



Infrastructure Works Deed
(Victorian Farm Modernisation Project)

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

AND

THE PARTY SPECIFIED IN ITEM 1 OF SCHEDULE 1
("landowner")

AND

THE PARTY SPECIFIED IN ITEM 2 OF SCHEDULE 1
("water share owner")

AND

THE PARTY SPECIFIED IN ITEM 3 OF SCHEDULE 1
("guarantor")

PROJECT NUMBER

300-1-

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**Infrastructure works deed
(The VFMP Project)**

THIS DEED is made the _____ day of _____ 2014

BETWEEN:

GOULBURN BROKEN CATCHMENT MANAGEMENT AUTHORITY ABN 89 184 039 725
of 168 Welsford Street, Shepparton in the State of Victoria

(**GBCMA**)

and

The party named in Item 1 of SCHEDULE 1.

(**"landowner"**)

and

The party named in Item 2 of SCHEDULE 1.

(**"water share owner"**)

and

The guarantor named in Item 3 of SCHEDULE 1.

(**"guarantor"**)

BACKGROUND

- A. The Victorian State Government (the "**State**") has entered into 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 (the "**VFMP**") which will deliver funding to irrigators to improve farming irrigation systems on privately owned land within the Goulburn-Murray Irrigation District (**GMID**). The **VFMP** complements the work being undertaken as part of the Goulburn Murray Water Connections Project (NVIRP2).
- C. The **State** has provided funding to the **GBCMA** to act as a delivery partner for the purpose of implementing the **VFMP**.
- D. Under the **VFMP**, the **GBCMA** will acquire 59% of the permanent water savings achieved through the implementation of eligible projects. The water share acquired by the **GBCMA** will be consolidated by the **GBCMA** and transferred to the **Commonwealth**.
- E. For the purposes of the funding agreement entered into between the **State** and the **GBCMA** for the **VFMP**, "*irrigator*" under the funding agreement means the **landowner** and the **water share owner** in this deed to the extent of their respective obligations, and "*works contract*" means this deed.
- F. The **landowner's** project for on farm works has been selected for funding under the **VFMP**. Conditions of the provision of funding are that:

- (i) the **water share owner** must enter into a contract to transfer to the **GBCMA** the **GBCMA's share of the agreed water savings** specified in Item 10 of SCHEDULE 1; and
- (ii) the **landowner** must enter into this deed with the **GBCMA** to carry out the **works**; and
- (iii) the **water share owner** must assign to the **landowner** the **water share owner's contribution** as specified in Item 6 of SCHEDULE 1 to implement the **works** in accordance with this deed.

IT IS AGREED AS FOLLOWS:

1. Definitions

- 1.1 In this deed, including the recitals, unless the context otherwise requires:

ABN has the same meaning as it has in section 41 of the *A New Tax System (Australian Business Number) Act 1999* (Cth);

activity period means the period from the date this deed is signed to the **latest date for completion of works** specified in Item 5 of SCHEDULE 1;

activity material means all material:

- a) brought into existence for the purpose of performing this deed or the **contract for transfer of water entitlement** (whether by the **water share owner**, the **landowner** or a **subcontractor**);
- b) incorporated in, supplied or required to be supplied along with the **material** referred to in paragraph (a);
- c) copied or derived from **material** referred to in paragraphs (a) or (b) by or on behalf of the **water share owner** or the **landowner**;

adjustment has the meaning given to that term in the **GST Act**.

advisers means a party's agents, contractors (including subcontractors) or advisers engaged in the performance or management of this deed;

agreed water savings means the volume of high reliability **water share** specified in Item 9 of SCHEDULE 1;

approved auditor means a person who is:

- (a) an auditor employed by the Victorian Auditor-General, as established under the *Audit Act 1994* (Vic); or
- (b) registered as a company auditor under the *Corporations Act 2001* (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia or of CPA Australia,

whose firm or organisation did not prepare the financial statements that are the subject of the audit and who is not a principal, member, adviser, shareholder, officer or employee of **GBCMA** or of a related body corporate (as defined in section 9 of the *Corporations Act 2001 (Cth)*).

asset means any item of tangible property specified in SCHEDULE 2 which is purchased, leased, created or otherwise brought into existence wholly, or in part, with the use of the **funding**, which has at that time a value of over \$5,000 exclusive of GST, but does not include **activity material** or any **water share** that the **water share owner** is required to transfer to the **GBCMA**;

Auditor-General means the office established under the *Auditor-General Act 1997 (Cth)* and includes any other entity that may, from time to time, perform the functions of that office;

Australian accounting standards refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001 (Cth)*;

Australian auditing standards refers to the standards of that name maintained by the Australian Auditing and Assurance Standards Board created by section 227A of the *Australian Securities and Investments Commission Act 2001 (Cth)*;

authorised deposit taking institution means a deposit taking institution duly authorised under the *Banking Act 1959 (Commonwealth)* to carry on banking business in Australia;

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

confidential information means all information concerning this deed:

- (a) that a party to this deed receives, becomes aware of, develops, creates or generates in the course of or incidental to the operation of this deed; and
- (b) information that is agreed between the parties to this deed after the date of this deed as constituting **confidential information** for the purposes of this deed.

conflict means any actual or potential matter, circumstance, interest or activity involving or affecting the **landowner** or **water share owner** and the **GBCMA** which could reasonably be perceived to exist to impair the ability of the **landowner** or **water share owner** to perform their obligations under this deed;

contract for transfer of water entitlement means a contract between the **water share owner** and the **GBCMA** to transfer to the **GBCMA** the **GBCMA's share of agreed water savings** set out in Item 10 of SCHEDULE 1;

dispose means to sell, lease or sub-lease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts and '**disposal**' means the method of so disposing;

existing material means all **material** in existence prior to the date of this deed:

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with; or as part of;

the **activity material**;

financial year means each period from 1 July to the following 30 June occurring during the **activity period**, or any part of such a period occurring at the beginning or end of the **activity period**;

funding means the amount or amounts (in cash or in kind) of funding specified in Item 6 of SCHEDULE 1 which are payable by the **GBCMA** in accordance with clause 7 and SCHEDULE 2;

GBCMA means the Goulburn Broken Catchment Management Authority and its successors.

