUSTRALIA REPRESENTED BY
THE DEPARTMENT OF SUSTAINABILITY, ENVIRONMENT,
WATER, POPULATION AND COMMUNITIES

WATER FOR THE FUTURE
NEW SOUTH WALES STATE PRIORITY PROJECT

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

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

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

A. Terminology used in this Project Schedule

- A.1.1. Except where indicated in Item A.1.2, capitalised terms in this Project Schedule have the same meaning as in clause 18.4 of the *Water Management Partnership Agreement* between the Commonwealth and New South Wales dated 11 January 2010 (the Agreement).
- A.1.2. For the purpose of this Project Schedule only, the terms specified in this item have the following meaning:
- a. Activity: means an activity that the State is required to undertake, or ensure is undertaken, to complete the Priority Project and includes anything that is reasonably incidental to the completion of that activity.
 - b. Business Case Information Requirements: means the criteria set out in Schedule E of the IGA.
 - c. DSEWPaC: means the Commonwealth Department of Sustainability, Environment, Water, Population and Communities (formerly known as the Department of Environment, Water, Heritage and the Arts or DEWHA) 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. CEWH: means the Commonwealth Environmental Water Holder, managed through the Commonwealth Environmental Water Office, which manages Commonwealth environmental water to protect and restore the environmental assets of the Murray-Darling Basin, and outside the Basin where the Commonwealth owns water.
 - e. Heads of Agreement: means the Heads of Agreement document signed between the State and the Commonwealth on 28 June 2013, outlining the commitments of both parties and which should be read in conjunction with this Schedule.
 - f. IGA: means the 2008 Intergovernmental Agreement on Murray-Darling Basin Reform.
 - g. Interim Land Management Arrangements – means arrangements to be applied upon transfer of land and water entitlement to the NSW Water Administration Ministerial Corporation prior to an agreed Land Management Plan being implemented.
 - h. Land Management Plan: means a long-term plan that will provide for in perpetuity protection and management of key environmental assets in the Nimmie-Caira detailing land use, interim land management arrangements by the State and long term land management by a suitable entity.
 - i. Lowbidgee Supplementary Water Entitlement: means the 381,000 unit shares of Lowbidgee supplementary water entitlement that was created under the 2012 amendments to the Murrumbidgee Regulated River Water Sharing Plan (WSP).
 - j. LTAAAY: means Long Term Average Annual Yield.
 - k. MDBA: means the Commonwealth Murray-Darling Basin Authority.

- l. ML: means megalitre, which is 1,000,000 litres.
- m. Advisory Committee: means a group comprising representatives from the State and Commonwealth and any agreed independent members who will provide advice on the delivery of the project.
- n. NOW: means the New South Wales Office of Water, a business unit in the Department of Primary Industries, which is an office of the NSW Department of Trade and Investment, Regional Infrastructure and Services (ABN 72 189 919 072) representing the Crown in right of the State of New South Wales, and includes its Personnel and successors.
- o. Parties: means the parties to this Agreement, being the Commonwealth and the New South Wales Government.
- p. Project Control Group: means a group comprising representatives from the State and Commonwealth (including the CEWH), as provided by clause 11 of the Heads of Agreement, who will monitor the progress of this Priority Project, including against this Project Schedule.
- q. Progress Report: means a report received at the intervals specified in the Milestone in Item C.1.1 and as specified in Item I.2;
- r. RAP: means the Commonwealth Department of Sustainability, Environment, Water, Population and Communities Reconciliation Action Plan 2013-2015.
- s. (the) State: means the New South Wales Government.
- t. SWC: means the New South Wales State Water Corporation.
- u. Sustainable Diversion Limit (SDL): means the amount of water that can be taken for town water supplies, industry, agriculture and other human or 'consumptive' uses, while ensuring there is enough water to achieve healthy river and groundwater systems, as defined in Chapter 6 of the Basin Plan.
- v. Transfer: means the permanent transfer of Water Entitlement by the State to the Commonwealth under the provisions of the WM Act.
- w. WM Act: means the *Water Management Act 2000 (NSW)*.
- x. WSP: means the Water Sharing Plan for the Murrumbidgee Regulated River Water Source 2003.
- y. WMPA: means the Water Management Partnership Agreement dated 11 January 2010 between the Commonwealth of Australia and the Minister for Water for and on behalf of the Crown in right of the State of NSW acting through the NSW office of Water

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 to projects in New South Wales, subject to Due Diligence and compliance with the Commonwealth's Business Case Information Requirements and this Agreement.
- B.1.2. In the IGA, the Commonwealth agreed in-principle to provide funding of up to \$708 million for Priority Projects to be delivered by the State, subject to the

proposed Priority Project's satisfying the Commonwealth's Due Diligence Assessment.

B.1.3. The State submitted a Business Case to DSEWPaC for a proposed NSW Nimmie-Caira System Enhanced Environmental Water Delivery Priority Project on 4 July 2012.

B.1.4. The Commonwealth's Due Diligence assessment of the Proposed Project against the Business Case Information Requirements was completed in June 2013. The Proposed Project was approved for funding of up to \$180,133,974 (excluding GST) by the Commonwealth Minister for Sustainability, Water, Environment, Population and Communities on 24 June 2013, for the agreed project only, subject to conditions. The conditions of the final Due Diligence are now reflected in this Project Schedule.

