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From: Colreavy, Mary

Sent: Wed, 3 May 2017 19:03:40

To: Matthew Bickford-Smith (s. 47F(1))

Cc: s. 22(1)(a)(ii)

Subject: FW: For action - EAA files [SEC=UNCLASSIFIED]

Sensitivity: Normal

Attachments:

OLF sample water purchasing contract.pdf; 2016-004 Limited Tender Application Form.pdf; EAA letter 20170503.pdf;

Dear Matthew

Further to our conversation this evening, as discussed, I have attached a letter of response to your letter dated 7 April. In this letter I have provided information regarding the correct Mean Annual Diversion volumes for these parcels of water, your sale offer prices and total values.

Also attached is the application form for you to fill in and a copy of a draft standard purchase contract.

Please call me or s. 22(1)(a)(ii) if you wish to discuss any of these documents.

regards

Mary

Mary Colreavy

Assistant Secretary

Water Acquisition and Markets Branch

Water Division

Department of Agriculture and Water Resources

L4, 18 Marcus Clarke St, Canberra, ACT

Tel: s. 47F(1) ; M: s. 47F(1)

The department acknowledges the traditional owners of country throughout Australia and their continuing connection to land, sea and community. We pay our respects to traditional owners, their cultures and elders past and present.

With regard



Transaction Details

1. Seller's Water Rights

- 1.1 Water Right Reference:
- 1.2 Total Volume:
- 1.3 Sale Volume:
- 1.4 Water Authority:
- 1.5 State:

2. Parties

2.1 Seller

- (a) Name:
- (b) Australian Business Number:
- (c) Address:
- (d) Telephone number:
- (e) Facsimile number:
- (f) E-mail address:

2.2 Seller's Solicitor

- (a) Name:
- (b) Attention:
- (c) Address:
- (d) Telephone number:
- (e) Facsimile number:
- (f) E-mail address:

2.3 Seller's Broker

- (a) Name:
- (b) Attention:

- (c) Address:
- (d) Telephone number:
- (e) Facsimile number:
- (f) E-mail address:

2.4 Commonwealth's Solicitor

- (a) Name:
- (b) Attention:
- (c) Address:
- (d) Telephone number:
- (e) Facsimile number:
- (f) E-mail address:

3. Agreement

3.1 Agreement Date:

3.2 Condition Date:

3.3 Place for Settlement:

3.4 Purchase Price:

3.5 Commonwealth's Confidential Information:

3.6 Seller's Confidential Information:

3.7 Period of Confidentiality:

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Details

Parties

1. Commonwealth of Australia represented by **the Department of Agriculture and Water Resources** ABN 24 113 085 695 of 18 Marcus Clark Street, Canberra ACT 2600, Australia (**Commonwealth**).
2. The person named in item 2.1(a) of the Transaction Details of the address specified in item 2.1(c) of the Transaction Details (**Seller**).

Introduction

- A. The Seller owns the Seller's Water Rights.
- B. The Seller has agreed to sell and the Commonwealth has agreed to purchase the Sale Volume on the terms of this Agreement.

Agreed terms

1. Definitions and interpretation

1.1 Definitions

In this Agreement, the following words have these meanings unless the contrary intention appears:

- (a) **Agreement** means this document, including any schedule or annexure to it and the Transaction Details;
- (b) **Agreement Date** means the date specified in item 3.1 of the Transaction Details;
- (c) **Applicable Rules** means:
 - (i) any statute, rule, regulation, proclamation, order in council, ordinance, order or by-law whether Commonwealth, State, Territorial or local;
 - (ii) any notice, order or direction received from, or given by, any Government Agency; or
 - (iii) any contract, affecting Water Rights, and includes:
 - (iv) the *Water Act 2007* (Cth);
 - (v) if the Relevant State is:
 - (A) New South Wales, the *Water Management Act 2000* (NSW);
 - (B) Victoria, the *Water Act 1989* (Vic);
 - (C) Queensland, the *Water Act 2000* (Qld);
 - (D) South Australia, the *Natural Resources Management Act 2004* (SA);
 - (vi) the Memorandum of Understanding between the Commonwealth and New South Wales dated 23 September 2009;
 - (vii) any water sharing rules, water sharing plan, water resource plan or resource operations plan;

- (viii) if the Water Authority is an Irrigation Infrastructure Operator, the Water Authority's procedures for the Transformation of Irrigation Rights (including procedures for applying for Transformation);
- (ix) any contract between the Water Authority and the Seller in relation to the Seller's Water Rights; and
- (x) any document issued by the Water Authority evidencing title to the Seller's Water Rights;
- (d) **Application** means all documents necessary for the Water Authority to Approve the Transfer of the Sale Volume and includes:
 - (i) an Application Form;
 - (ii) all documents specified in the Application Form or required by the Water Authority as part of the Application Form; and
 - (iii) all documents required under the Applicable Rules,
 in each case, completed in proper form and duly executed;
- (e) **Application Form** means a form in relation to the Transfer of the Sale Volume;
- (f) **Approve** means issue a document evidencing approval and includes:
 - (i) if the Relevant State is Queensland and:
 - (A) the Seller's Water Rights are Supplemented, a "*ROP13 – Notice of existence of water supply contract*" in respect of the Commonwealth; or
 - (B) the Seller's Water Rights are derived from a Water Licence:
 - (A) the Decommissioning Works have been finalised; and
 - (B) confirmation from the Water Authority that ownership of the Water Rights has been transferred to the Commonwealth;
 - (ii) a dealing certificate;
- (g) **Authorisation** includes:
 - (i) any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency; and
 - (ii) in relation to any thing which may be proscribed or restricted in whole or in part by law or otherwise if a Government Agency intervenes or acts in any way within a specified period after lodgement, registration or other notification of any thing, the expiration of that period without the intervention or action by that Government Agency;
- (h) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (i) **Claim** includes, in relation to a person, a demand, claim, action or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent;
- (j) **Commonwealth's Confidential Information** means the confidential information specified in item 3.5 of the Transaction Details;
- (k) **Condition** means that the Application is Approved:
 - (i) unconditionally; or
 - (ii) on conditions acceptable to the Commonwealth,

by the Water Authority or State Authority, as the case requires;

- (l) **Condition Date** means:
 - (i) the date specified in item 3.2 of the Transaction Details;
 - (ii) if clause 5.3 applies, the date determined in accordance with that clause; or
 - (iii) any other date agreed by the Commonwealth and the Seller;
- (m) **Decomissioning Works** means any decommissioning works to infrastructure or any other works on the Seller's land as is required by the Water Authority as a condition of Approval to Transfer a Water Licence.
- (n) **Division** means a division of a "water share" under section 33Y of the *Water Act 1989* (Vic);
- (o) **Encumbrance** means in relation to any property:
 - (i) a mortgage, charge, encumbrance, pledge, lien or other security over the property;
 - (ii) a lease, licence, term transfer or transfer for a period of any right, title or interest in respect of the property;
 - (iii) any administrative advice stating that a distribution operations licence granted under Division 3 of Part 4 of Chapter 2 of the *Water Act 2000* (Qld) applies;
 - (iv) a caveat, garnishee order, writ of execution, right of set-off, assignment of income or monetary claim affecting the property;
 - (v) a preferential interest, trust, title retention, or other estate, interest, claim or arrangement affecting the property;
 - (vi) a contract of sale or option to purchase or acquire the property; or
 - (vii) an agreement to grant, create, allow or register any of these, including Encumbrances which are registered or unregistered, statutory, legal or equitable;
- (p) **Government Agency** means any government and any governmental body, whether:
 - (i) legislative, judicial or administrative;
 - (ii) a department, commission, authority, instrumentality, tribunal, agency or entity; or
 - (iii) Commonwealth, State, Territorial or local;
- (q) **GST** means GST as defined in the GST Act;
- (r) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (s) **Irrigation Infrastructure Operator** has the meaning given to that term in the *Water Act 2007* (Cth);
- (t) **Irrigation Right** has the meaning given to that term in the *Water Act 2007* (Cth);
- (u) **Loss** includes any damage, loss, cost, liability or expense of any kind and however arising (including as a result of any Claim), including penalties, fines and interest and including any that are prospective or contingent and any amounts which for the time being are not ascertained or ascertainable;

- (v) **ML** means megalitre (one million litres);
- (w) **Notice** means a communication in connection with this Agreement, including a notice, consent, request, waiver or demand;
- (x) **Personal Information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable:
 - (i) (a) whether the information or opinion is true or not; and
 - (ii) (b) whether the information or opinion is recorded in a material form or not, being the meaning given to that term in the *Privacy Act 1988* (Cth).
- (y) **Place for Settlement** means:
 - (i) the place specified in item 3.3 of the Transaction Details; or
 - (ii) any other place agreed by the Commonwealth and the Seller;
- (z) **Purchase Price** means the amount specified in item 3.4 of the Transaction Details;
- (aa) **Registrar** means:
 - (i) if the Relevant State is New South Wales:
 - (A) subject to clause 1.1(aa)(i)(B), New South Wales Land and Property Information; or
 - (B) if the Water Authority is an Irrigation Infrastructure Operator and the Commonwealth has elected not to Transform, the Water Authority;
 - (ii) if the Relevant State is Victoria, the “*Registrar*” as defined under the *Water Act 1989* (Vic); or
 - (iii) if the Relevant State is Queensland, the “*registrar*” as defined under the *Water Act 2000* (Qld);
 - (iv) if the Relevant State is South Australia, the relevant state government water authority;
- (bb) **Release** means a document required to remove any Encumbrance in respect of the Sale Volume, including:
 - (i) if the Relevant State is New South Wales:
 - (A) if the Water Authority is a state government authority, a “*Discharge of Mortgage (Security Interest)*” from the relevant state government water authority and a written consent on letterhead from the holder of the Encumbrance; and
 - (B) if the Water Authority is an Irrigation Infrastructure Operator, a document reasonably required by the Water Authority, including, if required, any certificate evidencing the Seller’s Water Rights;
 - (ii) if the Relevant State is Victoria, a “*Discharge of Mortgage of Water Share*”,
 - (iii) if the Relevant State is Queensland:
 - (A) a “*Form 3 – Release of Mortgage*”; and
 - (B) a “*Form W2F079 – Notice to chief executive satisfaction of obligation to distribution operations licence holder*”,

but does not include any cheque in favour of the Water Authority in respect of any fee for the removal of any Encumbrance;
- (cc) **Relevant State** means the State specified in item 1.5 of the Transaction Details;
- (dd) **Representatives** means officers, employees, agents, professional advisers or subcontractors and:

- (i) in respect of the Seller, includes any Seller's Solicitor detailed in item 2.2, and any Seller's Broker specified in item 2.3, of the Transaction Details;
 - (ii) in respect of the Commonwealth, includes any Commonwealth's Solicitors specified in item 2.4 of the Transaction Details;
- (ee) **ROL Holder** means the holder of a resource operations licence granted under Division 3 of Part 4 of Chapter 2 of the *Water Act 2000* (Qld);
- (ff) **Sale Volume** means that part of the Seller's Water Rights entitling the holder to the maximum volume of water each year, or the number of units or shares, specified in item 1.3 of the Transaction Details;
- (gg) **Seller's Confidential Information** means the confidential information specified in item 3.6 of the Transaction Details;
- (hh) **Seller's Water Rights** means:
 - (i) subject to clause 1.1(hh)(ii), the Water Rights with the water right reference specified in item 1.1 of the Transaction Details and expressed as entitling the holder to the maximum volume of water each year, or the number of units or shares, specified in item 1.2 of the Transaction Details; or
 - (ii) if there has been a Division or Subdivision of the Water Rights specified in clause 1.1(hh)(i), the Water Rights resulting from that Division or Subdivision (as the case may be);
- (ii) **Settlement** means completion of the sale and purchase of the Sale Volume in accordance with clause 10;
- (jj) **Settlement Adjustment Sheet** means a document setting out amounts payable by the Commonwealth and the Seller on the basis of clause 8;
- (kk) **Settlement Date** means the:
 - (i) the date specified in the Settlement Notice; or
 - (ii) any other date agreed by the Commonwealth and the Seller;
- (ll) **Settlement Notice** means the notice given by the Commonwealth to the Seller in accordance with clause 10.1;
- (mm) **Stamp Duty** means duty imposed under the *Duties Act 1997* (NSW), the *Duties Act 2000* (Vic), the *Duties Act 2001* (Qld), the *Stamp Duties Act 1923* (SA) or any other similar legislation of a State or Territory of Australia;
- (nn) **State Authority** means, where the Water Authority is an Irrigation Infrastructure Operator, the water authority against which that Irrigation Infrastructure Operator holds the corresponding Water Access Entitlements;
- (oo) **Subdivision** means a subdivision of "water allocation" as defined in the *Water Act 2000* (Qld) in accordance with clause 3;
- (pp) **Supplemented** means, in relation to "water allocation" as defined in the *Water Act 2000* (Qld), a water supply which is made more reliable by releases of stored water, for example from dams;
- (qq) **Tender Application Form** means the tender application form submitted by the Seller in respect of the Sale Volume the subject of this Agreement;
- (rr) **Trade Limitation** means any limit on the Transfer of Water Rights imposed by the Applicable Rules;
- (ss) **Transaction Details** means the details of the transaction contemplated by this Agreement as specified under the heading "Transaction Details" on the first pages of this Agreement;

- (tt) **Transfer** means the transfer of the Sale Volume to the Commonwealth by one of the following methods determined by the Commonwealth:
- (i) the transfer of Water Access Entitlements from the Seller to the Commonwealth;
 - (ii) the transfer of Irrigation Rights from the Seller to the Commonwealth; or
 - (iii) the Transformation of Irrigation Rights held by the Seller into Water Access Entitlements held by the Commonwealth;
- (uu) **Transfer Documents** means all documents, in registrable form, necessary to register the Transfer of the Sale Volume from the Seller to the Commonwealth including:
- (i) if the Relevant State is New South Wales:
 - (A) if the Water Authority is a state government water authority, a notification from the relevant state water authority and, unless otherwise agreed by the Commonwealth and the Seller, any certificate evidencing the Seller's Water Rights; or
 - (B) if the Water Authority is an Irrigation Infrastructure Operator, all documents required by the Water Authority, including, if required, any certificate evidencing the Seller's Water Rights;
 - (ii) if the Relevant State is Victoria, a "*Transfer of Water Share*";
 - (iii) if the Relevant State is Queensland:
 - (A) a "*Form 1 – Transfer*";
 - (B) a "*Form 24 – Property Information (Transfer)*"; and
 - (C) if the Seller's Water Rights are Unsupplemented, the dealing certificate issued by the relevant state government water authority,
- in each case, properly executed and capable (upon payment of the prescribed registration fee) of registration at the office or registry responsible for the registration of that document without further notation or amendment;
- (vv) **Transformation** has the meaning given to that term in the *Water Market Rules 2009* (Cth);
- (ww) **Trust** means any trust named in item 2.1(a) of the Transaction Details;
- (xx) **Unsupplemented** means, in relation to "*water allocation*" as defined in the *Water Act 2000* (Qld), a water supply which is not boosted by releases of stored water;
- (yy) **Warranties** means the warranties set out in items 1.5, 2 and 3 of Schedule 1 and:
- (i) either:
 - (A) if the Seller is a body corporate, item 1.1 of Schedule 1; or
 - (B) if the Seller is a natural person, item 1.2 of Schedule 1; and
 - (ii) either:
 - (A) if there is a Trust, item 1.3 of Schedule 1; or
 - (B) if there is not a Trust, item 1.4 of Schedule 1;
- (zz) **Water Access Entitlement** has the meaning given to that term in the *Water Act 2007* (Cth);
- (aaa) **Water Allocation** means a volume of water allocated to a Water Right;
- (bbb) **Water Authority** means the water authority specified in item 1.4 of the Transaction Details;

(ccc) **Water Licence** means a “*water licence*” as defined under the *Water Act 2000* (Qld); or

(ddd) **Water Right** means:

- (i) if the Relevant State is New South Wales:
 - (A) if the Water Authority is a state government water authority, a “*water access licence*” as defined under the *Water Management Act 2000* (NSW); or
 - (B) if the Water Authority is an Irrigation Infrastructure Operator, an Irrigation Right held against that Water Authority;
- (ii) if the Relevant State is Victoria, a “*water share*” as defined under the *Water Act 1989* (Vic); or
- (iii) if the Relevant State is Queensland:
 - (A) a “*water allocation*” as defined under the *Water Act 2000* (Qld); or
 - (B) a Water Licence;
- (iv) if the Relevant State is South Australia:
 - (A) if the Water Authority is a state government water authority, a “*water licence*” under the *Natural Resources Management Act 2004* (SA); or
 - (B) if the Water Authority is an Irrigation Infrastructure Operator, an Irrigation Right held against that Water Authority; and

(eee) **Water Year** means any period of one year commencing on 1 July and ending on 30 June.

1.2 Interpretation

(a) Reference to:

- (i) the singular includes the plural and the plural includes the singular;
- (ii) a person includes an individual, a firm, a body corporate, an unincorporated association or an authority;
- (iii) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of permitted novation) and permitted assigns;
- (iv) a thing includes the whole and each part of it separately;
- (v) a statute, regulation, code or other law or a provision of any of them includes:
 - (A) any amendment or replacement of it; and
 - (B) another regulation or other statutory instrument made under it, or made under it as amended or replaced;
- (vi) a form, certificate, notice, consent or other document created by a Government Agency, State Authority or Water Authority includes that document as amended, supplemented, varied or replaced (except to the extent that it is inconsistent this Agreement);
- (vii) money (including “\$”, “AUD” or “dollars”) is to Australian currency unless otherwise stated;
- (viii) costs includes charges, expenses and legal costs;
- (ix) any contract (including this Agreement) or other instrument includes any variation or replacement of it;
- (x) a group of persons is a reference to any two or more of them taken together and to each of them individually;

- (xi) a body which has been reconstituted or merged must be taken to be the body as reconstituted or merged;
 - (xii) a body which has ceased to exist and the functions of which have been substantially taken over by another body must be taken to be that other body;
 - (xiii) time is to Canberra time; and
 - (xiv) a day or a month means a calendar day or calendar month.
- (b) The meaning of any general language is not restricted by any accompanying example, and the words “*includes*”, “*including*”, “*such as*”, “*for example*” or similar words are not words of limitation.
 - (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
 - (d) Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.
 - (e) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
 - (f) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
 - (g) Unless the context requires otherwise, where a period of time is to be calculated by reference to a day, act or event, that period of time is to be calculated exclusive of that day or the day of that act or event but inclusive of the day on which that period of time starts or ends (as the case may be).

1.3 Parties

- (a) If a party consists of more than one person, this Agreement binds each of them separately and any two or more of them jointly.
- (b) An obligation, representation or warranty on the part of or in favour of more than one person is for the benefit of each of them separately and all of them jointly.
- (c) A party which is a trustee is bound both personally and in its capacity as a trustee.

2. Sale and purchase

2.1 Sale Volume

The Seller agrees to sell to the Commonwealth, and the Commonwealth agrees to purchase from the Seller, the Sale Volume, free from all Encumbrances and otherwise on the terms of this Agreement.

2.2 Consideration

The consideration for the Sale Volume is the amount payable by the Commonwealth in accordance with clause 10.4.

3. Subdivision

3.1 Queensland water allocation only

This clause 3 applies only if the Seller’s Water Rights are “*water allocation*” as defined in the *Water Act 2000* (Qld) and the Seller has not agreed to sell all of the Seller’s Water Rights to the Commonwealth. If this clause 3.1 applies, the Seller must effect a Subdivision of the Seller’s Water Rights in accordance with this clause 3.

3.2 Application for subdivision

Within five Business Days after the Agreement Date, the Seller must lodge all documents, including a “*Form ROP07 - Application to subdivide water allocation*” in relation to the Seller’s Water Rights, necessary for the relevant state government water authority to issue a dealing certificate in relation to the Subdivision of the Seller’s Water Rights, such that one part following the Subdivision will be the Sale Volume.