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);

input tax credit has the meaning given to that term in the **GST Act**, but also includes a reduced input tax credit under Division 70 and an adjusted input tax credit under Division 132 of the **GST Act**.

intellectual property means all copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks) and registered designs, trade secrets and know-how, all rights under the *Circuit Layouts Act 1989* (Cth), and all other intellectual or intangible property.

interest means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Tax Administration Act 1953* (Cth), on a daily compounding basis;

landowner means the person or person specified in Item 1 of SCHEDULE 1 and, where the context admits, includes the **landowner's** employees, agents, contractors and successors;

land means the land specified in Item 4 of SCHEDULE 1;

landowner's contributions means the in-kind or cash contributions to the value specified in Item 7 of SCHEDULE 1 that are provided by the **landowner** to complete the **works**;

landowner's nominated account means an account in the name of the **landowner** or a **related party** of the **landowner** held with an **authorised deposit taking institution**;

latest date for completion of works means that date specified in Item 5;

liquidated damages amount is the amount calculated in accordance with Item 12 of SCHEDULE 1;

material means the subject matter of any category of **intellectual property rights** and includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same;

personal information has the same meaning as under the **Privacy Act**, which currently is information or an opinion (including information or an opinion forming part of a data base), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

project means the **VFMP Project**, and includes the **landowner's works** undertaken in accordance with this deed;

Privacy Act refers to the *Privacy Act 1988* (Cth);

Privacy Commissioner means the Office of the Privacy Commissioner established under the **Privacy Act** and includes any other entity that may, from time to time, perform the functions of that Office;

qualified accountant means a person who is a member of the Institute of Chartered Accountants in Australia, or of CPA Australia or the National Institute of Accountants;

receipt means a valid proof of receipt of payment issued by the recipient of that payment, and in the case of electronic funds transfers requires proof of receipt of the payment by the correct recipient. Proof of electronic remittance does not constitute a receipt. The receipt must include the name and ABN of the supplier, details of the supply, and the amount of the payment received and must be dated on or after the date of this deed;

records includes all documents, information and data stored by any means and all copies and extracts of the same;

related party or **related person** means a person who is related to another person in accordance with any of the following provisions—

- (a) natural persons are related persons if one of them is a **relative** of the other;
- (b) companies are related persons if they are "*related bodies corporate*" within the meaning of the *Corporations Act (Cwth) 2001*;
- (c) a natural person and a company are related parties if the natural person is a majority shareholder or director of the company or of another company that is a related body corporate of the company within the meaning of the *Corporations Act (Cwth) 2001*;
- (d) a natural person and a trustee are related persons if the natural person is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee;
- (e) a company and a trustee are related persons if the company, or a majority shareholder or director of the company, is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee;

relative in relation to a **natural person**, means a person who is—

- (a) a child of the person or of the partner of the person;
- (b) a parent of the person or of the partner of the person;
- (c) a brother or sister of the person or of the partner of the person;
- (d) the partner of the person or a partner of any person referred to in paragraph (a), (b) or (c).

State means the Victorian State Government.

subcontractor means a contractor engaged by the **landowner** to perform all or part of the **works** but does not include the **landowner**.

tax invoice has the meaning given in section 195-1 of the **GST Act**;

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

term of this deed means the period from the date of this deed until the later of:

- (a) 60 **business days** after the expiry of the **activity period**;
- (b) payment for completion of the **works** to the satisfaction of the **GBCMA**; or
- (c) termination of this deed.

water share means a high reliability water share as defined in Division 2 of Part 3A of the *Water Act 1989 (VIC)*;

water share owner's contribution means the consideration received by the **water share owner** pursuant to the **contract for transfer of water entitlement** that is assigned to the **landowner** pursuant to clause 6.1 ;

works means the works as defined in clauses 4.1 and 4.2.

works completion date means the date upon which the **works** are completed to the reasonable satisfaction of the **GBCMA**.

works generated income means any income earned or generated by the **landowner** from its use of the **funding**, including:

- (a) where the proceeds of insurance paid to the **landowner** to replace an **asset** exceed the amount actually paid by the **landowner** to replace the **asset** – the proportion of that excess that reflects the proportion of the total cost of acquiring the **asset** that was met by the **funding**; and
- (b) the proportion of any income received by the **landowner** as a result of its use of an **asset** that reflects the proportion of the total cost of acquiring the **asset** that was met by the **funding**;

Other definitions appear in SCHEDULE 1.

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The words "this deed" means this document and includes any Schedules and Annexures to it.

2. Rules for interpreting this deed

- 2.1 The following rules also apply in interpreting this deed, except where the context makes it clear that the rule is not intended to apply.
- 2.2 A reference to:
- (a) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (b) 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;
 - (c) 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;
 - (d) anything (including a right, obligation or concept) includes each part of it.
- 2.3 A singular word includes the plural, and vice versa.
- 2.4 Any reference to a person will include a corporation and the use of one gender includes other genders.
- 2.5 Any obligation on the part of two or more persons will bind them jointly and severally.
- 2.6 If a word is defined, another part of speech has a corresponding meaning.
- 2.7 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.
- 2.8 The Schedules (and Annexures and documents incorporated by reference, if any) form part of this deed. In the event of any conflict or inconsistency between any part of:
- (a) the terms and conditions contained in the clauses of this deed;
 - (b) the Schedules;
 - (c) any Annexures, or
 - (d) any other documents incorporated by reference;
- then the material mentioned in any one of paragraphs (a) to (d) of this clause 2.8 has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

3. Warranties by landowner

Warranties as to Ownership

- 3.1 The **landowner** warrants that:

- (a) The **landowner** is either:
 - (i) the legal owner and occupier of the **land**; or
 - (ii) the trustee of the trust described in Item 1 of SCHEDULE 1 (if any is referred to),
- (b) Save as provided in clause 3.1(a), no one other than the **landowner** and any person with a registered interest as shown on the title of the **land** and any beneficial owner under a trust, has any rights over the **land** including possessory rights.
- (c) The **landowner**:
 - (i) has, or by the date of this deed will have, the right to undertake the **works** on the **land**; and
 - (ii) is under no legal disability; and
 - (iii) is in possession of the **land**, either personally or through a tenant; and
 - (iv) has not previously entered into any agreement with respect to the **land** that would give rights to a third party to negatively impact on the **landowner's** ability to comply with this deed;
 - (v) has no knowledge of any of the following:
 - (A) public rights of way over the **land**;
 - (B) easements over the **land** other than those registered on the certificates of title to the **land**;
 - (C) notices or orders affecting the **land** other than the usual rates notices and any **land** tax notices; and
 - (D) legal proceedings which would render the sale of the **land** void or voidable or capable of being set aside.

Warranties as to Capacity

3.2 In addition to and despite all other warranties, express or implied, in this deed, the **landowner** and the **water share owner** individually warrant and covenant that:

- (a) they are empowered to enter into this deed and to do all things that will be required by this deed;
- (b) all things have been done or will be done as may be necessary to render this deed legally enforceable and fully valid and binding them; and
- (c) all authorizations or approvals required by law for the performance of the their respective obligations under this deed have been obtained and can and will be obtained; and
- (d) the **landowner** has examined all information relevant to risks, contingencies and other circumstances which could affect its implementation of this deed and which is obtainable by making reasonable enquiries; and it has satisfied

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itself as to the availability of labour and resources required by it in order to carry out its obligations under this deed.

Other landowner representations

3.3 The **landowner** has been advised by the **GBCMA** to seek:

- (a) consent to enter into this deed from any person who has a registered interest in the **land**; and
- (b) legal advice prior to entering into this deed; and
- (c) professional advice prior to entering into this deed regarding any potential tax implications arising from any payments made to the **landowner** under this deed; and
- (d) planning and heritage advice to determine that all **works** undertaken as a result of this deed will comply with planning and heritage requirements.

3.4 The **landowner** will obtain the consent of any party having a registered interest in the **land** if so required.

3.5 The **landowner** warrants that the **land** is connected to a "backbone" channel within the Goulburn Murray Irrigation District (as determined from time to time under Goulburn-Murray Water's Connections Program), or the **landowner** has in place, or will have in place by 13 August 2013, a current executed Connection Agreement with Goulburn-Murray Water whereby the **landowner** agrees with **Goulburn-Murray Water** to connect the **land** to the "backbone".

3.6 The **landowner** warrants that:

- (a) there are no impediments to the **landowner** commencing **works** under this deed upon execution of the deed by all parties to it; and
- (b) commencement and completion of **works** is not dependent upon completion of any other works by third parties (including Goulburn-Murray Water) under any Connection Agreement with Goulburn-Murray Water.

3.7 The **landowner** has not entered, and warrants that it will not enter into an agreement with any other **State** or **Commonwealth** irrigation efficiency program delivery partner to receive funding for the **works** as contemplated by this deed.

GST & ABN status

3.8 The **landowner** and the **water share owner** each warrant that they have either:

- (a) correctly quoted their ABN status to the **GBCMA**; or
- (b) if they do not have an ABN, they have completed a "Statement by a Supplier" in the form approved by the Australian Tax Office stating the reason for not quoting an ABN to an enterprise.

3.9 The **landowner** and the **water share owner** acknowledge that if they fail to comply with clause 3.8, the **GBCMA** is obliged by law to withhold "No ABN withholding tax".

3.10 The **landowner** and the **water share owner** must:

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- (a) immediately notify the **GBCMA** of any changes to the their GST status or ABN; and
- (b) supply proof of its **GST** and ABN status as and when requested by the **GBCMA**.

Apportionment of GST

- 3.11 Where the **landowner** and/or the **water share owner** comprise more than one person, and some of those persons are registered for GST and others are not, the **GBCMA** requires confirmation from the **landowner** and/or the **water share owner** as to how the payments are to be apportioned between the registered and non-registered entities. The **landowner** and the **water share owner** must in these circumstances complete SCHEDULE 7 (Apportionment of Taxable and Non-Taxable Supply on Payments due to **landowner**).
- 3.12 The **GBCMA** may withhold the payments to the parties until such time as SCHEDULE 7 is completed by the **landowner** and provided to the **GBCMA**.

4. Landowner to do works

Definition of Works

- 4.1 The **works** comprise the quoted water savings works specified in Part B of SCHEDULE 2 and the other works specified in Part C of SCHEDULE 2.
- 4.2 The works specified in Part C of SCHEDULE 2 must be:
 - (a) for a minimum of total value specified in Part C of SCHEDULE 2 costed in accordance with the "Schedule of Agreed Costs" in Part D of SCHEDULE 2; and
 - (b) be works that relate to the:
 - (i) pre-construction activities including engineering design and site set-out costs;
 - (ii) decommissioning of existing infrastructure (including removal of existing infrastructure, cultivation and set-out survey costs) on the **land** prior to the works specified in Part B of SCHEDULE 2 commencing;
 - (iii) project management of the works specified in Part B of SCHEDULE 2; and/or
 - (iv) installation of on-farm operational infrastructure on the **land** after the works specified in Part B of SCHEDULE 2 are completed including new fencing, installation of piping and stock troughs and creation of laneways

as approved by the **GBCMA**.

Landowner to do works

- 4.3 The **landowner** will carry out the **works** by the date specified in Item 5 of SCHEDULE 1 in a proper and workmanlike manner, using only persons or entities

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qualified to carry out such **works** diligently, effectively and in good faith and in accordance with this deed.