B.1.5. A Heads of Agreement for the implementation of the Nimmie-Caira System Enhanced Environmental Water Delivery Priority Project was signed by the Commonwealth Minister for Sustainability, Water, Environment, Population and Communities and was signed by the NSW Minister for Primary Industries on 28 June 2013.

B.1.6. This Priority Project consists of the following components:

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

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

B.1.8. This Priority Project commences on the date this Project Schedule is signed by the Commonwealth and must be completed by 15 April 2018, unless otherwise agreed in writing by the Parties.

B.2. Aim of the Priority Project

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

- a. achieve water recovery which provides a substantial contribution towards 'bridging the gap' under the Basin Plan;
- b. implement management arrangements for the Nimmie-Caira area which give priority to enhancement of environmental and indigenous cultural outcomes within and potentially beyond the Nimmie-Caira area;
- c. implement arrangements for the future commercial use of parts of the Nimmie-Caira Land that are consistent with the environmental restoration of key areas, ecological objectives and indigenous cultural values;

- d. restore the floodplain health and ecosystem functions in the Nimmie-Caira area of the Lowbidgee floodplain;
 - e. establish secure and lasting protection for the ecological assets, floodways and habitats in the Nimmie-Caira;
 - f. plan and undertake activities to make an assessment against convention listing requirements with a view to a potential joint nomination of high ecological value areas of the Lowbidgee floodplain for inclusion on the List of Wetlands of International Importance under the Ramsar Convention.
- B.2.2. The Priority Project will recognise the potential system level environmental benefits of Basin-scale significance which can be achieved through protecting and restoring the local environment, relaxing constraints through Nimmie-Caira Lands, allowing for improved coordination of watering events between the Murrumbidgee and other rivers, and helping to 'bridge the gap' in the Murrumbidgee valley.
- B.2.3. The Priority Project will assist in determining the technical feasibility of providing further SDL adjustment for the Murrumbidgee catchment under the process specified in the Basin Plan;
- B.2.4. The Priority Project will provide substantially enhanced capacity for improved environmental watering outcomes including through relaxing constraints, shepherding and re-crediting of flows for the Nimmie-Caira Entitlement in the short term and (potentially) for other entitlements in the longer term (subject to there being no adverse third party impacts);
- B.2.5. The Priority Project will assist the State to meet its commitments to the IGA and meet Reform Requirements. The Priority Project will result in the transfer of a water entitlement to the Commonwealth.

B.3. Priority Project Requirements

- B.3.1. The State agrees:
- a. To facilitate the timely transfer to the Commonwealth of the 381,000 unit shares of Lowbidgee Supplementary Water Entitlement on a single water access licence.
 - b. That the acquisition by the Commonwealth of the Lowbidgee Supplementary Water Entitlement complies with clause 3(h) of the NSW Access Licence Dealing Principles Order (No. 1) 2013 – Murray Darling Basin.
 - c. That, concurrently to transferring the Lowbidgee Supplementary Water Entitlement, the State will arrange for and complete the purchase of 84,417 hectares of privately owned land in the Nimmie-Caira as defined in the Business Case (the Nimmie-Caira Land), the ownership of which will be transferred to the NSW Government.
 - d. To establish a Project Control Group within 90 days of the date of this Project Schedule. Membership will be as per Clause 11 of the Heads of Agreement.
 - e. To establish a Nimmie-Caira Project Advisory Committee within 90 days of the Project Schedule (as per Clause 12 of the Heads of Agreement) to provide advice on delivery of the project.
 - f. To establish interim water management arrangements that provides for an orderly transition of the Lowbidgee Supplementary Water Entitlement from

the current owners to the Commonwealth, with priority for interim water management to be on appropriate watering of environmental assets (as per Clause 10.g.i of the Heads of Agreement).

- g. To the joint development, with the Commonwealth, of an Environmental Watering Plan (EWP) for the Nimmie-Caira to be completed within one year of the date of this Project Schedule (as per clause 10.g.ii of the Heads of Agreement).
- h. To the joint development, with the Commonwealth, of a long term water infrastructure management and operation plan within three years (as per Clause 10.g.iii of the Heads of Agreement).
- i. To plan and undertake activities to make an assessment against Convention listing requirements with a view to a potential joint nomination of high ecological value areas of the Lowbidgee floodplain for inclusion on the List of Wetlands of International Importance under the Ramsar Convention.

B.4. Land Management Arrangements

- B.4.1. The State agrees that interim land management arrangements will be developed by the State in consultation with the Commonwealth, and will ensure all activities approved on Nimmie-Caira Land are aligned with the objectives of the Heads of Agreement;
- B.4.2. The State agrees:
 - a. Upon signing of this Project Schedule, unless otherwise agreed by the Parties, all existing commercial operations are to cease within 12 months and no new commercial operations are to be permitted to commence in this time.
 - b. Until the Long Term Land Management Plan is agreed and subject to clause 10 (m) of the Heads of Agreement, that any lease or sale of land for commercial operations will be subject to advice from the Advisory Committee and will require approval by the Commonwealth. Leases will be limited to a maximum of five years.
 - c. To ensure that current owners may continue to occupy their current residences only under a commercial lease arrangement at rates determined by independent valuers.
 - d. To ensure that land in the Priority Project area that is vacated as a result of sale to the State may be leased to an approved commercial enterprise only by way of a process of public tender and only for activities consistent with the agreed objectives for the Priority Project.
 - e. To ensure that pest plant and animal control programs are undertaken by each lessee as a condition of lease.
- B.4.3. The State agrees that the interim land management arrangements, including the arrangements for holding and use of revenue from any lease or sale of land or other activities in the Priority Project area will be agreed within three months of the date of this Project Schedule. In implementing this requirement, NSW will establish a separate interest bearing account into which all funds received by the lease or sale of Nimmie-Caira land will be deposited.