3.3 Application for ROP13 in respect of supplemented water rights

If the Seller’s Water Rights are Supplemented, the Seller must lodge promptly all documents, including, if required by the Water Authority, a copy of the dealing certificate referred to in clause 3.2, necessary for the Water Authority to issue a “*ROP13 – Notice of existence of water supply contract*” in respect of the Seller in relation to the Sale Volume.

3.4 Registration of subdivision

The Seller must lodge promptly with the Registrar all documents necessary to register the Subdivision, including:

- (a) a duly executed “*Form 14 – General request*”;
- (b) the dealing certificate referred to in clause 3.2;
- (c) if clause 3.3 applies, the “*ROP13 – Notice of existence of water supply contract*” issued by the Water Authority; and
- (d) a duly executed “*Form 18 – General consent*” from each person holding an Encumbrance in respect of the Seller’s Water Rights,

and pay all applicable fees.

3.5 Notification to Commonwealth

The Seller must promptly provide to the Commonwealth a copy of the registration confirmation statement from the Registrar in respect of the Subdivision under this clause 3.

3.6 Evidence for Water Authority

If the Water Authority requires evidence that the Subdivision under this clause 3 has been registered, for example, a copy of the registration confirmation statement from the Registrar, before it will process an Application, then the Seller must provide that evidence to the Water Authority promptly.

4. Application

4.1 Determination of application form

The Commonwealth must determine the Application Form to be used.

4.2 Execution of application form

The Seller must execute the Application Form or, if necessary, must procure that the Water Authority executes the Application Form.

4.3 Lodgement generally by the Commonwealth

Subject to clause 4.4:

- (a) the Seller must deliver to the Commonwealth a duly executed Application (apart from any necessary documents in the custody or control of the Commonwealth):
 - (i) if clause 3 applies, no later than five Business Days after the Subdivision is registered;
 - (ii) if clause 5.1 or clause 5.2 applies, no later than 15 Business Days before the commencement of the next Water Year; or

- (iii) otherwise, on the Agreement Date; and
- (b) subject to the Seller complying with clause 4.3(a), the Commonwealth must lodge the Application with the Water Authority or State Authority, as the case requires.

4.4 Lodgement by the Seller in particular cases

Despite clause 4.3, the Commonwealth may direct the Seller to lodge the duly executed Application (apart from any necessary documents in the custody or control of the Commonwealth) with the Water Authority in which case:

- (a) the Seller must do so within five Business Days after the direction is given to the Seller or by any other date agreed by the Commonwealth and the Seller; and
- (b) the Commonwealth must lodge with the Water Authority all documents required by the Water Authority which are in the custody or control of the Commonwealth.

4.5 Application fees

The Commonwealth must pay any fees in relation to the lodgement of the Application as required by the Water Authority, State Authority or ROL Holder, as applicable.

4.6 Removal of encumbrances over South Australian water rights

Without limiting clause 19.1, if the Relevant State is South Australia, the Seller must procure that any person holding an Encumbrance in respect of the Sale Volume do (at the Seller's cost) all things (including executing deeds, documents and instruments), including all things required by the Water Authority, to remove the Encumbrance before the Application is determined.

5. Trade limitations

5.1 Application unlikely to be approved

If the Commonwealth determines that an Application is unlikely to be Approved by the Water Authority or State Authority, as the case requires, before the Condition Date because of a Trade Limitation, the Commonwealth may, by giving notice to the Seller, determine that an Application not be lodged until the next Water Year. The notice must be given before the Application is lodged.

5.2 Application rejected

If the Application is rejected by the Water Authority or State Authority because of a Trade Limitation, another Application must be lodged.

5.3 Extension and termination

If clause 5.1 or clause 5.2 applies, then:

- (a) the Condition Date is extended to 30 September in the next Water Year; unless
- (b) either party terminates this Agreement by giving notice to the other party at least 15 Business Days before the commencement of the next Water Year.

5.4 Rights on termination

If this Agreement is terminated under clause 5.3 then, in addition to any other rights, powers or remedies provided by law or in equity:

- (a) subject to clause 5.4(b), each party is released from its obligations and liabilities under or in connection with this Agreement and this Agreement will have no further effect, other than under this clause 5.4 and clauses, 1, 14, 16, 17 and 19.8; and
- (b) each party retains the rights, remedies and powers it has in connection with any past breach or any claim that has arisen before termination.

6. Condition

6.1 Condition

The obligations of the parties at Settlement are subject to the Condition being satisfied by the Condition Date.

6.2 Obligation to satisfy condition

The Seller must use reasonable commercial endeavours to ensure that the Condition is satisfied as soon as possible but, in any event, before the Condition Date.

6.3 Decommissioning Works

- (a) Where the Seller's Water Rights are derived from a Water Licence, the Seller must undertake any Decommissioning Works in accordance with applicable legislation and without unreasonable delay.
- (b) The Seller will notify the Commonwealth:
 - (i) as soon as reasonably possible of the nature and anticipated timeframe of the completion of the Decommissioning Works ("**Decommissioning Works Timeframe**"); and
 - (ii) upon completion of the Decommissioning Works.
- (c) Within 30 days of receiving the notice pursuant to clause 6.3(b), where the Commonwealth considers in its absolute discretion that the Decommissioning Works Timeframe will either:
 - (i) negatively impact the viability or suitability of the overall purchase of the Water Licence; or
 - (ii) cause the Condition to not be satisfied by the Condition Date,
 the Commonwealth can elect to terminate the Agreement by notice in writing to the Seller.
- (d) The Seller's obligations under clause 6.3 are essential terms of this Agreement. The Commonwealth may treat the Seller's breach of an essential term as a repudiation of this Agreement and may terminate this Agreement for breach of this essential term and for repudiation. This clause does not prevent any other obligations under this Agreement from being essential terms.

6.4 Further obligation to co-operate

Without limiting the generality of clause 6.2:

- (a) the Seller must make all necessary and appropriate applications and supply all necessary and appropriate information for the purpose of enabling the Condition to be satisfied;
- (b) the Seller must not withdraw or procure the withdrawal of any application made or information supplied under clause 6.3(a);
- (c) the Seller must not take any action, or fail to take any action, that would, or would be likely to, prevent or hinder the satisfaction of the Condition; and
- (d) the Seller must:
 - (i) supply to the Commonwealth copies of all applications made and all information supplied for the purpose of enabling the Condition to be satisfied; and
 - (ii) keep the other party informed in a timely manner of the status of any discussions or negotiations with relevant third parties regarding the Condition.

6.5 Obligation to notify

If a party becomes aware:

- (a) that the Condition has been satisfied; or
- (b) of any facts, circumstances or matters that may result in the Condition not being or becoming incapable of being satisfied;

that party must promptly notify the other party accordingly.

6.6 Failure to satisfy condition

If the Condition is not satisfied to the reasonable satisfaction of the Commonwealth by the Condition Date, the Commonwealth may terminate this Agreement at any time by notice to the Seller.

6.7 Rights on termination

If this Agreement is terminated under clause 6.6 then, in addition to any other rights, powers or remedies provided by law or in equity:

- (a) subject to clause 6.7(b), each party is released from its obligations and liabilities under or in connection with this Agreement and this Agreement will have no further effect, other than under this clause 6.7 and clauses, 1, 14, 16, 17 and 19.8; and
- (b) each party retains the rights, remedies and powers it has in connection with any past breach or any claim that has arisen before termination.

7. Period before Settlement

From the Agreement Date until Settlement, the Seller:

- (a) must not dispose of, or agree to dispose of, any of the Sale Volume;
- (b) must not create an Encumbrance in respect of the Sale Volume;
- (c) must promptly provide the Commonwealth with a copy of any documentation received in respect of the Sale Volume from:
 - (i) the Water Authority;
 - (ii) any Government Agency; and
 - (iii) any person holding an Encumbrance in respect of the Sale Volume;
- (d) must promptly provide to the Commonwealth all information that the Commonwealth (acting reasonably) requests with respect to the Seller's Water Rights; and
- (e) authorises the Commonwealth to inspect the Water Authority's records in relation to the Seller's Water Rights, and, if the Commonwealth requests, must promptly execute and deliver to the Commonwealth any document to give effect to the authorisation given under this clause 7(e).

8. Outgoings, fees and charges

8.1 Outgoings

- (a) The Seller must pay all outgoings in relation to the Sale Volume in respect of the period up to and including the Settlement Date, including all fees and charges in relation to the delivery and usage of water, including spillable water.
- (b) The Commonwealth must pay all outgoings in relation to the Sale Volume in respect of the period after the Settlement Date.

8.2 Other fees and charges

- (a) The Seller must pay all fees and charges in relation to the removal of Encumbrances with respect to the Sale Volume.
- (b) Subject to clause 8.2(a), the Commonwealth must pay all fees and charges:
 - (i) payable to the Water Authority for processing the Application; and
 - (ii) payable to the Registrar for registering the Transfer.

9. Settlement adjustment sheet

- (a) Before Settlement, the Commonwealth must deliver a Settlement Adjustment Sheet to the Seller.
- (b) The Settlement Adjustment Sheet must be prepared:
 - (i) on the basis of clause 8;
 - (ii) with respect to outgoings, fees or charges that have been paid, on the basis of the amount paid; and
 - (iii) with respect to outgoings, fees or charges that have not been paid, disregarding any discount for early payment.
- (c) The adjustment or payment, under clause 10.4, of any amount in accordance with the Settlement Adjustment Sheet does not limit the rights or obligations of the parties under clause 8.
- (d) If a party must, under the Applicable Rules, pay any amount for which the other party is responsible under clause 8, the party must pay the amount and the other party must reimburse them within 15 Business Days after receiving satisfactory evidence in respect of the payment.

10. Settlement

10.1 Notice of Settlement date

The Commonwealth must give notice of the Settlement Date to the Seller within ten Business Days after the Condition is satisfied.

10.2 Time and place

Settlement must occur at the Place for Settlement on the Settlement Date at:

- (a) a time between 9 am and 5 pm notified by the Commonwealth to the Seller; or
- (b) any other time agreed by the Commonwealth and the Seller.