5. Release by Landowner

5.1 The **landowner** will carry out the **works** entirely at the **landowner's** own risk and the **water share owner** and the **landowner** hereby release, and agree that they are not entitled to make a claim against the **GBCMA**, the **State** or the **Commonwealth** in respect of any liability arising out of:

- (a) any loss or liability incurred by the **water share owner** or the **landowner**;
- (b) damage to any property; or
- (c) injury suffered by, or death of, the **water share owner** or the **landowner** or their employees, agents, contractors or invitees

as a result of this deed, except to the extent that any fault on the part of the **GBCMA**, the **State** or the **Commonwealth** contributed to the relevant loss, liability, damage, injury or death.

6. Funding of works

6.1 The **water share owner** hereby:

- (a) agrees to assign to the **landowner** the **water share owner's contribution**, which amount will form part of the **funding** under this deed; and
- (b) directs the **GBCMA** to pay the **water share owner's contribution** directly to the **landowner** in accordance with clause 7.1(a).

6.2 The **works** will be funded from the following sources:

- (a) the **funding** received under this deed; and
- (b) the **landowner's contributions**.

6.3 The **landowner** must contribute the **landowner's contributions**, whether in-kind or cash contributions, in the amount specified in Item 7 of SCHEDULE 1, which amount must constitute at least 10% of the value of the **works** undertaken by **landowner** pursuant to this deed.

6.4 The **landowner** will use the **funding** solely for the purpose of carrying out the **works** and may not use the **funding** for any other purpose.

6.5 The **landowner** must:

- (a) provide the **landowner's contributions** to complete the **works**; and
- (b) if required by the **GBCMA**, provide satisfactory written evidence upon request of the **landowner's** ability to make the **landowner's contributions**.

7. Payment of Funding

Payments to the landowner

- 7.1 Subject to clause 7.3, the **GBCMA** will pay to the **landowner**:
- (a) the amount specified as "Payment 1" as set out in Item 6 of SCHEDULE 1 (comprising all or part of the **water share owner's contribution**) upon settlement of the **contract for transfer of water share**; and
 - (b) subject to clause 7.2, the amount specified as "Payment 2" in Item 6 of SCHEDULE 1 within 5 **business days** from:
 - (i) a statutory declaration by the **landowner** in the form of SCHEDULE 4 with the required attachments being received by the **GBCMA**; and
 - (ii) the **GBCMA** being satisfied that **works** to a value of "Payment 1" have been completed, and further **works** for which payment is sought have been completed in accordance with this deed; and
 - (c) subject to clause 7.2, the amount specified as "Payment 3" in Item 6 of SCHEDULE 1 within 5 **business days** from:
 - (i) a statutory declaration by the **landowner** in the form of SCHEDULE 4 with the required attachments being received by the **GBCMA**; and
 - (ii) the **GBCMA** being satisfied that the **works** have been completed in accordance with this deed.
- 7.2 The **GBCMA** will only pay to the **landowner** such amounts as have been actually incurred in doing the **works**, and where the **landowner** can produce original invoices for the **works** and (with the exception of **landowner contributions**) original **receipts** for payment of those invoices.

Payments by EFT only

- 7.3 The parties agree that the **GBCMA** will make all payments due to the **landowner** under clause 7.1 by electronic funds transfer ("EFT") into the **landowner's nominated account**.
- 7.4 The **landowner** must:
- (a) retain the **funding** in the **landowner's nominated account** and use those funds solely for the purpose of completing the **works** under this deed;
 - (b) ensure that the **landowner's nominated account** is in the name of the **landowner** or a **related party** of the **landowner** which the **landowner** solely controls.
- 7.5 The **landowner** MUST complete the "EFT Registration" in SCHEDULE 6 authorising the **GBCMA** to pay the **funding** to the **landowner's nominated account**.
- 7.6 Where the nominated account holder is not the **landowner**, the completion of the "EFT Registration" in SCHEDULE 6 constitutes a direction to pay the **landowner's** entitlements under this deed.

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- 7.7 Where incorrect information is provided to the **GBCMA**, liability to correct those payments rests with the **landowner** who provided the incorrect information.

Interest on funding

- 7.8 **Interest** on the **funding** set aside for the payments and held by the **GBCMA** will not form part of the **funding**.

Payments for works undertaken by the landowner

- 7.9 The **GBCMA** will not provide any payment to the **landowner** in respect of the **landowner's** time spent performing any part of the **works** unless the works to be undertaken by the **landowner** are specified in SCHEDULE 2 as to be carried out by the **landowner** and those works are costed at a reasonable contractor rate and included in an invoice from the **landowner**.

Relationship between landowner and GBCMA in relation to landowner's contributions

- 7.10 Under this deed the **GBCMA** is providing funding directly to the **landowner** in consideration for the **landowner** carrying out the **landowner's works** on the **land**. The provision of that funding is an incentive to encourage on-farm efficiencies by the **landowner** to the **land**.
- 7.11 The parties expressly agree that the payments of **funding** by the **GBCMA** to the **landowner** for the **works** constitute funding creating a relationship of grantor and grantee of funding, and does not constitute a sub-contractual relationship between the **GBCMA** and the **landowner**;

Payment of funding withheld

- 7.12 The parties expressly agree that :
- (a) the **GBCMA** will not be obliged to make any payments to the **landowner** under this deed unless and until the **GBCMA** has received the **funding** from the **State**, and any such failure to pay by the **GBCMA** will not constitute a breach of this deed; and
 - (b) except where expressly provided to the contrary in this deed, the **GBCMA** will not pay any amount of **funding** to the **landowner** for partial performance of the **landowner's** works.

Limitation of landowner payments

- 7.13 The **landowner** may not make an advance payment under any subcontract for the **works** that exceeds 50% of the value of the subcontract.

8. Landowner's obligation to acquire quality equipment

- 8.1 The **landowner** must ensure that all equipment (new and second-hand) installed by the **landowner's subcontractor** is of merchantable quality, fit for purpose and consistent with the purpose of the **works**.
- 8.2 The **landowner** agrees that any use of second-hand equipment :
- (a) may involve higher risk than the use of new equipment, and

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- (b) is at the **landowner's** own risk.
- 8.3 The **landowner** must be satisfied, prior to the use of any second-hand equipment in performance of the **works** that the equipment complies with the requirements specified in clause 8.1 above.
- 8.4 If the **GBCMA**, acting reasonably, determines that any use of the second-hand equipment has reduced the expected benefits from the **works** and does not comply with the requirements of this deed, the **GBCMA** may:
 - (a) withhold a **payment** in whole or in part; and / or
 - (b) require the **landowner** to carry out remedial works at the **landowner's** cost.