- B.4.4. The State agrees to develop and implement a long-term Land Management Plan (LMP) in consultation with, and agreed by, the Commonwealth, no later than two years from the date of this Project Schedule. The LMP will:
- a. Ensure that the Commonwealth can undertake environmental watering in accordance with any environmental watering plan, internal distribution rules or use approval (including for the inundation of land).
 - b. Document the Commonwealth's rights to inundate the land for environmental watering purposes.
 - c. Recognise the Commonwealth's priority use of the infrastructure and land for environmental watering purposes.
 - d. Identify the location and extent of areas within the Nimmie-Caira that are to be protected or restored as environmental assets and the routes by which environmental water will be conveyed to these areas consistent with Attachment D to the Heads of Agreement.
 - e. Detail plans for environmental restoration, including re-vegetation and erosion control, management and control of feral pests and weeds.
 - f. Restrict the use of revenue raised by any sale or lease of land to activities required for the management of the Nimmie-Caira area for conservation and indigenous cultural purposes, or, if agreed by the Parties, for land management for conservation and indigenous cultural purposes in the broader Lowbidgee floodplain or, if agreed by the Parties, for a contribution towards the cost of further SDL gap-bridging NSW State Priority Projects.
 - g. Require flood easements to be registered and included on the land title for those lands in the Priority Project area which have the potential to be inundated through any managed environmental watering events. Land title documents must contain permanent conservation covenants or conservation agreements or restrictions on use or easements as appropriate to ensure long-term land management practices align with the Long Term LMP and the Environmental Watering Plan.
 - h. Set out requirements for fencing management agreements so as to protect and manage rookery sites; river banks, etc.
 - i. Provide for the potential for the long term ownership and management of the land (including permanent funding arrangements for land management), particularly the environmental and indigenous cultural assets within Nimmie-Caira, to be undertaken by a suitable non-government entity whose business objectives are the long term conservation of ecological and indigenous cultural assets and protection of these assets. This includes potential management by the entity as a Ramsar site in the future in the event of a successful joint nomination, consistent with Paragraph B.5.12.
- B.4.5. The State agrees to ensure that all activity within the Nimmie-Caira area remains consistent with the long-term LMP once it is completed, and that the following key principles in relation to the continued use/occupation of Nimmie-Caira land are adhered to:
- a. Until the long-term LMP is in place, Nimmie-Caira Land cannot be leased for greater than five years, or sold, without the prior agreement of the Commonwealth.

- b. The State may approve commercial use of the Nimmie-Caira Land (for example, leasing for dry land cropping or other farming activities) only if the proposed activities are consistent with the environmental restoration, ecological objectives and indigenous cultural values of the Heads of Agreement and the interim land management arrangements or the long-term LMP (once it is in place).
- c. Nimmie-Caira Land can be sold or leased by the State only where this is consistent with the objectives of the long-term LMP, which are to protect and maintain the environmental and indigenous cultural assets of the Nimmie-Caira area and integrate where possible with long term objectives for environmental watering in Yanga National Park.
- d. In conjunction with the development of the long term LMP the scope and design requirements of a stock and domestic system for Nimmie-Caira will be determined.
- e. Appropriate protection against liability will be included in sale or lease arrangements whereby the Commonwealth is not liable to maintain the land, including management of feral pests and weeds.

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

B.5. Other Priority Project Activities

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

- i. develop and implement a policy on accessibility of the area to the public;
- ii. complete a comprehensive Indigenous Heritage Survey to ensure adequate protection is afforded to sites of significance, excepting those properties which have already been the subject of a previous Commonwealth survey. This should include engagement with the local Indigenous community consistent with, at a minimum, the SEWPaC Reconciliation Action Plan engagement guidelines;
- iii. complete a comprehensive ecological survey to ensure aquatic and terrestrial values and conditions are documented, including the extent and condition of the land/vegetation cover and landform/contours of the entire Priority Project area. The findings of these surveys will be incorporated as appropriate into the long-term LMP;
- iv. develop and undertake appropriate pest plant and animal control programs where required, using lease income to fund these activities.

B.5.2. The State agrees to use its best endeavours to make changes to relevant state laws and statutes, including the Water Sharing Plan and land tenure

arrangements, to enable full implementation of this Project Schedule and the Heads of Agreement.