10.3 Seller's obligations

- (a) Subject to clause 10.3(b), at or before Settlement, the Seller must deliver to the Commonwealth:
 - (i) all Transfer Documents; and
 - (ii) all Releases.
- (b) If the Relevant State is:
 - (i) South Australia and the Application has been Approved by the State Authority; or
 - (ii) Queensland, and the Water Right is derived from a Water Licence,

the Seller is not required to deliver Transfer Documents or Releases under clause 10.3(a).

- (c) If the Seller does not comply with clause 10.3(a), the Commonwealth may terminate this Agreement immediately by giving notice to the Seller.

10.4 Payment obligations

At Settlement, the Commonwealth must pay to the Seller (or as the Seller has directed) the Purchase Price, subject to any adjustment in accordance with the Settlement Adjustment Sheet.

10.5 Interdependent obligations

The requirements of clauses 10.3 and 10.4 are interdependent and are to be carried out contemporaneously and, as nearly as may be possible, simultaneously. No delivery, payment or other event referred to in clauses 10.3 and 10.4 may be treated as having been made or occurred until all deliveries and payments have been made and all other events have occurred.

10.6 Risk

Until Settlement, the Sale Volume is at the risk of the Seller. After Settlement, it is at the risk of the Commonwealth.

10.7 After Settlement

If an obligation of any party required to be performed at Settlement is not performed at Settlement, and regardless of whether it is waived as a condition or requirement of Settlement, the relevant party remains obliged to perform that obligation, except to the extent that performance of that obligation is also waived.

11. Water allocation

11.1 General

If Water Allocation is allocated or determined in respect of the Sale Volume in the period after Settlement and before the Transfer is registered by the Registrar, the Seller must, if requested by the Commonwealth within 60 Business Days after the date of registration, promptly transfer that Water Allocation to the Commonwealth at no charge. The Commonwealth must pay the Water Authority's fee for processing the transfer.

11.2 South Australia

If Water Allocation is allocated or determined in respect of the Sale Volume in the period after the Transfer is registered by the Registrar and before Settlement, the Commonwealth must, if requested by the Seller within 60 Business Days after Settlement, promptly transfer that Water Allocation to the Seller at no charge. The Seller must pay the Water Authority's fee for processing the transfer.

12. Payments

All payments in connection with this Agreement must be made:

- (a) by unendorsed bank cheque drawn by an Australian bank;
- (b) by way of direct transfer of immediately available funds; or
- (c) in such other form of funds as may be agreed between the Commonwealth and the Seller.

13. Warranties

13.1 Seller warranties

The Seller warrants to the Commonwealth that each Warranty is true and accurate on the Agreement Date and will remain true and accurate until Settlement and on Settlement.

13.2 Separate warranties

Each Warranty is a separate warranty in no way limited by any other Warranty.

13.3 Disclosure obligation

The Seller must disclose to the Commonwealth anything which is or will constitute a breach of a Warranty or cause a Warranty to be untrue or inaccurate, as soon as possible after the Seller becomes aware of it. This obligation applies from the Agreement Date until and at Settlement.

13.4 Right of termination

The Commonwealth may terminate this Agreement by giving notice to the Seller at any time before Settlement if:

- (a) it becomes aware (after the Agreement Date) of a breach of a Warranty; and
- (b) the Commonwealth notifies the breach to the Seller and the Seller is unable to remedy it within five Business Days after receiving the notice or before the Settlement Date, whichever is earlier.

If this Agreement is terminated under this clause 13.4 then, in addition to any other rights, powers or remedies provided by law or in equity:

- (c) subject to clause 13.4(d), each party is released from its obligations and liabilities under or in connection with this Agreement and this Agreement will have no further force or effect, other than under this clause 13.4 and clauses 1, 14, 16, 17 and 19.8; and
- (d) each party retains the rights, remedies and powers it has in connection with any past breach or any claim that has arisen before termination.

14. Confidentiality

14.1 Prohibition on disclosure

- (a) Subject to clause 14.2, the Seller must not, without the prior written consent of the Commonwealth, disclose any of the Commonwealth's Confidential Information to a third party.
- (b) Subject to clause 14.2, the Commonwealth must not, without the prior written consent of the Seller, disclose any of the Seller's Confidential Information to a third party.

14.2 Exceptions to obligations

The obligations on each party under clause 14.1 will not be taken to have been breached to the extent that confidential information of the other party is:

- (a) disclosed by a party if this Agreement expressly authorises or requires the disclosure;
- (b) disclosed by a party to the Water Authority, the Registrar, or a person whose consent is needed, in connection with this Agreement;
- (c) disclosed by a party to its Representatives solely in order to comply with obligations, or to exercise rights, under this Agreement or to obtain advice in relation to this Agreement (including its administration and enforcement);

- (d) disclosed to a party's internal management personnel, solely to enable effective management or auditing of activities related to this Agreement;
- (e) disclosed by the Commonwealth to the Auditor-General, Information Commissioner, Privacy Commissioner and Freedom of Information Commissioner, or his or her delegate, for the purpose of performing the Auditor-General's, Information Commissioner's, Privacy Commissioner's or Freedom of Information Commissioner's statutory functions or powers;
- (f) disclosed by the Commonwealth to the responsible Minister;
- (g) disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (h) disclosed by the Commonwealth on the Department of Agriculture and Water Resource's web site in response to the Senate Order on Departmental and Agency Contracts (for example, disclosure in contract listings, grants listings or file lists);
- (i) disclosed by the Commonwealth within the Department of Agriculture and Water Resources, or to another Government Agency, where this serves the Commonwealth's legitimate interests;
- (j) authorised or required to be disclosed by any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, including:
 - (i) disclosure on the AusTender web site to the extent authorised or required by the *Public Governance, Performance and Accountability Act 2013* (Cth) and the Commonwealth Procurement Rules (for example, reporting that the Commonwealth has entered into this Agreement, including disclosure of the Seller's name, locality and ABN and the Agreement Date and Purchase Price);
 - (ii) where an application is made under the *Freedom of Information Act 1982* (Cth);
 - (iii) where the Commonwealth has been served with a valid search warrant; and
 - (iv) where the Commonwealth has a duty to disclose the transfer of funds under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth);
- (k) disclosed by a party in connection with legal or other proceedings relating to this Agreement; or
- (l) in the public domain otherwise than due to a breach of this Agreement.

14.3 Obligation on disclosure

Where a party discloses Confidential Information of the other party to another person:

- (a) pursuant to clause 14.2(c) or (d), the disclosing party must:
 - (i) notify the receiving person that the information is confidential information; and
 - (ii) not provide the information unless the receiving person agrees to keep the information confidential, including in the case of the Commonwealth's Confidential Information, the receiving person giving the Commonwealth a legally binding undertaking to that effect in the form approved by the Commonwealth; or
- (b) pursuant to clause 14.2(f) or (g), the disclosing party must notify the receiving party that the information is confidential information of the other party.

14.4 Period of confidentiality

The obligations under this clause 14 continue, despite the expiry or termination of this Agreement, for the period specified in item 3.7 of the Transaction Details.

15. Privacy

15.1 Collection of personal information

The Seller acknowledges that:

- (a) the Commonwealth collects Personal Information in respect of the Seller in connection with this Agreement including Personal Information:
 - (i) in the Tender Application Form, Application, Transfer Documents and any associated response to a request for information, application or registration form submitted by the Seller;
 - (ii) contained in public registers and registers maintained by the Water Authority relevant to the subject matter of this Agreement; and
 - (iii) in the Transaction Details and otherwise in this Agreement; and
- (b) such Personal Information will be used for the following purposes:
 - (i) evaluating tenders, including the activities described in the Tender Application Form;
 - (ii) preparing, managing, evaluating, auditing, and reporting on this Agreement and the transactions contemplated by this Agreement, and
 - (iii) conducting the transactions contemplated by, and otherwise complying with obligations and exercising rights under, this Agreement, and related activities.

15.2 Authorisation for collection

The collection of Personal Information as described in clause 15.1 is not expressly authorised or required by law.

15.3 Disclosure of personal information

Personal information in respect of the Seller collected by the Commonwealth in connection with this Agreement may be disclosed by the Commonwealth:

- (a) to the Commonwealth's Representatives in order to prepare this Agreement and undertake due diligence investigations in respect of this Agreement; and
- (b) as described in each of clauses 14.2(a) to (k).

16. Books and records

16.1 Seller to keep books and records

The Seller must retain and require its Representatives to retain all books and records relating this Agreement.

16.2 Survival

The obligations under this clause 16 apply during the term of this Agreement and continue for seven years from the expiry or termination of this Agreement.

17. Audit and access

17.1 Right to conduct audits

- (a) The Commonwealth or a Representative may conduct audits relevant to the performance of the Seller's obligations under this Agreement.
- (b) The Commonwealth may, at reasonable times and on giving reasonable notice to the Seller:

- (i) require the Seller or its Representatives to provide documentation, books, records and information that are directly related to this Agreement; and
 - (ii) have access to the premises of the Seller to the extent necessary for the Commonwealth to exercise its rights under clause 17.1(a).
- (c) The Seller must provide the Commonwealth with any reasonable assistance requested by the Commonwealth in relation to:
- (i) its exercise of its rights under this clause 17; and
 - (ii) any inquiry into or concerning this Agreement including any administrative or statutory review, audit or inquiry, any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any parliamentary committee.

17.2 Auditor-General, Information Commissioner, Privacy Commissioner or Freedom of Information Commissioner

- (a) The rights of the Commonwealth under clause 17.1 apply equally to the Auditor-General, Information Commissioner, Privacy Commissioner and Freedom of Information Commissioner, or his or her delegate, for the purpose of performing the Auditor-General's, Information Commissioner's, Privacy Commissioner's or Freedom of Information Commissioner's statutory functions or powers.
- (b) The Seller must do all things necessary to comply with the Auditor-General's, Information Commissioner's, Privacy Commissioner's or Freedom of Information Commissioner's, or his or her delegate's requirements notified under clause 17.1, provided that such requirements are legally enforceable and within the power of the Auditor-General, Information Commissioner, Privacy Commissioner or Freedom of Information Commissioner, or his or her respective delegate.

17.3 Survival

The obligations under this clause 17 apply during the term of this Agreement and continue for seven years from the expiry or termination of this Agreement.

