



**Contract For Transfer Of
Water Share
(Victorian Farm Modernisation Project)**

**THE PARTY SPECIFIED IN ITEM 1
("water share owner")**

to

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

PROJECT NUMBER

500-1-

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 Farm Modernisation Project ("**VFMP**") which will deliver funding to irrigators to improve farming irrigation systems on privately owned land within the Goulburn Murray Irrigation District (**GMID**). **VFMP** complements the work being undertaken as part of the Goulburn Murray Water Connections Project.
- C. The Victorian State Government has provided funding to the **GBCMA** as a delivery partner for the purpose of carrying out **VFMP**.
- D. Under the terms of **VFMP**, 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 Five percent (55%) of the agreed anticipated water savings resulting from those works must be transferred to the **GBCMA** under this contract.
- E. The agreed 55% of the water savings to be transferred under **VFMP** must be consolidated by the **GBCMA** and transferred to the **Commonwealth**.

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PARTICULARS OF TRANSFER

Item 1	water share owner	Full names: Address: Telephone: Mobile Telephone: Contact Person:	
Item 2	water share owner's solicitor	Name: Address: Telephone: Facsimile:	
Item 3	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	ML
Item 5	agreed volume of water share	ML	
Item 6	consideration	\$	Total consideration payable on the settlement date
Item 7	settlement date	is the day the GBCMA complies with clause 6.3.	
Item 8	date of this contract	The	day of 2016

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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)
)
(water share owner))
in accordance with Section 127(1) of the)
Corporations Act 2001 (Cth) by being signed)
by those persons who are authorised to sign
for the Company:

.....
Secretary/Director (please print)

.....
Director (please print)

.....
Secretary/Director (Signature)

.....
Director (Signature)

.....
Address

.....
Address

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*.

agreed volume of water share means the total volume of **water share** identified in item 5 that is being transferred to the **GBCMA** pursuant to this contract.

allocation means the allocation granted under Division 7 of Part 3A of the **Act** in respect of the **agreed volume of water share**.

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** complies with clause 6.1.

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**, the **water share owner** and the **landowner** whereby the **landowner** agrees to carry out certain 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 VFMP funding by the **GBCMA** and more particularly described in the **infrastructure works deed**.

liquidated damages means the damages amount determined in accordance with clauses 1.1 and 26.2(b) of 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 7, which is the date the **GBCMA** pays the **consideration** in accordance with clause 6.3.

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.

Transfer means the form of document issued by the **Authority** evidencing **Ministerial Consent** to the transfer of a **water share**.

water share means a water share as defined in the **Act**.

water share owner means the person(s) specified in item 1 being the registered owner(s) of the **water shares** specified in item 4.

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.

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- (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 **agreed volume of water share** free of all encumbrances to the **GBCMA**, and the **GBCMA** agrees to accept the transfer of the **agreed volume of 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 **agreed volume of water share** to the **GBCMA** at the Victorian Water Register.

3. OWNERS WARRANTIES

- 3.1 The **water share owner** warrants that:
- (a) it has the right to transfer the **agreed volume of water share** on the date of this contract;
 - (b) it has and will have at all times up until the **settlement date**, full beneficial and legal title to the **agreed volume of water share**;
 - (c) by the **Delivery of Transfer Date**, it will have, or be in a position to provide, free unencumbered title to the **agreed volume of water share**; and
 - (d) all rights, title and interests in the **agreed volume of 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. WATER SHARE OWNER OBLIGATIONS

- 4.1 The **water share owner** must:
- (a) provide the following documents to the **GBCMA** on exchange of this contract:
 - (i) application(s) to transfer the **agreed volume of water share**;
 - (ii) sufficient proof of identification to enable the **Authority** to process the application to transfer the **agreed volume of 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

and 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

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- (b) immediately pay any rates and charges on the **water share** as and when required by the **Authority** to facilitate the approval of the application to transfer the **water share**.

5. GBCMA OBLIGATIONS

5.1 The **GBCMA** must:

- (a) pay:
 - (i) for the lodging of the application(s) to transfer the **agreed volume of 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 **agreed volume of water share** at the Victorian Water Register; and
- (b) upon receipt of the documents referred to in clause 4.1(a) from the **water share owner**, immediately sign same and lodge them with the **Authority**.