- B.5.3. The State agrees that, in consultation with the Commonwealth, to use its best endeavours to develop and implement water shepherding and return flow arrangements for the Nimmie-Caira Entitlement as a priority.
- B.5.4. The State agrees to assess opportunities for water that is shepherded, or return flows that are re-credited that would otherwise not occur, to contribute to the NSW proportion of downstream shared requirements by way of a 'supply measure' under the SDL Adjustment Mechanism in the Plan.
- B.5.5. The State agrees to ensure that policy and rules that may be developed for water shepherding and re-crediting of return flows are implemented in such a way as to ensure that the characteristics of licensed entitlements held for environmental use will not be diminished relative to like entitlements held and used for other purposes.
- B.5.6. The State agrees that in consultation with the Commonwealth, and within the agreed budget, to undertake the design and construction of works necessary to enable the efficient delivery of environmental water as per Clause 19.e of the Heads of Agreement.
- B.5.7. The State agrees to ensure that the current and any future Nimmie-Caira water infrastructure is available as required to facilitate environmental watering within and through the Nimmie-Caira area.
- B.5.8. The State agrees to develop internal water distribution rules in consultation with the CEWH and consistent with the EWP for the Nimmie-Caira area.
- B.5.9. The State agrees that, consistent with New South Wales laws, the CEWH will determine how environmental water holdings will be distributed in the Nimmie-Caira area, and through adjacent areas, subject to no adverse third party impacts, consistent with any approved environmental watering plans, internal distribution rules or use approvals.
- B.5.10. The State agrees to establish flood easements on all land titles acquired under this Priority Project, within the agreed budget, to enable the Commonwealth to inundate those lands that have the potential to be inundated through any managed environmental watering events.
- B.5.11. The State confirms that all liabilities and responsibilities associated with the ownership and maintenance of land and water infrastructure (excluding regulated water charges for SWC infrastructure related to the use of the entitlement) will reside with the owner of the land and water infrastructure.
- B.5.12. During the life of this Schedule, the State and the Commonwealth will consider the potential for joint nomination of high ecological value areas of the Lowbidgee floodplain. This will include planning and undertaking activities to make an assessment against convention listing requirements required for inclusion on the List of Wetlands of International Importance under the Ramsar Convention.

B.6. Delivery of the Priority Project

- B.6.1. The State will be responsible for ensuring the proper and efficient conduct and management of this Priority Project in accordance with this Project Schedule and

it will carry out each Activity, including the management of the land, in accordance with all applicable laws (including, but not limited to, all required planning, environmental, development, building, occupational health and safety and regulatory approvals and all applicable Australian standards) while under state ownership.

- B.6.2. The State will comply, and ensure that its Proponents and their subcontractors comply, with all applicable requirements of the National Code of Practice for the Construction Industry as set out in Attachment 1 to this Project Schedule.
- B.6.3. The State will ensure that its Proponents and subcontractors comply with all applicable requirements of the Australian Government OHS Accreditation Scheme as set out in Attachment 2 to this Project Schedule.
- B.6.4. If requested, the State will provide the Commonwealth with access to the State's records and Personnel to enable the Commonwealth to conduct its own independent audit or review of any aspect of this Priority Project.
- B.6.5. The State is responsible for:
 - a. meeting the Priority Project Milestones specified in Item C of this Project Schedule;
 - b. managing Priority Project delivery for all aspects in a way which supports the achievement of the objectives at Section B.2 and considers the views of the Project Control Group and the advice of the Advisory Committee; and
 - c. managing Priority Project delivery and risks in a way that ensures that all Priority Project and budget milestones are delivered in a timely and cost effective manner.
- B.6.6. The State will provide regular reports on the Priority Project's progress in-line with Project Schedule milestone requirements. This includes:
 - a. reporting on the purchase transactions for the Nimmie-Caira Land and Nimmie-Caira Entitlement components and other relevant outcomes, including any revenue from the sale or lease back of land. The reporting framework will be consistent with the relevant provisions of the WMPA; and
 - b. ensuring there is appropriate monitoring, auditing and reporting of Priority Project expenditure against the Project Cost to enable the Commonwealth to be suitably informed on the progress and outcomes of this Priority Project.
- B.6.7. The State will ensure that the Project Control Group and Project Advisory Group meets according to Clauses 11 and 12 of the Heads of Agreement and that all relevant meeting documentation, where possible, is circulated to all members at least five working days in advance.
- B.6.8. No additional funding will be provided by the Commonwealth to the State if the costs of the Priority Project exceed the Funding.
- B.6.9. In the eventuality that the State considers that the scope of the Priority Project should change, the State may propose a variation to this Project Schedule consistent with clause 16 of the WMPA but no such change is effective until agreed by the Parties in accordance with clause 16.
- B.6.10. The State acknowledges that the Commonwealth is not required to perform any aspect of this Priority Project.

B.6.11. In undertaking this Priority Project, the State will comply with the requirements, where relevant, of the Environment Protection and Biodiversity Conservation Act 1999.

B.6.12. Both Parties acknowledge that:

- a. On the 28 June 2013 the Commonwealth agreed to make a payment of [REDACTED] to be held in trust by the State for the Commonwealth.
- b. These funds were paid into the NSW Treasury operating bank account on 8 July 2013.