18. Goods and services tax

18.1 Interpretation

In this clause 18:

- (a) words or expressions used in this clause which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
- (b) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
- (c) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
- (d) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

18.2 Payment of GST

- (a) Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Agreement for any supply made under or in connection with this Agreement does not include GST.
- (b) The parties believe that no GST is payable in respect of any supply pursuant to clause 2. If, for any reason, that supply is not GST-free but is a taxable supply and, to the extent that any other supply made under or in connection with this Agreement is a taxable supply, the GST-exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST-exclusive consideration is to be paid or provided.
- (c) A party's right to payment under clause 18.2(b) is subject to a valid tax invoice being delivered to the party who is the recipient of the taxable supply.
- (d) To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

19. General

19.1 Further assurances

- (a) Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Agreement.
- (b) Without limiting clause 19.1(a), the Seller must do (at the Seller's cost) all things (such as executing, and procuring third parties to execute, deeds, documents and instruments, including, if the Relevant State is New South Wales, a dealing form W-01T under section 71M of the *Water Management Act 2000* (NSW)) reasonably required by the Commonwealth for the Transfer or for the transfer of Water Allocation to the Commonwealth under clause 11.1.
- (c) The Seller irrevocably authorises the Commonwealth (and its agents) to alter:
 - (i) the Application;
 - (ii) the Transfer Documents; and
 - (iii) the Releases,by inserting such details as are omitted in respect of the Seller's Water Entitlements and by rectifying any errors in, or omissions from, the document as may be necessary to make it an effective document.

19.2 Entire understanding

- (a) This Agreement:
 - (i) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
 - (ii) supersedes any prior agreement or understanding on anything connected with that subject matter.
- (b) Accordingly, any thing (such as correspondence, negotiations or representations before this document is executed or an arrangement or understanding) not reflected in this Agreement does not bind the parties and may not be relied on by them.

- (c) Each party has entered into this Agreement without relying on any representation (whether or not negligently) by any other party or any person purporting to represent that other party.

19.3 Variation

An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

19.4 Waiver

- (a) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (b) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- (c) A waiver is not effective unless it is in writing.
- (d) Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

19.5 Rights, powers and remedies

- (a) The rights, powers and remedies of any party under this Agreement are additional to other rights, powers and remedies independently given by law.
- (b) In exercising or enforcing, or deciding not to exercise or enforce, a right, power or remedy, a party is not required to take into account any adverse effect on another party.
- (c) Each party agrees to comply with the conditions of any approval, consent or waiver given by another party.

19.6 Continuing obligations

The rights and obligations of the parties do not merge on the completion of any transaction contemplated by this Agreement. They also survive the execution and delivery of any conveyance, assignment, transfer or other document entered into for the purpose of implementing any transaction contemplated by this Agreement.

19.7 Costs and outlays

- (a) Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Agreement.
- (b) The Commonwealth must pay when due all Stamp Duty and all associated fines, penalties and interest payable as a result of the signing or execution of this Agreement and on all Transfer Documents specifically identified in clauses 1.1(uu)(i),(ii) and (iii).
- (c) The Seller must pay when due all Stamp Duty and all associated fines penalties and interest payable in connection with:
 - (i) this Agreement or any transaction contemplated by this Agreement, other than the amounts to which clause 19.7(b) refers;
 - (ii) any Transfer Document not specifically identified in clauses 1.1(uu)(i),(ii) or (iii) (such as, if the Relevant State is New South Wales, a dealing form W-01T under section 71M of the *Water Management Act 2000* (NSW));
 - (iii) any Release or any Encumbrance to which a Release relates; or
 - (iv) any other document or instrument executed under or in connection with this Agreement or any transaction contemplated by this Agreement.

- (d) Subject to this clause 19.7, any action to be taken by a party in performing its obligations under this Agreement must be taken at its own cost and expense unless otherwise provided in this Agreement.

19.8 Notices

- (a) A Notice has no legal effect unless it is in writing.
- (b) In addition to any other method of service provided by law, the Notice may be:
 - (i) sent by prepaid post to the address for service of the addressee;
 - (ii) sent by facsimile to the facsimile number of the addressee; or
 - (iii) sent by e-mail to the e-mail address of the addressee.
- (c) If the Notice is sent or delivered in a manner provided by clause 19.8(b), it must be treated as given to and received by the party to which it is addressed:
 - (i) if sent by post, on the second Business Day (at the address to which it is posted) after posting; or
 - (ii) if sent by facsimile or e-mail before 5 pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (d) A Notice sent or delivered in a manner provided by clause 19.8(b) must be treated as validly given to and received by the party to which it is addressed even if:
 - (i) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent;
 - (ii) the Notice is returned unclaimed; or
 - (iii) in the case of a Notice sent by e-mail, the e-mail message is not delivered or opened (unless the sender's computer reports that it has not been delivered).
- (e) The Seller's addresses for service, facsimile numbers and e-mail addresses are those specified in items 2.1, 2.2 and 2.3 of the Transaction Details. A Notice must be treated as given to the Seller if it is sent to any of those addresses for service, facsimile numbers or e-mail addresses.
- (f) The Commonwealth's address for service, facsimile number and e-mail address are those specified in item 2.4 of the Transaction Details.
- (g) A party may change its address for service, facsimile number or e-mail address by giving Notice of that change to the other party.
- (h) If the party to which a Notice is intended to be given consists of more than one person then the Notice must be treated as given to that party if given to any of those persons.
- (i) Any Notice by a party may be given, and may be signed, by its solicitor or broker.

19.9 No assignment

- (a) The Seller may not assign or deal with or purport to assign or deal with its rights under this Agreement, or create or allow to exist any third party interest over them, without the prior written consent of the Commonwealth. The Commonwealth is not required to give consent or justify the withholding of consent.
- (b) Any act or omission in contravention of clause 19.9(a) is ineffective.

19.10 Governing law and jurisdiction

- (a) The law of the Relevant State governs this Agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and of the Commonwealth of Australia.

19.11 Execution by attorney

Where this Agreement is executed by an attorney, that attorney, by executing, declares that it has no notice of revocation, termination or suspension of the power of attorney under which it executes this Agreement.

19.12 Counterparts

- (a) This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.
- (b) This Agreement is binding on the parties on the exchange of counterparts. A copy of a counterpart sent by facsimile machine or e-mail:
 - (i) must be treated as an original counterpart;
 - (ii) is sufficient evidence of the execution of the original; and
 - (iii) may be produced in evidence for all purposes in place of the original.

19.13 *Workplace Gender Equality Act 2012 (Cth)*

- (a) This clause 19.13 applies only to the extent that the Seller is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012 (Cth)* (the WGE Act).
- (b) The Seller must comply with its obligations, if any, under the WGE Act.
- (c) If the Seller becomes non-compliant with the WGE Act during the term of the contract, the Seller must notify the Department.
- (d) If the term of the contract exceeds 18 months, the Seller must provide a current letter of compliance within 18 months from the date of commencement of the contract and following this, annually, to the Department.
- (e) Compliance with the WGE Act does not relieve the Seller from its responsibility to comply with its other obligations under the contract.

Schedule 1 – Warranties

1. The Seller

1.1 If the Seller is a body corporate

- (a) The Seller is duly incorporated and validly exists under the law of its place of incorporation.
- (b) The Seller has full corporate power and authority to enter into this Agreement and perform its obligations under this Agreement, to carry out the transactions contemplated by this Agreement, and to own the Seller's Water Rights.
- (c) The entry into and performance of this Agreement has been properly authorised by all necessary corporate action of the Seller.
- (d) The entry into and performance of this Agreement and each transaction contemplated by this Agreement does not and will not (with or without the giving of notice or the lapse of time or both) contravene or conflict with or result in a breach of or default under:
 - (i) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on the Seller;
 - (ii) any Authorisation;
 - (iii) the Seller's constitution or other constituent documents; or
 - (iv) any other contract or commitment which is binding on the Seller.
- (e) The Seller:
 - (i) is not wound up, no resolution for its winding up has been passed and no meeting of members or creditors has been convened for that purpose;
 - (ii) is not the subject of a winding up application which has been made to a court, and no event has occurred which would entitle any person to apply to a court to wind up the Seller;
 - (iii) has not proposed or taken any steps to implement a scheme of arrangement or other compromise or arrangement with any of its creditors;
 - (iv) is not the recipient of a demand under section 459E of the *Corporations Act 2001* (Cth) or any corresponding or analogous provision governing the Seller in a jurisdiction outside Australia;
 - (v) is not in receivership and none of its assets are in the possession of or under the control of a mortgagee or chargee;
 - (vi) is not subject to administration under Part 5.3A of the *Corporations Act 2001* (Cth) or any corresponding or analogous provision governing the Seller in a jurisdiction outside Australia; or
 - (vii) is not insolvent (as defined in section 95A of the *Corporations Act 2001* (Cth)).
- (f) The Seller has not received from the Australian Securities and Investment Commission or any corresponding or analogous Government Agency in a jurisdiction outside Australia any notice warning of possible cancellation of registration of the Seller.

1.2 If the Seller is a natural person

- (a) The Seller:
 - (i) is not bankrupt, of unsound mind or incapable of managing his or her own affairs;

- (ii) has full legal capacity and power to enter into this Agreement and perform his or her obligations under this Agreement, to carry out the transactions contemplated by this Agreement, and to own his or her property and assets and carry on his or her business; and
- (iii) is able to pay his or her debts as and when they fall due.
- (b) No application has been made for the bankruptcy of the Seller and the Seller has not filed for bankruptcy.
- (c) No receiver, receiver and manager, trustee for creditors or trustee in bankruptcy or analogous person has been appointed to any property or assets of the Seller and no creditor of the Seller has taken possession of any property or assets of the Seller.
- (d) No voluntary arrangement has been proposed or reached with a creditor of the Seller.