9. Financial records

- 9.1 The **landowner** must at its own cost keep financial accounts and **records** relating to the **works** and retain all receipts and payments relating to the **works** separately identified and reported in accordance with this deed.
- 9.2 If requested by the **GBCMA**, the **landowner** must from the financial accounts and **records**:
 - (a) prepare financial statements of its income and expenditure in respect of the payments of **funding** and **landowner's contributions** (if any), in accordance with **Australian accounting standards** including:
 - (i) an income and expenditure statement;
 - (ii) a Schedule of the **assets** acquired, sold, written-off or otherwise disposed of; and
 - (iii) a statutory declaration in the form of SCHEDULE 4 for the **financial year(s)** to date compared with the details set out in SCHEDULE 2; and
 - (b) have the financial statements referred to in (a) above audited in accordance with **Australian auditing standards**.
- 9.3 The operation of this clause 9 survives the expiration or earlier termination of this deed.

10. Works records

- 10.1 The **landowner** must keep full and accurate accounts and **records** of:
 - (a) the conduct of the **works**;
 - (b) the receipt and use of **landowner's contributions** (if any);
 - (c) the acquisition of **assets**;
 - (d) the **agreed water savings**, the **GBCMA's share of agreed water savings** and the transfer of the **GBCMA's share of agreed water saving** to the **GBCMA**; and

- (e) the creation of **intellectual property rights** in **activity material**.
- 10.2 **Records** and accounts specified in clause 10.1 must be retained by the **landowner** for a period of no less than 7 years after expiry of the **term of this deed**.
- 10.3 The operation of clause 10 survives the expiration or earlier termination of this deed.

11. Audits

- 11.1 The **GBCMA** reserves the right to conduct at its own cost an audit of the **landowner's** financial accounts and **records** at any time up to 7 years after the expiry of the **term of this deed**, and the **landowner** agrees to retain and make available all financial accounts and **records** to the **GBCMA** for this purpose.
- 11.2 The **landowner** acknowledges that the **State** and the **Commonwealth** may, at their discretion, conduct an independent audit of the **landowner** and any **subcontractor(s)** having regard to their obligations and warranties under this deed. The subject matter of any audit conducted pursuant to this clause may include financial and technical matters, the extent to which the parties are aware of their obligations and have complied with clause 29 (including in respect to occupational health and safety) and whether water savings have accrued as represented in the **project**.
- 11.3 The **landowner** agrees to give the **State** and/or the **Commonwealth** access to the **landowner's land**, **records** and personnel to enable the **State** and/or the **Commonwealth** to conduct an audit or review and inspection of the **works** by a person appointed by the **State** and/or the **Commonwealth** of any aspect of the **project** including verifying the carrying out of the **works** for which the **funding** has been paid, and whether those **works** have achieved the **agreed water savings**. The **landowner** acknowledges that the **GBCMA** holds these rights as agent of and trustee for the **State** and the **Commonwealth** and that the **State** and the **Commonwealth** are treated to that extent as parties to this deed.
- 11.4 In conducting an audit contemplated by this clause the **State** or **Commonwealth** may take into consideration:
 - (a) the records the subject of clause 10.1;
 - (b) any other information or materials reasonably required (and the **landowner** must comply and must ensure that its **subcontractors** comply with any reasonable request to provide such information or material),and may conduct a site inspection as contemplated by clause 23.1.
- 11.5 The **landowner** must ensure that its contractual arrangements with **subcontractors** reflect the requirements of this clause 11.
- 11.6 The operation of this clause 11 survives the expiration or earlier termination of this deed.

12. Provision of security

- 12.1 The **landowner** must not use any of the **funding**, this deed, or any **assets** as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, except with the written consent of the **GBCMA**.

13. Contract for transfer of water entitlements

- 13.1 This deed is conditional upon the **landowner** (or where applicable the **water share owner**) entering into a binding **contract for transfer of water entitlements** prepared by or on behalf of the **GBCMA** for the purpose of the **Project**.
- 13.2 The **GBCMA** will not make any payments to the **landowner** under this deed until the settlement of the **contract for transfer of water entitlements**.
- 13.3 A breach of the **contract for transfer of water entitlements** is a breach of this deed.
- 13.4 The **landowner** undertakes, if requested by the **GBCMA**, to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 13.

14. Assets

- 14.1 The **landowner** agrees not to use the **funding** to create or acquire any asset apart from the **assets** specified in SCHEDULE 2.
- 14.2 Throughout the **term of this deed**, the **landowner** agrees:
- (a) not to encumber or **dispose** of any **asset**, or deal with or use any **asset** other than in accordance with this clause 14;
 - (b) to hold all **assets** securely and safeguard them against theft, loss, damage, or unauthorised use;
 - (c) to maintain all **assets** in good working order;
 - (d) maintain all appropriate insurances for all **assets** to their full replacement value and provide satisfactory written evidence of this to the **GBCMA** when requested;
 - (e) if required by law, maintain registration and licensing of all **assets**;
 - (f) to be fully responsible for, and bear all risks relating to, the use or disposal of all **assets**; and
 - (g) as and when requested by the **GBCMA** to the **landowner**, provide copies of the **assets** register to the **GBCMA**.
- 14.3 If any **asset** is lost, stolen, damaged or destroyed, or not maintained, during the **term of this deed**, the **landowner** must reinstate the **asset** including from the proceeds of the insurance and this clause 14.3 continues to apply to the reinstated **asset**.