These funds will be paid into a Department of Trade and Investment Trust Account until they are required to meet purchase requirements. Account details will be provided in accordance with the Milestone requirements at clause C.1.1

- c. These funds are to be used solely for the acquisition by the State of:
 - i. the Lowbidgee Supplementary Water Entitlement; and
 - ii. the Nimmie-Caira Landin accordance with this Project Schedule.
- d. These funds may only be drawn upon by the State for the acquisition of the Lowbidgee Supplementary Water Entitlement and all the properties that make up the Nimmie-Caira Land as a package.
- e. In the event that the State is unable to acquire:
 - i. the Lowbidgee Supplementary Water Entitlement; or
 - ii. any one of the properties that make up the Nimmie-Caira Landconsistent with this Project Schedule, by 30 June 2014 the State will promptly return all funds with interest to the Commonwealth unless otherwise agreed in writing (in accordance with clause 22 of the Heads of Agreement).
- f. The State may draw upon these funds, in accordance with the requirements of this clause B.6.12, in order to meet Project Milestones 1 and 2 at clause C.1.1.
- g. The State will notify the Commonwealth in writing at least 48 hours in advance of its intention to draw on the funds and the purpose for which it plans to use those funds.
- h. If requested by the Commonwealth, the State will provide evidence to account for the expenditure of the funds.
- i. In relation to both the Nimmie-Caira Land and the Lowbidgee Supplementary Water Entitlement, the State will notify the Commonwealth in writing within 24 hours of the completion of key steps in the transaction process:
 - i. exchange of contracts;
 - ii. settlement; and
 - iii. registration.

B.6.13. In delivering the Priority Project, the State agrees to the following:

- a. Consistent with clause 14 of the Agreement, the State agrees that it will seek the agreement of SEWPaC before the release of any publicity material by the State in relation to the Priority Project. SEWPaC will provide any agreement on the release of such publicity material within 10 Business Days, excluding any which require approval by the Commonwealth Minister.
- b. The State is responsible for ensuring that the Funding is spent for the purposes of the Priority Project in accordance with the Project Budget and in accordance with this Project Schedule.
- 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 SEWPaC, 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 SEWPaC, at its sole discretion, gives its prior written consent to the State using the Funds for that purpose.

B.6.14. The use of any interest that the State earns on the Commonwealth Funds will be consistent with clause 6.1.9 of the WMPA. The prior approval of the Commonwealth will be obtained for the use of any interest on the Priority Project.

B.6.15. The State may access the contingency funds of up to [REDACTED], subject to agreement by SEWPaC to allow for increases in the project costs specified in D1. Submissions seeking to use contingency funding will be provided to SEWPaC in writing and will be considered within 30 days of receipt. Submissions will include written evidence demonstrating the cost increases to be incurred and the extent of variation from the approved budget. The funding schedule will be varied to reflect the value and timing of any additional payments which are approved so that the State is able to meet its obligations under this Funding Schedule.

C. Project Milestones

C.1.1. Land and Water purchase milestones

Project Milestone Number	Project Milestone	Indicator / Evidence	Due Date	Funding (excl GST)
1	First Stage of legal process for purchase of land and water	Notification by the State within 48 hours of the date set for exchange of contracts for purchase of the land and water entitlement.	within 6 months of the signing of this Schedule	[REDACTED]
2	Meeting contractual obligations for land and water purchase	Provision of copies of the exchanged contracts and notification by the State of date set	within 12 months of the	[REDACTED]

		for settlement of the purchase of the land and water entitlement.	exchange of contracts	
3	Details of separate financial management accounts	<p>Account details of separate financial management accounts.</p> <p>i. Evidence in the form of statements showing the establishment and deposit of funds in the Trust Account for the purchase of land and water entitlement;</p> <p>ii. Evidence of a separate account to deposit all funds received from the lease or sale of Nimmie-Caira land;</p> <p>iii. Evidence of a separate account to deposit all project funds received from the Commonwealth;</p> <p>The State will report on interest earned on all funds provided by the Commonwealth.</p>	Within 1 month of the signing of this Schedule	
4	Registration of ownership of land and water entitlement	Notification that the Water Administration Ministerial Corporation has been registered as the legal owner of the Nimmie-Caira Land and that the Commonwealth has been registered as the legal owner of the Lowbidgee Supplementary Water Entitlement.	within 12 months of the exchange of contracts	

C.1.2. Project Milestones for this Priority project

	Project Milestone 1		8 September 2013	\$2,000,000
1.1	Signing of the Project Schedule	Project Schedule signed by both Parties.		

1.2	Basin Pipe Project Schedule variation	Agreement to an amendment to the Basin Pipe Project Schedule to ensure that the total water entitlement to be held by the Commonwealth from compliant projects will be increased up to a maximum of 75% of the total water savings commensurate with the extent of funding provided for the Nimmie-Caira Project.		
	Project Milestone 2		15 September 2013	
2.1	Nimmie-Caira Project Advisory Committee formed	Appointment of representatives for committees and Terms of Reference developed and agreed by both Parties. First meeting held and minutes provided.		
2.2	Nimmie-Caira Project Control Group formed	Appointment of representatives for committees and Terms of Reference developed and agreed by both Parties. First meeting held and minutes provided.		
2.3	Submit progress report to the Commonwealth	Provision of Progress Report to the reasonable satisfaction of SEWPAC. Subject to Item 1.2 of schedule.		
	Project Milestone 3		15 January 2014	\$2,500,000
3.1	Interim Land Management Arrangements implemented	Finalised copies of signed lease agreements and copies of independent valuations for occupation of land at commercial rates upon finalisation of land and water transfer.		
3.2	Cultural Heritage Survey and report	Evidence of tender to engage consultant to commence survey.		
3.3	Environmental Water Plan	Evidence of tender to engage consultant to commence environmental water plan.		
3.4	Ecological survey and report	Evidence of tender to engage consultant to commence ecological survey.		