1.3 If the Seller is a trustee

- (a) The Seller is the only trustee of the Trust.
- (b) The Seller has not been removed from, or ceased to act, or resigned or retired from the office of trustee of the Trust, nor has any decision or action been taken or proposed in respect of the removal, resignation or retirement of the Seller as trustee of the Trust, or to appoint an additional trustee of the Trust.
- (c) The Seller is not in default under the Trust deed.
- (d) The Seller has power under the Trust deed to enter into and observe the Trustee's obligations under this Agreement;
- (e) The Seller has entered in this Agreement in the Trustee's capacity as trustee of the Trust and for the benefit of the beneficiaries of the Trust.
- (f) The Seller has a right, and will at all times have a right, to be fully indemnified out of the assets of the Trust in respect of the obligations incurred by the Seller under this Agreement.
- (g) The assets of the Trust are sufficient to satisfy that right of indemnity and all other obligations in respect of which the Seller has a right to be indemnified out of the Trust fund.

1.4 If the Seller is not a trustee

The Seller is not entering into this Agreement as trustee of any trust or settlement.

1.5 General

- (a) No legal proceedings, arbitration, mediation or other dispute resolution process is taking place, pending or threatened, the outcome of which is likely to have a material and adverse affect on the ability of the Seller to perform its obligations under this Agreement.
- (b) If an Australian Business Number has not been quoted to the Commonwealth by the Seller, the Seller does not need to do so pursuant to one of the exemptions in the *Income Tax Administration Act 1953* (Cth).

2. Information

2.1 True and accurate information

All information in this Agreement is true and accurate and is not misleading or deceptive.

2.2 Complete disclosure

The Seller has disclosed to the Commonwealth all the information it possesses concerning the Sale Volume which the Commonwealth would reasonably require to make an informed assessment in relation to the Sale Volume.

3. Seller's water rights

3.1 Title

The Seller:

- (a) is the sole legal and (unless there is a Trust) beneficial owner of the Sale Volume;
and
- (b) has good and marketable title to the Sale Volume.

3.2 Other contracts

The Seller has not entered into any contract or commitment to dispose of the Sale Volume.

3.3 Notice from a government agency

The Seller has not received a notice from a Government Agency which might interfere with the rights of the Seller to own the Sale Volume and there are no facts or circumstances that may give rise to any such notice being received by the Seller.

Execution page

Executed as an agreement

SIGNED for and on behalf of the Commonwealth of Australia as represented by the **Department of Agriculture and Water Resources (ABN 24 113 085 695)** by a duly authorised representative

Name of authorised representative (print)

Name of witness (print)

Signature of authorised representative

Signature of witness

Date

Date

Note to drafter: Select and complete the appropriate execution block for the entity with which the Commonwealth is contracting from the list below and delete the rest.

[For an individual]

SIGNED by [*insert name of individual*] in the presence of

Signature

Signature of witness

Date

Name of witness (print)

Date

[For a company with two directors or a director and a secretary]

EXECUTED by [*insert name of company and ABN*] in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by

Name of Director (print)

Name of Director / Company Secretary (print)

Signature of Director

Signature of Director / Company Secretary

Date

Date

[For a company with a sole director / company secretary]

EXECUTED by [*insert name of company and ABN*] in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by

Name of Sole Director / Company Secretary
(print)

Signature of Sole Director / Company
Secretary

Date

[For a company with a sole director and no company secretary]

SIGNED for and on behalf of [*insert name of company and ABN*] by its authorised representative in the presence of

Name of Sole Director (print)

Name of witness (print)

Signature of Sole Director

Signature of witness

Date

Date

[For a partnership or an association]

SIGNED for and on behalf of [*insert name of partnership / association and ABN*] by a duly authorised representative who warrants that they have the authority to sign this deed on behalf of [*insert name of partnership / association*]

in the presence of:

Name of authorised representative (print)

Name of witness (print)

Signature of authorised representative

Signature of witness

Date

Date

[For an attorney]

SIGNED for and on behalf of [*insert name of party*] by [*his/her/its*] attorney [*insert name of attorney*] under power of attorney dated [*insert date*]

in the presence of:

Name of authorised representative (print)

Name of witness (print)

Signature of authorised representative

Signature of witness

Date

Date

[For a Trustee that is an individual]

SIGNED by [*insert name of Trustee*] in their capacity as Trustee for [*insert name of Trust and ABN (e.g. Smith Family Trust ABN 12 123 123 123)*]

in the presence of:

Name of Trustee (print)

Name of witness (print)

Signature of Trustee

Signature of witness

Date

Date

[For a Trustee that is a company with a sole director]

SIGNED by [*insert name of Trustee*] in their capacity as Trustee for [*insert name of Trust and ABN (e.g. Smith Family Trust ABN 12 123 123 123)*] in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

in the presence of:

Name of Sole Director / Company Secretary (print)

Name of witness (print)

Signature of Sole Director / Company Secretary

Signature of witness

Date

Date



Australian Government

**Department of Agriculture
and Water Resources**

Water Purchase Limited Tender

Condamine Balonne

Tender Application Form

**PIN - 24666
Tender 2016-004**



Australian Government
Department of Agriculture
and Water Resources

Guide to completing and submitting this Tender Application Form

1. This Tender Application Form comprises:

- Part 1: Tenderer details;
- Part 2: Tenderer deed;
- Part 3: Authority to search;
- Part 4: Agent's undertaking;
- Part 5: Privacy Notice; and
- Part 6: Information Management.

2. In this Tender Application Form:

- (a) **Entitlement** means a perpetual or ongoing entitlement, by or under a law of a State, to exclusive access to a share of the water resources of a water resource plan area.
- (b) **Eligible Entitlement** means an Entitlement which has the characteristics required by paragraph 3 of this Tender Application Form;
- (c) **Closing Date** means Wednesday 31 May 2017 at 2pm AEST.
- (d) **Tender** means this Tender Application Form and supporting materials.
- (e) **Tender Application Form Requirements** means the requirements set out at paragraph 4 of this Tender Application Form.
- (f) **Tenderer** means any entity which or person who submits a Tender or, where the context requires, is proposing to submit a Tender.

3. Eligible Entitlements are entitlements that are:

- (a) Queensland overland flow entitlements from the Condamine Balonne.
- (b) able to be permanently traded;
- (c) located in a Water Management Area with a demonstrated need for additional environmental water recovery; and
- (d) suitable for ongoing management by the Commonwealth Environmental Water Holder.

4. Tender Application Form Requirements

- (a) The Tender must be written in English.
- (b) Measurements must be expressed in Australian legal units of measurement.
- (c) Where a Tenderer wishes to tender for the sale of more than one Eligible Entitlement, a Tenderer must complete a separate Part 1A of the Tender Application Form for each Eligible Entitlement.
- (d) If a Tender is submitted, evidence that all registered owners of the Eligible Entitlement consent to the Tender and have endorsed the Tender Application Form.
- (e) The Tenderer must exist as a legal entity at the Closing Date.

- (f) The Tenderer must be the legal owner of the Eligible Entitlement or authorised by the legal owner(s) to tender the Eligible Entitlement on their behalf.

The Department may exclude Tenders from further consideration if they do not meet one or more of the Tender Application Form Requirements.

5. Evaluation Criteria

- (a) The Department will assess the value of the Entitlement to the 'Restoring the Balance in the Murray-Darling Basin' under the Sustainable Rural Water Use and Infrastructure Programme based on the following criteria
 - (i) amount of water it is likely to provide over the long-term
 - (ii) capacity to deliver the water to priority environmental assets
 - (iii) current market price
- (b) The Department may at any time exclude a Tender from consideration if it reaches the view that the Tender does not offer value for money or meets the stated evaluation criteria.

6. Responsibility for ensuring the completeness and accuracy of all Tenders rests with Tenderers.

7. Tenderers should ensure that any errors or alterations made to a Tender are clearly identified and, where appropriate, initialled.

8. Tenderers can submit completed Tender Application Forms via one of the following methods:

Fax: (02) 6272 5626

Email: waterpurchasing@agriculture.gov.au

Post: Water Purchase and Conveyance Section
Department of Agriculture and Water Resources
GPO Box 858
Canberra City ACT 2601

Tenders lodged by email must be in Microsoft Word or PDF format and should not exceed a file size of 5 megabytes.

9. Tenderers may seek clarification of the meaning of the content of this Tender Application Form by contacting the Department, in writing, using the contact details set out at paragraph 8.

10. Tenders should be submitted by one means only (either by email or fax or by post) and should comprise:

- (a) a signed copy of the Tender Application Form; and
- (b) a copy of the relevant Entitlement(s);

11. When a Tender Application Form is received by the Department, a receipt will be dispatched by return email in the first instance.

12. The Department may seek any other supporting material it requires (including material evidencing a Tenderer's right to deal with the entitlement where the Tenderer is not the registered owner).

13. Tenderers are responsible for and must:

- (a) ensure that the total volume of the Eligible Entitlement offered does not exceed the total nominal volume provided by the Queensland Government for that Entitlement;
- (b) provide proof of ownership of the Eligible Entitlement, and where applicable, material evidencing a Tenderer's right to deal with the Entitlement where the Tenderer is not the registered owner. This might include power of attorney arrangements; and
- (c) ensure they have submitted all required material and provided the correct information in their Tender Application Form, and other supporting material required by the Department (if unsure, Tenderers should confirm relevant details with their water authority or advisors).