6. COMPLETION AND PAYMENT

6.1 Within ten (10) **business days** after the date the **water share owner** receives the **Transfer(s)** of the **agreed volume of water share** issued by the **Authority**, the **water share owner** must provide to the **GBCMA**:

- (a) the properly signed **Transfer(s)** of **agreed volume of water share** in registrable form; and
- (b) all things necessary to enable the **GBCMA** to become the registered proprietor of the **agreed volume of water share** free from any encumbrances, including, without limitation:
 - (i) any discharge of mortgage(s) in registrable form and releases of any security interest(s) over the **agreed volume of water share**; and
 - (ii) any fees to effect registration of any release or discharge of any encumbrances.

6.2 The date that the **water share owner** complies with its obligations under clause 6.1 is referred to in this contract as the "**delivery of Transfer date**" (see definition in clause 1.1).

6.3 The **GBCMA** must within five (5) **business days** after the **delivery of Transfer date** pay or transfer the **consideration** towards the **landowner's project** without setoff or deduction in accordance with the **infrastructure works deed** (the "**settlement date**") and the **water share owner** hereby irrevocably authorises and directs the **GBCMA** to apply the **consideration** in accordance with the **infrastructure works deed**.

6.4 Ownership of the **agreed volume of water share** passes when the whole of the **consideration** is paid or transferred in accordance with clause 6.3.

7. CONSENT FOR GBCMA TO DEAL WITH MORTGAGEE

- 7.1 By signing this contract, the **water share owner** hereby authorises the **GBCMA**:
- (a) to liaise with the mortgagee(s) recorded on the **water shares** ("**my mortgagee**") for the purpose of obtaining a discharge of any mortgage or mortgages over the **agreed volume of water share** pursuant to clause 6.1(b)(i) of this contract; and
 - (b) for this purpose to provide a copy of this contract to **my mortgagee**.
- 7.2 The **water share owner** hereby agrees to provide to the **GBCMA** any discharge authority required by **my mortgagee** within 7 days of a request to do so, and in this respect, time is of the essence.

8. GBCMA RIGHT TO TERMINATE

- 8.1 Provided the **GBCMA** has complied with its obligations under clause 5.1, if the **water share owner** has not complied with its obligations contained in clause 4 within 3 months after the date of this contract (regardless of the reason for such failure to comply, including reasons that may be beyond the control of the **water share owner**), 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 right to terminate is absolute and is not dependent on default by the **water share owner**, and does not require compliance with clause 17.

9. CO-OPERATION

- 9.1 Each party agrees to co-operate and liaise fully with the other party, in order to ensure that this contract is implemented effectively.
- 9.2 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.

10. CONDITIONAL CONTRACT

- 10.1 This contract is conditional upon the **water share owner** also signing the **infrastructure works deed**.

11. ACKNOWLEDGEMENTS

- 11.1 The parties acknowledge that the transfer of the **agreed volume of water share** is conditional upon the approval of the applications to transfer the **agreed volume of water share** by the **Authority**.
- 11.2 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.
- 11.3 Any clause of this contract which can and is intended to operate after settlement remains effective.

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12. GST

- 12.1 The **consideration** is a GST exclusive amount.
- 12.2 The **water share owner** and the **GBCMA** agree that the transfer of the **agreed volume of 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).
- 12.3 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.
- 12.4 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.

13. APPORTIONMENT OF CHARGES LEVIED BY THE AUTHORITY

- 13.1 The **water share owner** will be responsible to pay all charges which are or may be levied by the **Authority** for the **water share** identified in Item 4 for the current financial year at the time of settlement. There will be no adjustment of these fees.
- 13.2 The **water share owner** will receive the benefit of any government rebate, refund or assistance in relation to water charges.

14. CONFIDENTIALITY

- 14.1 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 **agreed volume of water share**;
 - (c) any parties named in the **particulars of transfer**; and
 - (d) any other party where the information must be disclosed to give effect to this contract.

15. COUNTERPART / EXECUTION

- 15.1 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.
- 15.2 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

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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.

- 15.3 The parties covenant to be bound by this contract being executed in counterparts in accordance with this clause.

16. SERVICE OF NOTICE

16.1 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.

17. 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.

18. DEFAULT

18.1 Where a specific time to perform an obligation is specified in this contract, time is of the essence in respect of that obligation.

18.2 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**.

18.3 If the **water share owner** defaults, then the **GBCMA** will be entitled to elect whether to claim the **liquidated damages** or whether to pursue contractual damages.

18.4 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.

18.5 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;

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- (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.

18.6 If the notice is not complied with, the contract is ended and no further notice is necessary.

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