3.5	Project Agreement for the Protection and Re-use of Commonwealth Environmental Water held in the Murrumbidgee Catchment	Finalised copy of the Project Agreement.		
3.6	Hay Shire Community Development Coordinator	Evidence of completion of agreement on implementation for milestone based grant process and role of development coordinator and report on future role and responsibilities. Evidence of employment contract.		
3.7	Balranald Shire Interpretive Centre Nimmie-Caira Module	Evidence of agreement on implementation for milestone based grant process and creation of the Nimmie-Caira module and report detailing use and outcomes.		
3.8	Project Advisory Committee	Minutes of meetings of Project Advisory Committee and provision of advice to Project Control Group.		
3.9	Submit progress report to the Commonwealth	Provision of Progress Report to the reasonable satisfaction of SEWPAC. Subject to Item I.2 of schedule.		
	Project Milestone 4		15 August 2014	\$3,500,000
4.1	Environmental Watering Plan	Final plan suitable for consideration by Advisory Committee.		
4.2	Land Management Plan development.	Project Control Group approved work plan for development of LMP.		
4.3	Balranald Shire Interpretive Centre Nimmie-Caira Module.	Report detailing use and outcomes of module.		
4.4	Creation of flood easements acquired under this project that are subject to flooding or may be subject to flooding in the future with reconfigured infrastructure, including any land that may be leased or sold	Evidence of commencement by NSW of the process for creation of flood easements on all land titles that are acquired and are subject to flooding or may be subject to flooding in the future with reconfigured infrastructure, including any land that may be leased or sold.		
4.5	Project Advisory Committee	Minutes of meetings of Project Advisory Committee and provision of advice to Project Control Group.		

4.6	Project Control Group	Minutes of meetings of Project Control Group.		
4.7	Environmental Watering Plan	Agreement on final Environmental Watering Plan by the Project Control Group.		
4.8	Ecological survey and report	Provision of final report to Commonwealth, the Advisory Committee and the Project Control Group.		
4.9	Submit progress report to the Commonwealth	Provision of Progress Report consistent with Item I.2 of schedule.		
4.10	Cultural Heritage survey and report	Evidence of final report to the Project Control Group to inform potential Ramsar nomination.		
	Project Milestone 5		15 January 2015	\$4,000,000
5.1	Project Control Group	Minutes of meetings of Project Control Group.		
5.2	Creation of flood easements acquired under this project that are subject to flooding or may be subject to flooding in the future with reconfigured infrastructure, including any land that may be leased or sold	Evidence of the creation of flood easements on all land titles that are acquired and are subject to flooding or may be subject to flooding in the future with reconfigured infrastructure, including any land that may be leased or sold.		
5.3	Long term water infrastructure management and operation plan	First draft long term water infrastructure management and operation plan for approval by the Project Control Group.		
5.4	Submit progress report to the Commonwealth	Provision of Progress Report consistent with Item I.2 of schedule.		
	Project Milestone 6		15 August 2015	\$7,500,000
6.1	Wakool Shire road upgrade tender and preliminary works	Evidence of competitive tender for road upgrade completed, contract signed and preliminary works commenced.		
6.2	Landholder advice and expertise	Evidence of incorporation of landholder advice and expertise i.e. meetings held and documented etc.		

6.3	Land Management Plan completion	Final Land Management Plan considered by Project Control Group.		
6.4	Project Advisory Committee	Minutes of meetings of Project Advisory Committee. Review interim land management arrangements. Review progress reports. Review progress on Long Term Land management Plan. Review revenue and land leasing arrangements. Provision of advice to Project Control Group.		
6.5	Project Control Group	Minutes of meetings of Project Control Group.		
6.6	Submit progress report to the Commonwealth	Provision of Progress Report consistent with Item I.2 of schedule.		
	Project Milestone 7		15 January 2016	\$11,000,000
7.1	Verification and modelling of system losses including potential offsets	Commencement of Report detailing system losses and potential offsets.		
7.2	Commence water delivery infrastructure reconfiguration	Evidence of tenders let and contract signed for reconfiguration, and preliminary works commenced.		
7.3	Fencing, signing and decommissioning of improvements	Evidence of tenders let for works and successful tendered contract signed with preliminary works commenced.		
7.4	Tala Lake Bypass channel	Project Control Group to consider and advise on proposed earthworks, tenders and arrangements.		
7.5	Wakool Shire road upgrade	Evidence of at least 50 per cent completion.		
7.6	Long term water infrastructure management and operation plan	Second draft long term water infrastructure management and operation plan for approval by the Project Control Group.		
7.7	Stock and Domestic water supply	Evidence of tenders let and contract signed with successful tenderer and preliminary works commenced. Works to be in-line with approved LMP.		
7.8	Submit progress report to the Commonwealth	Provision of Progress Report consistent with Item I.2 of schedule.		

