



GBCMA
Victorian On-Farm State Priority Project
("VOSP")
Contract For Transfer Of
Water Share

water share owner

to

GOULBURN BROKEN CATCHMENT MANAGEMENT AUTHORITY
ABN 89 184 039 725
("the GBCMA")

BACKGROUND

- A. The Victorian State Government has entered a funding agreement with the Commonwealth of Australia (the "**Commonwealth**") to improve water use efficiency and enhance the sustainability of rural water use in the Murray-Darling Basin.
- B. This has resulted in the development of the Victorian On-Farm State Priority Project ("**VOSP**") which will deliver funding to irrigators to improve farming irrigation systems on privately owned land within the Goulburn-Murray Irrigation District (**GMID**). **VOSP** complements the work being undertaken as part of the Northern Victoria Irrigation Renewal Project Stage 2.
- C. The Victorian State Government has provided funding to the **GBCMA** as a delivery partner for the purpose of carrying out **VOSP**.
- D. Under the terms of **VOSP**, irrigators must enter into an agreement with the **GBCMA** (an "**infrastructure works deed**") to carry out agreed works to the irrigator's land which will result in irrigation efficiencies leading to water savings. Fifty percent (50%) of the agreed anticipated water savings resulting from those works must be transferred to the **GBCMA** under this contract.
- E. Under this contract, the **GBCMA** will provide an Exemption Evidence Notice in respect of the agreed anticipated water savings to be transferred to the **GBCMA** to facilitate exemption from the 4% trading cap.
- F. The agreed 50% of the water savings to be transferred under **VOSP** must be consolidated by the **GBCMA** and transferred to the **Commonwealth**.

Contract for transfer of water share

PARTICULARS OF TRANSFER

| | | | |
|--------|-----------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
| Item 1 | water share owner | Full names: ABN: Address: Telephone: Mobile Telephone: Contact Person: | |
| Item 2 | water share owner's solicitor | Name: Address: Telephone: Facsimile: | |
| Item 3 | the GBCMA | GOULBURN BROKEN CATCHMENT MANAGEMENT AUTHORITY ABN 89 184 039 725 of 168 Welsford Street, Shepparton in the State of Victoria | |
| Item 4 | water share owner's water share Identification Number(s) | WEE | |
| Item 5 | water share | ML High Reliability Water Share @ \$1850 per ML | |
| Item 6 | consideration | \$ | Total consideration payable on the settlement date |
| Item 7 | water share owner's contribution (clause 3.1) | \$ | |
| Item 8 | settlement date | is the day the GBCMA complies with clause 5.1. | |
| Item 9 | date of this contract | The | day of 2012 |

SIGNED BY THE PARTIES

Signature of the **GBCMA**:
The **GBCMA** or its authorised officer

Signature of Water Share Owner(s):

Signature of Water Share Owner(s):

Executed by)
)
)

being signed by those persons who are authorised to sign for the company:

Director

Full name

Usual address

.....

Secretary

Full name

Usual address

.....

SAMPLE

CONDITIONS

1. INTERPRETATION

Definitions

- 1.1 The following definitions apply in this Contract. Other definitions appear in the **particulars of transfer**.

Act means the *Water Act 1989*.

allocation means that part of the volume of water allocated to the **water share** in accordance with Division 7 of Part 3A of the **Act**.

Authority means Goulburn-Murray Rural Water Corporation.

business days means in relation to taking any action in a place, any day other than a Saturday, Sunday or public holiday in that place.

consideration means the amount specified in item 6.

delivery of Transfer date means the date that the **water share owner** delivers to the **GBCMA** the properly signed Transfer(s) of **water share** in registrable form in accordance with clause 6.1(b).

financial year means each period commencing on 1 July and terminating on 30 June each year.

GST means the goods and services tax as defined in the **GST Act**.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

HRWS means high reliability water share.

infrastructure works deed means the deed to be entered into between the **GBCMA** and the **landowner** whereby the **landowner** agrees to carry out works on the **land**.

input tax credit has the meaning given in section 195-1 of the **GST Act**.

land means the land upon which the **landowner's project** is to be constructed.

landowner means the registered proprietor of the land, which may or may not be one and the same as the **water share owner**.

landowner's project means the project for on-farm works on the **land** that has been selected for funding by the **GBCMA** and more particularly described in the Infrastructure Works Deed made between the owner of the **land** and the **GBCMA**.

liquidated damages means the difference between the **consideration** and the value of the **water share** on the day of default as calculated in accordance with the **infrastructure works deed**.