15. Reporting

- 15.1 The **landowner** agrees to provide the **GBCMA** with written reports at the times and containing the information, specified in SCHEDULE 5.
- 15.2 If requested by the **GBCMA** the **landowner** must within 40 **business days** after the request from the **GBCMA**, provide the following to the **GBCMA**:

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- (a) audited financial statements of its income and expenditure in respect of the **funding, landowner's contributions** (if any), and **works generated income** that include:
 - (i) a definitive statement as to whether the financial information for the **works** is true and fair and is based on proper accounts and **records**;
 - (ii) a definitive statement as to whether the **funding** (and any **landowner's contributions** and **works generated income**) was spent for the **works** and in accordance with this deed; and
 - (b) a statement of financial position (assets and liabilities by class), which must include, under assets, the balance of the **landowner's** account referred to in clause 15.6(a).
- 15.3 The information required to be provided under clauses 15.1 and 15.2 must be accompanied by a certificate from the **landowner** that:
- (a) all **funding** received and **landowner's contributions** (if any), and **works generated income** was spent for the purpose of the **activity** and in accordance with this deed and that the **landowner** has complied with this deed;
 - (b) salaries and allowances paid to persons involved in the **landowner's project** are in accordance with any applicable award or agreement in force under any relevant law;
 - (c) where an **asset** has been created or acquired with the **funding**, that the **landowner** has complied with this clause 15 in respect of those **assets**; and
 - (d) at the time the **report** or financial statement is provided to **GBCMA**, the **landowner** is able to pay all of its debts as and when they fall due
- and any financial information required must be presented in accordance with any other financial reporting requirements which the **GBCMA** may notify to the **landowner**.
- 15.4 The **landowner** agrees that the financial statements referred to in clause 15.2 will comply with **Australian accounting standards** and will be prepared by a **qualified accountant**.
- 15.5 The **landowner** agrees that the audit referred to in clause 15.2 will be carried out by an **approved auditor** and comply with the **Australian auditing standards**.
- 15.6 The **landowner** is responsible for:
- (a) consolidating its financial statements;
 - (b) arranging for those consolidated statements to be audited by an **approved auditor**; and
 - (c) ensuring that the audit complies with the **Australian auditing standards**.
- 15.7 The operation of this clause 15 survives the expiration or earlier termination of this deed.

16. GST

- 16.1 Unless otherwise indicated, any consideration for a supply made under this deed is exclusive of any **GST** imposed on the supply.
- 16.2 If one party (the supplier) makes a **taxable supply** to the other party (the recipient) under this deed, 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. Alternatively if both the supplier and the recipient enter into an "Agreement for the Recipient of Supplies to Create Tax Invoices" in the form of SCHEDULE 8 then the recipient will prepare a Recipient Created Tax Invoice against which payment will be made. The supplier will not issue **tax Invoices** in respect of those supplies.
- 16.3 No party may claim or retain from the other party any amount in relation to a supply made under this deed for which the first party can obtain an **input tax credit** or decreasing adjustment.

17. Indemnity

- 17.1 The **landowner** indemnifies (and keeps indemnified) the **GBCMA**, the **State** and the **Commonwealth** against any:
- (a) loss or liability incurred by the **GBCMA**, the **State** and/or the **Commonwealth**;
 - (b) loss of or damage to the **GBCMA**, the **State** and/or the **Commonwealth's** property; or
 - (c) loss or expense incurred by the **GBCMA** in dealing with any claim against the **GBCMA**, the **State** and the **Commonwealth** (whether or not successful), including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the **GBCMA**, the **State** and the **Commonwealth**;
- arising from:
- (d) any act or omission by the **landowner**, its employees, agents, volunteers, **advisers** and the **subcontractor** in connection with this deed, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
 - (e) any breach by the **landowner** of its obligations or warranties under this deed; or
 - (f) the use of the **assets** by the **landowner**.
- 17.2 The **landowner's** liability to indemnify the **GBCMA**, the **State** and the **Commonwealth** under this clause 17 will be reduced proportionally to the extent that any fault on the **GBCMA's** part contributed to the relevant loss, damage, expense, or liability.
- 17.3 The **GBCMA**, the **State** and the **Commonwealth's** right to be indemnified under this clause 17 is in addition to, and not exclusive of, any other right, power, or remedy

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provided by law, but the **GBCMA** is not entitled to be compensated in excess of the amount of the relevant liability, damage, loss, or expense.

- 17.4 In this clause 17, “fault” means any negligent or unlawful act or omission or wilful misconduct.

18. Insurance

- 18.1 The **landowner** must, for as long as any obligations remain in connection with this deed, have the insurance specified in Item 11 in SCHEDULE 1 in respect of the **works**.
- 18.2 Whenever requested, the **landowner** must provide the **GBCMA**, within 10 **business days** of the request, with evidence that is satisfactory to the **GBCMA** (including a copy of the policy wording if required) that the **landowner** maintains the insurances referred to in clause 18.1.
- 18.3 The **landowner** must complete the authority to the **landowner's** insurer in the form of Schedule 9 attached to allow the **GBCMA** to obtain a certificate of currency directly from the landowner's insurer if necessary.
- 18.4 All insurance under this clause 18 and clause 14.2(d) is to be taken out with an insurer recognised by the Australian Prudential Regulation Authority or regulated by a State/Territory **Auditor-General**.

19. Intellectual Property

Ownership of intellectual property

- 19.1 The **landowner** and the **water share owner** acknowledge and agree that the ownership of all **intellectual property** created in relation to the **project** vests in the **State** upon creation. The **State** has provided a licence to the **GBCMA** to use this **intellectual property**.
- 19.2 The **landowner** and the **water share owner** assign ownership of all **intellectual property** referred to in clause 19.1 to the **State** and will ensure that its employees, contractors and agents execute all documents and do all things necessary to assign to the **State** all such rights. Notwithstanding anything to the contrary set forth herein, the **landowner** and the **water share owner** and each of its **subcontractors** will retain all rights in **intellectual property** (including their methodologies, ideas, know how, techniques, models, tools, skills, generic industry information, knowledge and experience, and any graphic representations of any of these) possessed or acquired prior to the **project**.
- 19.3 Clauses 19.1 and 19.2 do not apply to **intellectual property** belonging to the **landowner** or the **water share owner** or others where such **intellectual property** has been exclusively or substantially created other than in connection with the **project**, but is employed in relation to the **project**.
- 19.4 The **landowner** and the **water share owner** grant to the **State** and the **GBCMA** a perpetual, non-exclusive, paid-up licence (including the right to sub-license) to use all **intellectual property** referred to in clause 19.3 for the purposes that the **State** or the **GBCMA** consider fit.