	Project Milestone 8		15 August 2016	\$11,000,000
8.1	Wakool Shire road upgrade	Evidence of completion.		
8.2	Project Control Group	Minutes of meetings of Project Control Group.		
8.3	Project Advisory Committee	Minutes of meetings of Project Advisory Committee.		
8.4	Stock and Domestic water supply	Evidence of at least 30 per cent completion.		
8.5	Submit progress report to the Commonwealth	Provision of Progress Report consistent with Item I.2 of schedule.		
8.6	Assessment of high ecological value areas against convention listing requirements for inclusion on the List of Wetlands of International Importance under the Ramsar Convention	Provision of assessment report that includes recommendations for feasibility of Ramsar listing.		
8.7	Long term water infrastructure management and operation plan	Final long term water infrastructure management and operation plan approved by the Project Control Group.		
	Project Milestone 9		15 January 2017	\$6,000,000
9.1	Verification and modelling of system losses including potential SDL adjustments	Final Report detailing system losses and potential SDL adjustment.		
9.2	Stock and Domestic water supply	Evidence of 70 per cent completion. Works to be in-line with approved LMP.		
9.3	Project Control Group	Minutes of meetings of Project Control Group.		
9.4	Submit progress report to the Commonwealth.	Provision of Progress Report consistent with Item I.2 of schedule.		
	Project Milestone 10		15 August 2017	\$1,000,000
10.1	Water delivery infrastructure reconfiguration	Evidence of at least 70 per cent completion.		

10.2	Fencing, signing and decommissioning of improvements	Evidence of at least 70 per cent completion.		
10.3	Stock and Domestic water supply	Evidence of 100 per cent completion. Works to be in-line with approved LMP.		
10.4	Project Advisory Committee	Minutes of meeting of Project Advisory Committee and provision of advice to Project Control Group.		
10.5	Project Control Group	Minutes of meetings of Project Control Group.		
10.6	Transfer of water entitlements to the Commonwealth from the Basin Pipe State Priority project	Evidence that the total water entitlement to be held by the Commonwealth from compliant projects will amount to 75% of the total water savings.		
10.7	Submit progress report to the Commonwealth	Provision of Progress Report consistent with Item I.2 of schedule.		
	Project Milestone 11		15 January 2018	\$1,000,000
11.1	Water delivery infrastructure reconfiguration	Evidence of practical completion of all works.		
11.2	Tala Lake Bypass channel construction	Evidence of practical completion of the Tala Lake Bypass Channel.		
11.3	Fencing, signing and decommissioning of improvements	Evidence of 100 per cent completion.		
11.4	Land Management Plan	Review implementation of plan by Advisory Committee.		
11.5	Project Control Group	Minutes of meetings of Project Control Group.		
11.7	Submit progress report to the Commonwealth	Provision of Progress Report consistent with Item I.2 of schedule.		
	Project Milestone 12		15 April 2018	\$688,463
12.1	Project Advisory Committee	Minutes of meeting of Project Advisory Committee and provision of advice to Project Control Group.		

12.2	Project Control Group	Minutes of meetings of Project Control Group.		
12.3	Submit progress report to the Commonwealth	Provision of final Progress Report and independently audited financial report.		
	TOTAL			\$170,188,463

D. Project Cost

D.1. Project Cost for the Priority Project

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

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

D.2. Contributions for Priority Project

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

Contribution	Maximum Contribution (\$ excl. GST)
1. Commonwealth Funding	\$180,133,974
2. State Contributions to Project Cost	<p>Consistent with clause 10(s) of the Heads of Agreement, NSW will make a ten per cent co-contribution to the project. The Commonwealth accepts that the State ten per cent co-contribution to the Project will comprise:</p> <ol style="list-style-type: none"> 1) the State providing additional water entitlements to the Commonwealth from the Basin Pipe State Priority Project, in respect of which the total entitlement to be held by the Commonwealth from compliant projects will amount to 75 per cent of the total water savings; and 2) Commonwealth recognition of an in kind contribution,

	recognising the State’s actions over the long term to realise the environmental potential of the Nimmie-Caira area, valued at [REDACTED].
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D.3. State Contributions

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

E. Transfer of Water Entitlements

E.1. Agreed Water Savings

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

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

E.2.1. Not applicable.

F. Sharing of water savings

F.1. Additional Water Savings

F.1.1. Not used.

F.2. Shortfall in Agreed Water Savings

F.2.1. Not used.

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

G.1. Agreement Material

G.1.1. Not used.

G.2. Existing Material

G.2.1. 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 change in the value of the land referred to in paragraph B1.6.a above resulting from action taken by the State under clause B.4.4.g above ; or
- b. in dealing with any third party (including Commonwealth Personnel) claims against the Commonwealth, which includes without limitation the Commonwealth’s legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used and disbursements paid by the Commonwealth;

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

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

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

I. Project Reports

I.1. Project Reports

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

I.2. Progress Reports

I.2.1. Each Progress Report must demonstrate evidence of the State's project management and contract management activities and financial management, and must contain the following information:

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

I.3. Final Project Report

I.3.1. The final Project Report will be a stand-alone document that can be used for public information dissemination purposes regarding this Priority Project.

I.3.2. The final Project Report for the Priority Project is due at the earliest of:

- a. Milestone 12 as set out in Item C.1.2; or
- b. three months after the completion of the Priority Project; or

- c. three months after the termination of this Project Schedule or the Priority Project; or
- d. 31 May 2018.