Ministerial Consent means Ministerial consent required by section 33X of the **Act**.

particulars of transfer means the Particulars of Transfer forming part of this contract.

Personal Property Securities Register means the national register created by the *Personal Properties Securities Act 2009*.

settlement date means the date specified in item 8, which is the date is the day the **GBCMA** pays the **water share owner's contribution** to the **landowner** in accordance with clause 5.1.

taxable supply has the meaning given in section 195-1 of the **GST Act**.

trading rules means the trading rules for declared water systems made pursuant to sections 33AZ and 64AZ of the **Act** by the Minister and being the consolidated version prepared by the Department of Sustainability and Environment on 1 October 2009 with any amendments made thereto.

water share means the water share identified in item 5.

water share owner means the persons registered as the owner of the **water share** in the Water Registry established under the **Act** as specified in item 1.

water share owner's contribution means the amount specified in item 7.

Other definitions appear in the **particulars of transfer**. Item numbers refers to items in the **particulars of transfer** forming part of this contract.

"This contract" refers to this contract, the **particulars of transfer** and any schedules or annexures attached to it.

Rules for interpreting this document

1.2 The following rules also apply in interpreting this contract, except where the context makes it clear that the rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or any other document or agreement includes its successors in title, a permitted substitute or a permitted assign of that party; and
 - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) If a word is defined, another part of speech has a corresponding meaning.

- (d) If an example is given of anything (including a right, obligation or concept) such as by saying it includes something else, the example does not limit the scope of that thing.

2. TRANSFER

- 2.1 The **water share owner** agrees to transfer the **water share** to the **GBCMA**, and the **GBCMA** agrees to accept the transfer of the **water share**, upon the conditions set out in this contract including the **particulars of transfer**.
- 2.2 For the avoidance of doubt, the parties agree that this contract does NOT include a transfer of **allocation**. The **water share owner** will retain all **allocation** up to the date of registration of the Transfer of the **water share** to the **GBCMA** at the Victorian Water Registry.

3. WATER SHARE OWNER'S COVENANTS

- 3.1 The **water share owner** covenants with the **GBCMA** that unless otherwise agreed by the **GBCMA**:
- (a) if the **water share owner** is also the **landowner**, then the **water share owner's contribution** can be paid to the **GBCMA** to be applied to complete the **landowner's project** in accordance with the **infrastructure works deed**; and
- (b) if the **water share owner** is not the **landowner**, it will give, or assign to the **landowner** the **water share owner's contribution** conditional upon it being used as part payment of the **landowner's project** in accordance with the **infrastructure works deed**.

4. OWNERS WARRANTIES

- 4.1 The **water share owner** warrants that:
- (a) it has the right to transfer the **water share** on the date of this contract;
- (b) it has or will have full beneficial and legal unencumbered title to the **water share** on or before the date of this contract;
- (c) prior to the **delivery of Transfer date** any discharge of mortgage of **water share** or (as the case may be) any release or discharge of charge in respect to the **water share** has been registered; and
- (d) all rights, title and interests in the **water share** will pass absolutely to the **GBCMA** on the **settlement date** free and clear of any liens, claims, charges or encumbrances or any other third party interests.
- 4.2 For the avoidance of doubt, the **water share owner** will not have complied with clause 4.1(c) by tendering to the **GBCMA** on or before the **delivery of Transfer date** any unregistered discharge of mortgage of **water share** or a debenture release or discharge or release of a notification on the **Personal Property Securities Register** in respect to the **water share**.

5. PAYMENT AND COMPLETION

- 5.1 The **GBCMA** must within ten (10) **business days** after the **delivery of Transfer date** pay or transfer the **water share owner's contribution** to the **landowner** without

setoff or deduction in accordance with the **infrastructure works deed** (the "**settlement date**").

5.2 Ownership of the **water share** passes when the whole of the **consideration** is paid or transferred in accordance with clause 5.1.

6. WHAT THE OWNER MUST DO

6.1 The **water share owner** must:

- (a) provide the following documents to the **GBCMA** on exchange of this contract:
 - (i) application(s) to transfer the **water share**;
 - (ii) sufficient proof of identification to enable the **Authority** to process the application to transfer the **water share**;
 - (iii) any other documents required by the **Authority** to obtain **Ministerial Consent**, except for those documents which the **GBCMA** is obliged to provide.