Warranty and Indemnity

- 19.5 The **landowner** and the **water share owner** warrant to the **GBCMA** that any **intellectual property** provided by the **landowner** and the **water share owner** and embodied in or used in connection with the **project** is the sole property of the **landowner** or the **water share owner**, or the **landowner** or the **water share owner** are legally entitled to use the **intellectual property** for the purposes of the **project**.
- 19.6 The **landowner** and the **water share owner** must indemnify and keep indemnified the **GBCMA** against any costs, losses, expenses or damages incurred by the **GBCMA** by reason of the **landowner** and the **water share owner's** failure to comply with this clause 19.

Intellectual property in material provided by the GBCMA

- 19.7 **Intellectual property** in all manuals, drawings, computer programs and other information provided to the **landowner** and the **water share owner** by the **GBCMA** or the **State** for reproduction or guidance in relation to the **project** remains vested in the **State**. This information must not be used or reproduced for any other purpose without the prior written approval of the **GBCMA** or the **State**.

Moral Rights

- 19.8 The **landowner** and the **water share owner** must procure from any of their employees or agents that produce or contribute to the production of any document any moral rights consents required by the **GBCMA**.
- 19.9 The **landowner** and the **water share owner** must ensure that any consent it obtains pursuant to this clause 19.9 is given genuinely and is not obtained by duress or as a result of a false or misleading statement.
- 19.10 The rights and obligations pursuant to this clause 19 survive the suspension, expiration or termination of this deed.

20. Confidentiality and Restrictions after Termination

Use of information

- 20.1 The **landowner** and the **water share owner** must not, whether during or after the **term**, make any improper use of:
- (a) any trade secrets or any financial, accounting, marketing or technical information, customer and supply lists, pricing information, ideas, inventions, techniques, systems, concepts, formulae, know how, technology, operating procedures, processes, knowledge or other information belonging to, used by or relating to the **State** in the conduct of its business or gained as a result of the **landowner** and the **water share owner** involvement in the **project** at any time;
 - (b) the position of the **GBCMA** on any confidential matter; or
 - (c) any other information which may be detrimental to the interests of the **GBCMA** or any other person who has provided information to the **GBCMA** on a confidential basis, unless the **landowner** and the **water share owner** are required to disclose the information by law.

Non-disclosure

- 20.2 The **landowner** and the **water share owner** must not disclose to any third party or use any material or information referred to in clauses 20.1(a) to 20.1(c) without the prior written consent of the **GBCMA's** Representative. This does not apply to disclosure to the **landowner** and the **water share owner** legal representatives, accountants and auditors, provided such disclosure is subject to an obligation of confidentiality on similar terms to this deed.
- 20.3 The **landowner** and the **water share owner** may only use any material or information referred to in clauses 20.1(a) to 20.1(c) provided by the **State** for the sole purpose of undertaking the **project**.
- 20.4 The **landowner** and the **water share owner** must take and cause its **personnel** to take all necessary precautions to maintain the secrecy and confidentiality of any material or information referred to in clauses 20.1(a) to 20.1(c), including using their best endeavours to prevent improper publication or disclosure by a third party.
- 20.5 The rights and obligations pursuant to this clause 20 survive the suspension, expiration or termination of this deed.

21. Protection of personal information

- 21.1 This clause 21 applies only where the **landowner** deals with **personal information** when, and for the purpose of, conducting the works under this deed.
- 21.2 The **landowner** agrees to be treated as a 'contracted service provider' within the meaning of section 6 of the **Privacy Act**, and agrees in respect to the conduct of the **works** under this deed:
- (a) to use or disclose **personal information** obtained during the course or carrying out the **works** under this deed only for the purposes of this deed;
 - (b) not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the **Privacy Act**, which if done or engaged in by an agency, would be a breach of that IPP;
 - (c) to carry out and discharge the obligations contained in the IPPs as if the **landowner** were an agency under that Act;
 - (d) to notify individuals whose **personal information** the **landowner** holds, that complaints about the **landowner's** acts or practices may be investigated by the **Privacy Commissioner** who has power to award compensation against the **landowner** in appropriate circumstances;
 - (e) not to use or disclose **personal information** or engage in an act or practice that would breach section 16F (direct marketing) of the **Privacy Act**, a National Privacy Principle (NPP) (particularly NPPs 7 to 10) or an Approved Privacy Code (APC), where that section, NPP or APC is applicable to the **landowner**, unless:
 - (i) in the case of section 16F - the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this deed; or

- (ii) in the case of an NPP or an APC - the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this deed;
 - (f) to disclose in writing to any person who asks, the content of the provisions of this deed (if any) that are inconsistent with an NPP or an APC binding a party to this deed;
 - (g) to immediately notify the **GBCMA** if the **landowner** becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 21, whether by the **landowner** or any **subcontractor**;
 - (h) to comply with any directions, guidelines, determinations or recommendations of the **Privacy Commissioner** to the extent that they are not inconsistent with the requirements of this clause 21; and
 - (i) to ensure that any of the **landowner's** employees, officers, advisers or volunteers who are required to deal with **personal information** for the purposes of this deed are made aware of the **landowner's** obligations set out in this clause 21.
- 21.3 The **landowner** agrees to ensure that any contract entered into for the purpose of fulfilling the **landowner's** obligations under this deed contains provisions to ensure that the **subcontractor** has the same awareness and obligations as the **landowner** has under this clause, including the requirement in relation to contracts.
- 21.4 The **landowner** agrees to indemnify the **GBCMA** in respect of any loss, liability or expense suffered or incurred by the **GBCMA** which arises directly or indirectly from a breach of any of the **landowner's** obligations under this clause 21, or the **subcontractor** under the Contract provisions referred to in clause 21.3.
- 21.5 In this clause 21, the terms 'agency', 'Approved Privacy Code' (APC), 'Information Privacy Principles' (IPPs), and 'National Privacy Principles' (NPPs) have the same meaning as they have in section 6 of the **Privacy Act**, and 'subcontract' and other grammatical forms of that word has the meaning given in section 95B(4) of the **Privacy Act**.
- 21.6 The rights and obligations pursuant to this clause 21 survive the suspension, expiration or termination of this deed.