I.3.3. The final Project Report will contain information that:

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

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

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

I.4. Independent Audit Report

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

J. Payment Schedule for Funding for Priority Project

- J.1.1. The maximum Funding payable by the Commonwealth to the State in respect of this Priority Project is \$180,133,974 (excluding GST).
- J.1.2. Subject to the terms of this Project Schedule including clause J.1.5 below and clauses 6 and 17 of the Agreement, the Funding will be paid in instalments, and on the completion of the Payment Preconditions, set out in Item C. Each such payment of Funds is due within 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 DSEWPaC with an invoice for that payment of Funds.
- J.1.3. The Payment Preconditions for a payment of Funds under this Project Schedule are completion of the Project Milestones at Item C.
- J.1.4. Each Payment also has the Payment Precondition that all preceding Project Milestones have been achieved.
- J.1.5. Clauses J.1.1., J.1.2 and J.1.3 do not apply to the payment of funding to meet project milestone C.1.1. Payment of those funds will be made as set out in that clause.
- J.1.6. In line with the Water Management Partnership Agreement, if the Commonwealth reasonably determines that the State:
- a. Has funding that it no longer requires for the Priority Project; or
 - b. Has spent an amount of funds other than in accordance with the WMPA,
Then the Commonwealth may, at its sole discretion and after notification to the State
 - c. Reduce further payments of Funding to the State by up to that amount;
 - d. Require the State to repay that amount of Funds to the Commonwealth within 20 Business Days after the State receives a notice requiring that repayment;
 - e. Require the State to apply that amount of Funds to another Priority Project.
- J.1.7. Any interest that the State earns on the Commonwealth Funds is to be managed in accordance with clause 6.1.9 of the WMPA.

K. Contact Officer

- K.1.1. The nominated Contact Officers for this project are:
- I. For the Commonwealth,
Assistant Secretary, Water Infrastructure Northern Branch, Department of Sustainability, Environment, Water, Population and Communities, John Gorton Building, Parkes, ACT 2600, Ph: 02 6275 9063;
 - II. For New South Wales,
Project Co-ordinator, State Priority Projects, NSW Office of Water, 10 Valentine Ave Parramatta, NSW 2124, Ph: 02 8838 7872.
- K.1.2. Either Party signatory to this Schedule may change its Contact Officer at any time by notice in writing to the other Party.

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 _____ 2013.

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:)

Mark Patterson
Director-General
Department of Trade and Investment

_____)

Name of signatory

_____)
Signature

In the presence of:

_____)

Name of witness

_____)
Signature of witness

ATTACHMENT 1: REQUIREMENTS RELATING TO THE NATIONAL CODE OF PRACTICE FOR THE CONSTRUCTION INDUSTRY

1.1 Interpretation

1.1.1 In this Attachment 1:

Code	means the National Code of Practice for the Construction Industry 1997, a copy of which can be downloaded from www.deewr.gov.au/building .
Guidelines	means the Australian Government Implementation Guidelines for National Code of Practice for the Construction Industry, August 2009, a copy of which can be downloaded from www.deewr.gov.au/building .
Project Parties	means all contractors, subcontractors, consultants and employees who perform on-site work in relation to the Priority Project.

1.2 Compliance with Code

1.2.1 The State is required to comply and ensure that the Project Parties comply with the Code and Guidelines.

1.2.2 The Guidelines require the State to 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 Code and Guidelines as set out in the model tender documents available at:
<http://www.deewr.gov.au/WorkplaceRelations/Policies/BuildingandConstruction/Pages/default.aspx>; and
- b. all agreements and contracts entered into in relation to the Priority Project by it or any of the Project Parties contain the commitment to apply the Code and Guidelines as set out in the model contract clauses available at:
<http://www.deewr.gov.au/WorkplaceRelations/Policies/BuildingandConstruction/Pages/default.aspx>.

1.3 State must maintain Records and permit access

1.3.1 The State is required to maintain adequate records of compliance by it and each of the Project Parties with the Code and the Guidelines. The State is required to permit the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, full access to premises and records of the State and the Project Parties to:

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

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

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 Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax, or by post.

- 1.3.2 The Commonwealth and those authorised by it may publish or otherwise disclose information in relation to compliance by the State and the Project Parties with the Code and the Guidelines. The State is required to 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 contractors, subcontractors and consultants that have a demonstrated commitment to:

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

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

- i. the appointment would breach a sanction imposed by the Commonwealth Minister for Employment and Workplace Relations; or
- j. the contractor, subcontractor or consultant has had a judicial decision against them relation to employee entitlements, not including decision under appeal, and has not paid the claim.

ATTACHMENT 2: REQUIREMENTS RELATING TO THE AUSTRALIAN GOVERNMENT OHS ACCREDITATION SCHEME

1.1 Interpretation

1.1.1 In this Attachment 2:

BCII Act	means the <i>Building and Construction Industry Improvement Act 2005</i>
Building Work	has the meaning given to it by section 5 of the BCII Act
Scheme	means the Australian Government Building and Construction OHS Accreditation Scheme established by the BCII Act.

1.2 OHS Accreditation Scheme requirements

1.2.1 Subject to the exclusions specified in the *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005*, the State must ensure that all of its subcontracts valued at \$3 million or more and requiring Building Work related to this Priority Project:

- k. are notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity; and
- l. contain a requirement that the contractor:
 - 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.