The documents referred to in clauses (i), (ii) and (iii) must, where necessary, be completed with the **water share owner's** details and be signed by the **water share owner**. The **water share owner** authorises the **GBCMA** to complete those documents but only where such completion will give effect to this contract; and

- (b) within five (5) **business days** after the date the **water share owner** receives the Transfer of the **water shares** issued by the **Authority**, provide the properly signed Transfer(s) of **water share** in registrable form to the **GBCMA**.
- (c) The date that the **water share owner** complies with its obligations under clause 6.1(b) is referred to in this contract as the "**delivery of Transfer date**" (see clause 1.1).
- (d) If the **water share owner** fails to comply with clause 6.1(b) within 3 months after the date of this contract, then the **GBCMA** may at its sole option terminate this contract by written notice to the **water share owner**. In this event the **infrastructure works deed** will automatically simultaneously be terminated. *[This is a requirement of the funding agreement between State and the GBCMA.]*

7. WHAT the GBCMA MUST DO:

7.1 The **GBCMA** must:

- (a) pay:
 - (i) for the lodging of the application(s) to transfer **water share** with the **Authority** to obtain **Ministerial consent**;
 - (ii) for a copy of the **Authority** Information Statement; and
 - (iii) for copies of the **water share** extracts to attach to this contract;
 - (iv) any fee to lodge the transfers of **water share** at the Victorian Water Register.

- (b) upon receipt of the documents referred to in clause 6.1(b) immediately sign same and lodge them with the **Authority**; and
- (c) facilitate to the owner from the **GBCMA** an Exemption Evidence Notice to the **water share owner** to facilitate exemption from the 4% trading rule.

8. CO-OPERATION

- 8.1 Each party agrees to co-operate and liaise fully with the other party, in order to ensure that this contract is implemented effectively.
- 8.2 Each party must do everything (including execute any document) and must ensure that its employees and agents do anything (including execute any document) that the other party may reasonably require to give effect to this contract and the transactions contemplated by it.

9. CONDITIONAL CONTRACT

- 9.1 The parties acknowledge that:
 - (a) pursuant to section 33AZ(2) of the Act the Minister for Water on 30 November 2011 exempted the **GBCMA** from the 4% trade limit set out in the **trading rules**;
 - (b) this contract is conditional upon the approval of the applications to transfer **water share** by the **Authority**; and
 - (c) this contract is conditional upon the **water share owner** also signing the **infrastructure works deed**
- 9.2 Unless it is otherwise agreed in writing by the parties, either party may avoid this contract if the **Authority** has not approved the transfer of **water share** by a date being 6 months from the date of this contract.
- 9.3 The **GBCMA** is not obliged to accept a Transfer of the **water share** that is due to expire in ten (10) **business days** or less. In this event, the parties must, at the **water share owner's** cost, do all things reasonably necessary to submit a new application to the **Authority** for a transfer of the **water share** to the **GBCMA**, and the **GBCMA** may delay settlement until such time as the **water share owner** complies with this clause 9.3.

10. ACKNOWLEDGEMENTS

- 10.1 Each party agrees to co-operate and liaise with the other party and sign such other documents as the other party may reasonably require to give effect to this contract.
- 10.2 Any clause of this contract which can and is intended to operate after settlement remains effective.

11. GST

- 11.1 The **consideration** is a GST exclusive amount.
- 11.2 The **water share owner** and the **GBCMA** agree that the transfer of the **water share** under this contract is a supply of water that is GST free in accordance with the Australian Taxation Office Ruling GSTR 2000/25 (as amended from time to time).

- 11.3 However the **water share owner** and the **GBCMA** are mistaken, and one party (the supplier) makes a **taxable supply** to the other party (the recipient) under this contract, on receipt of a **tax invoice** from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the **GST** imposed on the supply in question.
- 11.4 No party may claim or retain from the other party any amount in relation to a supply made under this contract for which the first party can obtain an **input tax credit** or decreasing adjustment.

12. APPORTIONMENT OF CHARGES LEVIED BY THE AUTHORITY

- 12.1 The **water share owner** will be responsible to pay all charges which are or may be levied by the **Authority** for the **water share** for the current financial year at the time of settlement. There will be no adjustment of these fees.
- 12.2 The **water share owner** will receive the benefit of any government rebate, refund or assistance in relation to water charges.

13. CONFIDENTIALITY

- 13.1 Both parties agree to keep confidential all the transfer details of this contract and will not disclose any information to any other party except:
- (a) the **Authority**, the **GBCMA**, **Victorian State Government** and the **Commonwealth** or their authorised agents or advisers;
 - (b) any professional adviser or finance institution who may have or may take an interest in the **water share**;
 - (c) any parties name in the **particulars of transfer**; and
 - (d) any other party where the information must be disclosed to give effect to this contract.