14. The cost of decommissioning or reconfiguring Overland Flow works to meet the requirements of the Multi-Year Accounting Rule will be the responsibility of the seller. It will be the responsibility of the seller to arrange for these works and to ensure that, if required by the Queensland Department of Natural Resources and Mines, they are certified by a Queensland Registered Professional Engineer.
15. It is the responsibility of Tenderers to ensure that any Tender/s is received by the Department by the Closing Date.
16. Tenderers may Tender for the sale of one or more Eligible Entitlement using this Tender Application Form. However, a separate Part 1A of this Tender Application Form must be submitted for each Eligible Entitlement. Each Eligible Entitlement will be treated as a separate Tender.
17. The Department will aim to advise Tenderers whether Tenders are accepted or rejected within 90 business days after the Closing Date. However, the Department reserves the right to revise this anticipated timeframe at any time.
18. All decisions on whether to accept or reject a Tender are final.
19. Any complaints about the conduct of this tender process should be directed to:
Director
Water Purchase and Conveyance Section
Water Division
Department of Agriculture and Water Resources
PO Box 858 Canberra, ACT, 2601
Email: waterpurchasing@agriculture.gov.au

Lodgement Requirements

Is your Tender Application Form complete and correct? ☐ Yes

Has your Tender Application Form been correctly signed (Parts 2, 3 and 4) ☐ Yes

Have you provided a copy of the relevant Entitlement for each Eligible Entitlement which you have separately tendered for in this Tender Application Form? ☐ Yes

Does your Tender otherwise comply with the Tender Application Form Requirements? ☐ Yes

Have you completed Part 2 Section 4 (a) – Conflict of Interest declaration? ☐ Yes

Have you completed Part 2 Section 5 – Workplace Gender Equality Act 2012 (*Cth*) ☐ Yes

Please do not submit this cover or instruction pages



Australian Government

Department of Agriculture and Water Resources

Part 1: Preliminary matters and Tenderer details

DEPARTMENT USE ONLY

ID:

WEPS Response No:

Date received: / /

Complete:

Receipt: E-mail / Fax / Post

1. Number of Eligible Entitlement(s) which are being separately tendered for in this Tender Application Form:

Two

2. Tenderer details

Note: If the Eligible Entitlement(s) is/are jointly owned then the particulars of each Tenderer should be provided on the Additional Details page of this Tender Application Form

Tenderer name:			
Business name:			
ABN / ACN:			
Street Address:			
Postal Address:			
City/Town:			
State:		Postcode:	
Phone Number (BH):		Mobile:	
Email:			

If a company	The registered office	
	The principal place of business	
	The date and place of incorporation and the ACN	
	List individual shareholders holding 20 per cent or more of any issued share capital	
	Any related companies within the meaning of section 50 of the Corporations Act 2001 (Cth)	

If a trustee	Provide details of the relevant trust including a copy of the relevant trust deed (and any variations to that deed)	
--------------	---	--

If a partnership	Provide details of the partnership including a copy of the relevant partnership agreement	
------------------	---	--

3. Nominated contact		
Note: If the nominated contact details are the same as Tenderer details, please leave blank.		
Contact:	Agent <input type="checkbox"/>	Broker <input type="checkbox"/> Solicitor <input type="checkbox"/>
Name:		
Business Name:		
ABN / ACN:		
Postal Address:		
City/Town:		
State:	Postcode:	
Phone Number:	Mobile:	
E-mail:		

Part 1A: Tender details

LEX-2697

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Tenderers may tender for the sale of more than one Eligible Entitlement. However, a separate Part 1A of this Tender Application Form must be completed for each Eligible Entitlement.

1. Details of Eligible Entitlement (Tick boxes below as appropriate)

Water management area:	Entitlement type:	
Condamine Balonne	<input checked="" type="checkbox"/> Overland Flow	
Ownership details (as per water Entitlement)		
Third Party Interests		
Is there a seasonal water assignment, term transfer or lease affecting the Eligible Entitlement which would affect your ability to sell it?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Name of the holder(s) of the term transfer/lease:

2. Details of Tender

Note: You must attach a copy of your Entitlement or equivalent to the Tender for it to be considered.
Note: If Overland Flow with nominal, use nominal volume; if Overland Flow with surge, use Mean Annual Diversion.

Total volume of your Eligible Entitlement	16,337 megalitres
Volume of Eligible Entitlement tendered for sale (A)	14,969 megalitres
Price per megalitre for this Tender (B)	\$ 2,745 per megalitre
Total price of Eligible Entitlement tendered for sale (A x B)	\$ 41,089,905
Do you acknowledge that you would be responsible for any decommissioning or reconfiguration of Overland Flow works to meet the requirements of the state's Multi-Year Accounting Rule? It is the responsibility of the seller to arrange for these works and to ensure that, if required by the Queensland Department of Natural Resources and Mines, they are certified by a Queensland Registered Professional Engineer.	<input type="checkbox"/> Acknowledged
Do you give consent to being contacted to discuss your experience with this tender process? This tender process is being conducted as part of the Australian Government's 'Restoring the Balance in the Murray-Darling Basin' under the Sustainable Rural Water Use and Infrastructure Programme.	<input type="checkbox"/> Yes <input type="checkbox"/> No

Part 1A: Tender details

Tenderers may tender for the sale of more than one Eligible Entitlement. However, a separate Part 1A of this Tender Application Form must be completed for each Eligible Entitlement.

1. Details of Eligible Entitlement (Tick boxes below as appropriate)

Water management area:	Entitlement type:	
Condamine Balonne	<input checked="" type="checkbox"/> Overland Flow	
Ownership details (as per water Entitlement)		
Third Party Interests		
Is there a seasonal water assignment, term transfer or lease affecting the Eligible Entitlement which would affect your ability to sell it?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Name of the holder(s) of the term transfer/lease:

2. Details of Tender

Note: You must attach a copy of your Entitlement or equivalent to the Tender for it to be considered.
Note: If Overland Flow with nominal, use nominal volume; if Overland Flow with surge, use Mean Annual Diversion.

Total volume of your Eligible Entitlement	14,190 megalitres
Volume of Eligible Entitlement tendered for sale (A)	14,190 megalitres
Price per megalitre for this Tender (B)	\$ 2,745 per megalitre
Total price of Eligible Entitlement tendered for sale (A x B)	\$ 38,951,550
Do you acknowledge that you would be responsible for any decommissioning or reconfiguration of Overland Flow works to meet the requirements of the state's Multi-Year Accounting Rule? It is the responsibility of the seller to arrange for these works and to ensure that, if required by the Queensland Department of Natural Resources and Mines, they are certified by a Queensland Registered Professional Engineer.	<input type="checkbox"/> Acknowledged
Do you give consent to being contacted to discuss your experience with this tender process? This tender process is being conducted as part of the Australian Government's 'Restoring the Balance in the Murray-Darling Basin' under the Sustainable Rural Water Use and Infrastructure Programme.	<input type="checkbox"/> Yes <input type="checkbox"/> No

Part 2: Tenderer deed

1. Tender

Each Tender constitutes an offer (Offer) to sell the Eligible Entitlement on the terms and conditions set out in the Draft Contract available at **Attachment A** and accordingly is capable of immediate acceptance by the Commonwealth.

The Offer remains open for acceptance by the Commonwealth for 90 business days following the Closing Date. However, the Department reserves the right to revise this timeframe at any time.

Where a Tenderer is unable to comply with clauses of the Draft Contract in respect of any Eligible Entitlement to which the Tender relates, the Tenderer should provide a tabulated statement showing clearly, and in order of the relevant clauses, its level of non-compliance.

To the extent that the Tender does not include complete information relating to matters required for the completion of any Draft Contract, the Commonwealth may complete the contract at its reasonable discretion, and the Tenderer shall execute the resultant contract.

2. Confidentiality

The Tenderer will not, and will ensure that its employees, agents or subcontractors do not, either directly or indirectly record, divulge or communicate to any person any confidential information concerning the affairs of the Department, the Commonwealth or a third party acquired or obtained in the course of preparing a Tender, or any documents, data or information provided by the Department and which the Department indicates to Tenderers is confidential or which Tenderers know or ought reasonably to know is confidential.

3. Ethical Dealing

The Tenderer represents that its Tender has been compiled without the improper assistance of any current or former Departmental officer, employee, contractor or agent and without the use of information obtained unlawfully or in breach of an obligation of confidentiality to the Department.

The Tenderer represents that it has not:

- (a) engaged in misleading or deceptive conduct in relation to its Tender;
- (b) engaged in any collusive activity, anti-competitive conduct, or any other unlawful or unethical conduct with any other Tenderer, or any other person in connection with the preparation of their Tender;
- (c) attempted to solicit information from or influence improperly any current or former officer, employee, contractor or agent of the Department, or violate any applicable laws or Commonwealth policies regarding the offering of inducements in connection with the process; or
- (d) otherwise acted in an unethical or improper manner or contrary to any law.

4. Conflict of Interest

- (a) The Tenderer represents that, as at the date of this deed and having made all reasonable enquiries, no conflict of interest exists or is likely to arise in relation to its Tender except in relation to the following:

Insert details of any conflict of interest or otherwise insert 'Not applicable'. Provide any further information as attachments and/or in the Additional Details section of this Tender Application Form.

- (b) Upon becoming aware of any actual or potential conflicts of interest in respect of its Tender, or any contract for sale resulting from this tender process, the Tenderer undertakes to:
- (i) immediately notify the Department in writing of the conflict of interest making a full disclosure of all relevant information relating to the conflict of interest and setting out the steps it proposes to take to resolve or otherwise deal with the conflict of interest; and
 - (ii) take such steps as the Department may reasonably require to resolve or otherwise deal with that conflict of interest.

5. Workplace Gender Equality Act 2012 (Cth)

Under Australian Government procurement policy, you are obliged to indicate whether or not your organisation is covered by the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act). Your organisation is covered by the WGE Act if it is a 'relevant employer', defined as being a non-public sector employer (including higher education institutions, trade unions and not-for-profit organisations) of 100 or more employees in Australia. For information about the coverage of the WGE Act, contact the Workplace Gender Equality Agency on (02) 9432 7000. Please complete the tick boxes below, as relevant.

- ☐ Yes, I am a relevant employer. (Non-public sector employer of 100 or more employees in Australia.) I have attached a current letter of compliance as part of this submission which indicates my compliance with the WGE Act.
- ☐ Yes, I am a relevant employer. (Non-public sector employer of 100 or more employees in Australia.) I will be providing a current letter of compliance prior to contract.
- ☐ No, I am not a relevant employer (I am NOT a non-public sector employer of 100 or more employees in Australia).

Executed as a Deed Poll for the benefit of the Commonwealth of Australia.

Complete the applicable signature block/s below. Please contact the Department if the Tenderer is a trustee or a partnership in order to obtain the appropriate execution block.

Individual Tenderers:

Include the full names and the signatures of EVERY owner whose name appears on the Entitlement(s) who wishes to sell their share. Reprint this page and add details if there are more than three owners.

SIGNED SEALED AND DELIVERED by

Name of Tenderer:

Name of Witness:

Signature:

Signature:

Date:

Date:

Name of Tenderer:

Name of Witness:

Signature:

Signature:

Date:

Date:

Name of Tenderer:

Name of Witness:

Signature:

Signature:

Date:

Date:

Company Tenderers:

Where the Tenderers are companies, please ensure that one signature block is completed for EACH Tenderer.