14. COUNTERPART / EXECUTION

- 14.1 This contract may be executed in two or more counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument.
- 14.2 This contract may be executed by one or more of the parties, executing a counterpart, which may be a facsimile copy of this contract, and transmitting that executed counterpart by facsimile to the party or parties, which upon either the sender's transmission record indicating that the same was duly received without error, or the receipt by the other party or by one of the other parties of the executed contract by the sender, will be taken as conclusive evidence of the execution of the contract by that party.
- 14.3 The parties covenant to be bound by this contract being executed in counterparts in accordance with this clause.

15. SERVICE OF NOTICE

- 15.1 A party may serve a notice or request by:
- (a) personal service on the other party or the Lawyer of the other party;

- (b) prepaid post to the other party or the Lawyer for the other party (or document exchange if applicable);
- (c) facsimile transmission to the other party or the Lawyer for the other party; or
- (d) service is effected two (2) days after posting if the notice or request is posted.

16. SEVERANCE

If any provision of this contract does not comply with any law, then the provision must be read down so as to give it as much effect as possible. If it is not possible to give the provision any effect at all, then it must be treated as severed from the rest of this contract. This approach is to be used equally where any court is construing this contract and finds an invalid provision.

17. DEFAULT

- 17.1 Time is of the essence in this contract where a specific time to perform an obligation is specified in this contract, time is of the essence in respect of that obligation.
- 17.2 A default of this contract by the **water share owner** will constitute a default by the **water share owner** or the **landowner** (as the case may be) of the **infrastructure works deed**.
- 17.3 If the **water share owner** defaults, then in addition to any other damages or expenses payable under this contract, the **GBCMA** will be entitled to the **liquidated damages**.
- 17.4 If either party defaults, the other party may demand:
 - (a) reasonable expenses incurred as a result of the default;
 - (b) interest on any money overdue during the period of default at a rate two per centum (2%) higher than the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* as at the date of default and the **consideration** is altered accordingly.
- 17.5 If either party defaults, the other party may serve a notice which:
 - (a) specifies the default, expenses attributable to the default and the rate of any interest;
 - (b) states that this contract will be ended without further notice unless the default is remedied and the expenses and any interest are paid; and
 - (c) allows not less than fourteen (14) days for the remedy of the default and payment; and
 - (d) if served by the **water share owner**, states which options the **water share owner** intends to exercise under this clause.
- 17.6 If the notice is not complied with, the contract is ended and no further notice is necessary.
- 17.7 If the **water share owner** ends the contract due to the **GBCMA's** default:
 - (a) all moneys payable under clause 17.4 become immediately due and payable at the option of the **water share owner**; and

- (b) the **water share owner** may also either:-
- (i) resell the **water share** by private contract with all expenses and any deficiency in **consideration** or resale being payable by the **GBCMA** by way of damages; or
 - (ii) retain the **water share** and sue for damages from the **GBCMA** for breach of this contract.

18. MEDIATION OF DISPUTE

- 18.1 Except a claim for money or payment due to the **water share owner**, if a dispute arises out of or relates to this contract (including any dispute as to breach or termination of the contract) ("the **dispute**") a party to this contract may not commence any court proceedings relating to the **dispute** unless it has first complied with this clause (except where the party seeks urgent interlocutory relief).
- 18.2 A party to this contract claiming that a **dispute** has arisen under or in relation to this contract must give written notice to the other party to this contract specifying the nature of the **dispute**.
- 18.3 On receipt of that notice by that other party, the parties to this contract must endeavour in good faith to resolve the **dispute** expeditiously using mediation.
- 18.4 The parties must jointly appoint a mediator and agree on the mediator's remuneration. If the parties fail to agree on the appointment and remuneration within five (5) **business days** of service of the notice or any other time that the parties agree to in writing, either party may apply to the President of the Law Institute of Victoria or the President's nominee to appoint a mediator and determine the mediator's remuneration.
- 18.5 The parties must observe the instructions of the mediator about the conduct of the mediation.
- 18.6 If the **dispute** is not resolved within ten (10) **business days** after the mediator is appointed, or any other time that the parties agree to in writing, the mediation ceases.
- 18.7 Each party must pay an equal share of the costs of the mediation to the mediator and each party agrees to indemnify the mediator against liability in respect of the mediation of the **dispute**.
- 18.8 If the **dispute** is resolved, each party must sign the terms of the agreement and the terms are binding on the parties and override the terms of this contract if there is any conflict.
- 18.9 The mediation procedure is confidential and any discussion and written statements between the parties and between the parties and the mediator before or during the mediation procedure, cannot be used in any legal proceedings.

19. GENERAL

No merger

- 19.1 The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this contract.

Entire Contract

19.2 This contract contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection therewith.

Amendment

19.3 This contract may be amended or varied in writing executed by both parties.

No waiver

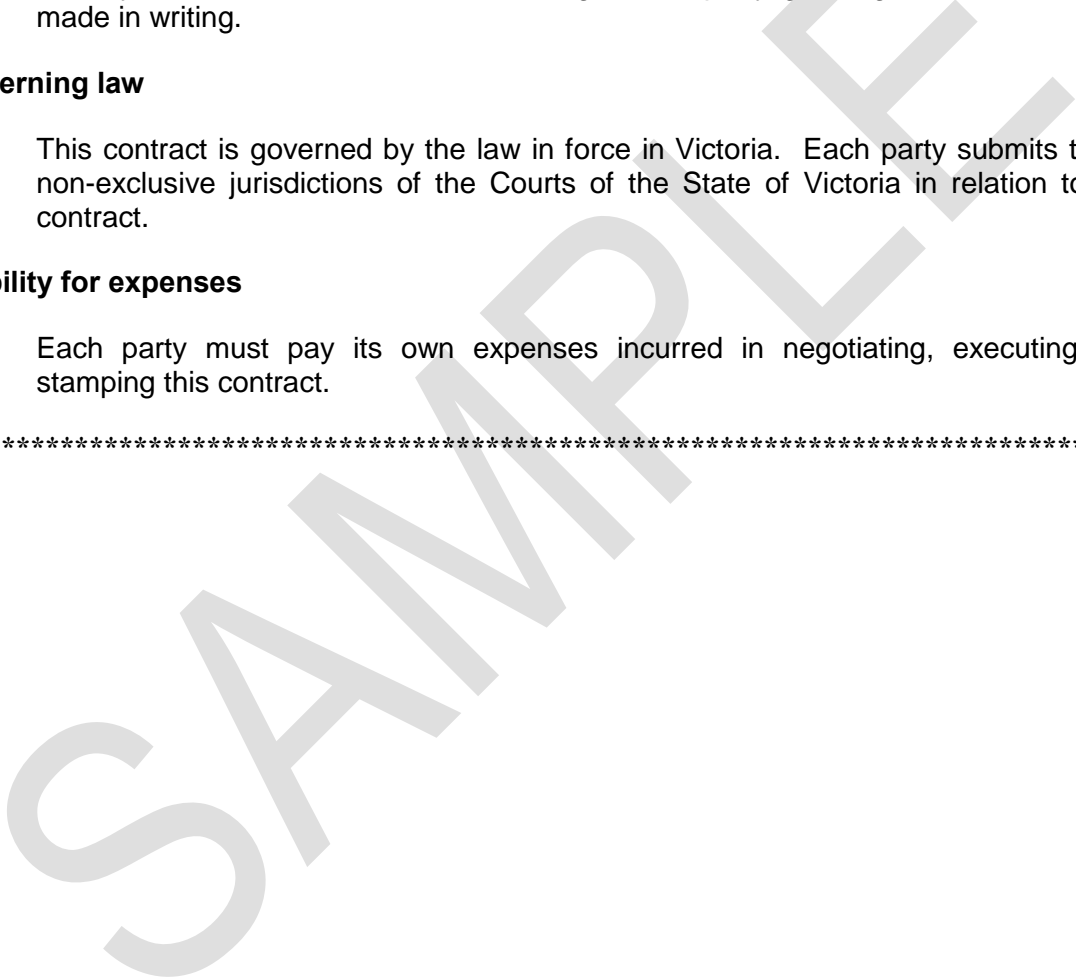
19.4 No failure to exercise or any delay in exercising any right, power or remedy by a party will operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

Governing law

19.5 This contract is governed by the law in force in Victoria. Each party submits to the non-exclusive jurisdictions of the Courts of the State of Victoria in relation to this contract.

Liability for expenses

19.6 Each party must pay its own expenses incurred in negotiating, executing and stamping this contract.



Annexure 1

Copy of Record of the Water Share on the Victoria Water Register

SAMPLE