SIGNED SEALED AND DELIVERED by

Name of Company: ABN:

in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Name of Director:

Name of Director / Company Secretary:

.....

.....

Signature:

Signature:

Date:

Date:

Part 3: Authority to search

The Tenderer hereby authorises the disclosure of information to the Department (or its solicitors) in relation to each of the Entitlement(s) which are the subject of this Tender Application form and having the Entitlement number(s):

Entitlement number(s):

Licence 602025 and Licence 602023

This consent ceases within 1 (one) year from the date of this authority or at the completion of the sale.

This consent includes, but is not limited to:

1. the number and security of Entitlements held by the Tenderer;
2. the ownership of the Entitlement(s);
3. any associated landholdings and title references;
4. any water usage, temporary transfers and allocation held by or accruing to the Entitlement(s);
5. any third party interests;
6. any water deficit;
7. any financial or other liabilities; and
8. copies of any notices.

EXECUTED AS A DEED POLL for the benefit of the Commonwealth of Australia.

Complete the applicable signature block/s below.

Individual Tenderers: Include the full names and the signatures of EVERY owner whose name appears on the Entitlement(s) who wishes to sell their share. Reprint this page and add details if there are more than three owners.

SIGNED SEALED AND DELIVERED by

Name of Tenderer:

Name of Witness:

Signature:

Signature:

Date:

Date:

Name of Tenderer:

Name of Witness:

Signature:

Signature:

Date:

Date:

Name of Tenderer:

Name of Witness:

Signature:

Signature:

Date:

Date:

Company Tenderers: Where the Tenderers are companies, please ensure that one signature block is completed for EACH Tenderer.

SIGNED SEALED AND DELIVERED by

Name of Company: ABN:

in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Name of Director:

Name of Director / Company Secretary:

.....

.....

Signature:

Signature:

Date:

Date:

Part 4: Agent's undertaking

Note: Any agent with authority to submit the Tender on behalf of a Tenderer is required to complete this undertaking. Tenderers must still sign as required in all other parts of this Tender Application Form. The agent must also provide a copy of evidence confirming the basis of the authority to act on behalf of the Tenderer. This may include a power of attorney. Where multiple Tenderers are represented by multiple agents, EACH agent must sign a separate undertaking.

I, _____ of _____
(Broker or Solicitor – please print name) *(Company – please print name)*

have been instructed by (the **Tenderer**) to submit this Tender to the Department of the Agriculture and Water Resources with the details as listed. I have full authority to submit this Tender on the Tenderer's behalf. I have confirmed with the Tenderer that they have not put in another, identical Tender at this time either on their own accord or through another broker or solicitor.

Basis of authority to deal:..... Evidence attached? ☐ Yes ☐ No

Signature: Date:

Issued pursuant to Australian Privacy Principle 5 of the *Privacy Act 1988 (Cth)* (Privacy Act).

Purpose for collection of personal information

‘Personal information’ means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

Personal information collected as part of this Tender will be used for the purpose of evaluating Tenders. This may include:

- (a) using the personal information to conduct checks/security checks/compliance etc;
- (b) undertaking searches of relevant registers and or investigations with State/ Territory authorities;
- (c) reporting on successful and unsuccessful Tenders; and
- (d) undertaking further due diligence and effecting the conveyance process.

Authorisation for collection

The collection of personal information for the above purposes is not expressly authorised or required by law.

Disclosure of personal information

The name, contact details and Australian Business Number (ABN) of successful Tenderers will be available on the AusTender website consistent with the requirements of the *Public Governance, Performance and Accountability Act 2013* (Cth) and the Commonwealth Procurement Rules to disclose the details of successful contracts.

Any personal information collected may be disclosed:

- (a) to the Minister and his office;
- (b) within the department or other Commonwealth and State agencies where this serves the legitimate interest of the Australian Government;
- (c) to legal service providers engaged by the Department to undertake due diligence and conveyancing;
- (d) to service providers engaged by the Department to undertake due diligence on the infrastructure components of the Request for Tender;
- (e) in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia; and
- (f) where the information is authorised or required by law to be disclosed or where the information is in the public domain otherwise than by the Department’s disclosure;
- (g) by being published on the AusTender website (<http://www.tenders.gov.au>) (for example, publication of notice of the contract to purchase water entitlements); and
- (h) by being published on the Department of Agriculture and Water Resources website (<http://www.agriculture.gov.au/about/grants/index.html>).

There are instances where the Department is authorised or required by law to disclose your information including:

- (a) where an application is made under the *Freedom of Information Act 1982* (Cth);
- (b) where the Department has been served with a valid search warrant; and

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(c) where the Department has a duty to disclose the transfer of funds under the ⁴⁸ *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

The Department's Privacy Policy contains information about how you may:

- access and seek correction of your personal information held by this Department; and
- complain to the Department about a breach of the Australian Privacy Principles or the Privacy Act.

A copy of the Department's Privacy Policy, can be accessed at:

<http://www.agriculture.gov.au/about/privacy>

Part 6: Information Management

The Department's confidential information

- (b) Tenderers should not and should ensure that their employees, agents or subcontractors do not, either directly or indirectly record, divulge or communicate to any person any confidential information concerning the affairs of the Department, the Commonwealth or a third party acquired or obtained in the course of preparing a Tender, or any documents, data or information provided by the Department and which the Department indicates to Tenderers is confidential or which Tenderers know or ought reasonably to know is confidential.
- (c) The Department may exclude from further consideration any Tender lodged by a Tenderer who has engaged in any behaviour contrary to paragraph (a).

Tenderer's confidential information

- (d) Subject to paragraphs (d) and (e), the Department will treat as confidential all Tenders submitted by Tenderers.
- (e) The Department will not be taken to have breached any obligation to keep information provided by Tenderers confidential to the extent that the information:
 - (i) is disclosed by the Department to its advisers, officers, employees or subcontractors solely in order to evaluate this Tender or to prepare and manage any resultant contract;
 - (ii) is disclosed to the Department's internal management personnel, solely to enable effective management or auditing of the evaluation process;
 - (iii) is disclosed to the Auditor-General, Ombudsman, Information Commissioner, Privacy Commissioner and Freedom of Information Commissioner, or his or her delegate, for the purpose of performing the Auditor-General's, Ombudsman's Information Commissioner's, Privacy Commissioner's or Freedom of Information Commissioner's statutory functions or powers;
 - (iv) is disclosed by the Department to the responsible Minister;
 - (v) is disclosed by the Department in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - (vi) is shared by the Department within the Department's organisation, or with another Commonwealth the Department, where this serves the Commonwealth's legitimate interests;
 - (vii) is authorised or required by law to be disclosed;
 - (viii) is in the public domain otherwise than due to a breach of the relevant obligations of confidentiality; or
 - (ix) is disclosed with the written consent of the Tenderer.
- (f) If a contract is entered into with a successful Tenderer, the successful Tenderer's Tender will not necessarily be treated as confidential. Tenderers should clearly identify in their Tender the information that they consider should be protected as confidential information (if any) should a contract be entered into with them. The Department will only consider a request for confidentiality where:
 - (i) the information to be protected is identified in specific rather than global terms;
 - (ii) the information is by its nature confidential; and
 - (iii) disclosure would cause detriment to the parties concerned.

Disclosure of Information

- (g) The *Freedom of Information Act 1982* (FOI Act) gives members of the public rights of access to documents in the possession of the Australian Government and its agencies. The FOI Act extends as far as possible the right of the Australian community to access information (generally documents) in the possession of the Australian Government, limited only by exceptions and exemptions necessary for the protection of essential public interests and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.
- (h) All sensitive business information or confidential data which a Tenderer provides in its tender and considers should be exempt from disclosure under the FOI Act should be clearly indicated in the Tender.

Use of Tender documents

- (i) All Tenders become the property of the Department upon submission.
- (j) Notwithstanding paragraph (h) and without prejudice to anything agreed in any subsequent contract, ownership of intellectual property in the information contained in a Tender remains unchanged.
- (k) However, the Department may use any material contained in a Tender, or otherwise provided by the Tenderer, for the purposes of the evaluation process and the preparation and management of any resultant contract.

[illegible]



Australian Government
Department of Agriculture
and Water Resources

Ref: 2016-004

Matthew Bickford-Smith
 Eastern Australia Agriculture
 PO Box 438
 St George Queensland 4481

Dear Matthew

Thank you for your letter of 22 March 2017 proposing to sell four parcels of overland flow entitlements in the Condamine Balonne to the Australian Government at a price of \$2,745 per ML.

Further to our discussions, I would like to confirm that any transaction involving overland flow entitlements uses a Mean Annual Diversion (MAD) determined by the Department of Natural Resources and Mines (DNRM) that is modelled on the Condamine and Balonne Resource Operations Plan time series (1922 – 2009).

Your letter proposed the sale of one of the entitlements (reference 602025) in its long term average annual yield volume, which the department uses for water recovery reporting purposes only. In relation to your letter, for the entitlement 602023, I note that advice from DNRM provided to you on 17 March 2017 indicates a MAD for this entitlement of 14,190 ML, and not the volume of 14,202 ML as specified in your letter.

On the basis of the information provided above, and noting that I understand your intention was to propose the sale of this licence in its MAD volume, I have therefore converted your volumes, as presented in the table below for you to consider.

Licence number (OLF)	Description	MAD (ML)	Price (\$/ML)	Total price (\$)
602025	Clyde S10	3,912	2,745	10,738,440
602025	Clyde S11	8,737		23,983,065
602025	Clyde S1-S8	2,320		6,368,400
602023	Kia Ora	14,190		38,951,550
Total		29,159		80,041,455

Should you wish to proceed, please complete the attached Tender Application Form and return it to us by 31 May 2017.

Please note that this request to complete the Tender Application Form is not to be taken or relied upon as an offer that is capable of acceptance, or as creating any form of contractual, legal or equitable rights, whether implied or otherwise. The Commonwealth will not be responsible for any costs or expenses incurred in complying with the requirements of this request.

Yours sincerely
 s. 47F(1)

Mary Colreavy s. 47F(1)
 Assistant Secretary
 Water Acquisition and Markets Branch
 03 May 2017