22. Conflict of interest

Landowner's warranty

- 22.1 The **landowner** warrants that, to the best of its knowledge after making diligent inquiry, at the date of this deed no **conflict** exists or is likely to arise in the performance of the **landowner's** obligations under this deed.

Landowner to use best endeavours

- 22.2 Without limiting the operation of this clause 22, the **landowner** must, during the **term of this deed**, use its best endeavours to ensure that no **conflict** arises through the **landowner's** involvement with the parties or programs.

Landowner to notify of potential Conflict of Interest

- 22.3 Any potential conflict of interest known at the date of this deed is contained in the Declaration of Interest contained in SCHEDULE 3.
- 22.4 If during the **term of this deed**, a **conflict** arises the **landowner** must:
- (a) immediately notify the **GBCMA** in writing of that **conflict** and of the steps that the **landowner** proposes to take to resolve or otherwise deal with the Conflict;
 - (b) make full disclosure to the **GBCMA** of all relevant information relating to the Conflict; and
 - (c) take such steps as the **GBCMA** may, if it chooses to, reasonably require to resolve or otherwise deal with that Conflict.
- 22.5 If the **landowner** fails to notify the **GBCMA** under this clause 22, or is unable or unwilling to resolve or deal with the **conflict** as required, the **GBCMA** may, where the **conflict** directly involves the **landowner**, terminate this deed in accordance with clause 26; or reduce the scope of this deed in accordance with clause 25.

23. Access to land and records

- 23.1 The **landowner** must give the **GBCMA** and persons authorised by the **GBCMA** (referred to in this clause 23 collectively as ‘those permitted’) access to premises at which **records** and **material** associated with this deed are stored at all reasonable times and allow those permitted to inspect and copy **records** and **material**, in the **landowner’s** possession or control, for purposes associated with this deed or any review of performance under this deed. The **landowner** must also give those permitted access to any **assets**, wherever they may be located, and reasonable access to the **landowner’s** employees, for the same purposes.
- 23.2 The **landowner** must provide all reasonable assistance requested by those permitted when they exercise the rights under clause 23.1 including:
- (a) making available all information, documentation and data, in any medium, required by the **GBCMA**, and
 - (b) making available the **landowner’s** employees, officers, volunteers and advisors who must provide access to the **landowner’s** computer **records** and copies of documentation, including computer discs or other forms of electronic data.
- 23.3 The rights referred to in clause 23.1 are subject to:
- (a) the provision of reasonable prior notice by those permitted (except where they believe that there is an actual or apprehended breach of the law); and
 - (b) the **landowner’s** reasonable security procedures.
- 23.4 The requirement for access as specified in clause 23.1 does not in any way reduce the **landowner’s** responsibility to perform the **landowner’s** obligations in accordance with this deed.

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23.5 In addition to any other obligation under this deed, the **landowner** must give persons authorised by the **GBCMA** access to, or arrange for access to be given to, locations where the **landowner** will undertake, is undertaking or has undertaken the **works**. The **GBCMA** may, at its absolute discretion, exercise rights under this clause for any reasonable purpose including to ascertain whether:

- (a) the **landowner** is aware of its obligations under clause 29 [Compliance with laws and Policies]; and/or
- (b) the **landowner** is completing the **works** (as the case may be) in accordance with the requirements of this deed

but any such inspection or review by the **GBCMA** under this clause will not oblige or otherwise diminish the **landowner's** responsibilities for complying with those requirements under this deed or at law.

23.6 The rights and obligations pursuant to this clause 23 survive the suspension, expiration or termination of this deed.

24. Delay

24.1 The **landowner** must take all reasonable steps to minimise delay in completion of the **works**.

24.2 If the **landowner** becomes aware that it or the **subcontractor** will be delayed in progressing or completing the **works** in accordance with this deed, the **landowner** must immediately notify the **GBCMA** in writing of the cause and nature and likely extent of the delay. The **landowner** is to detail in the notice the steps it will take to contain the delay.

24.3 On receipt of a notice of delay, the **GBCMA** may at its option, and subject always to the consent of the **State** and the **Commonwealth**:

- (a) notify the **landowner** in writing of a period of extension to complete the **works** and vary this deed accordingly;
- (b) notify the **landowner** in writing of a reduction in the scope of the **works** and any adjustment to the **funding** for the **landowner** to complete the reduced **works** and vary this deed accordingly;
- (c) terminate this deed under clause 26 or take such other steps as are available under this deed; or
- (d) where the **GBCMA** acting reasonably determines that there is no legitimate reason for the delay, notify the **landowner** that it is required to comply with the time frame for progressing and completing the **works**.

24.4 Except to the extent that the **GBCMA** takes action under clause 24.3, the **landowner** is required to comply, and must ensure that its **subcontractors** comply, with the time frame for progressing and completing the **works** as set out in this deed.

24.5 If the **landowner** does not notify the **GBCMA** of any delay in progressing or completing the **works** in accordance with clause 24.2 the **GBCMA** may, at its sole discretion, terminate this deed under clause 26.

25. Termination with costs and reduction in scope

- 25.1 If the **State** terminates or suspends funding to the **GBCMA** for any reason, the **GBCMA** may at any time before or during the **term of this deed** by written notice to the **landowner**, terminate this deed or reduce the scope of this deed without prejudice to the rights, liabilities, or obligations of the parties to this deed accruing prior to the date of termination. If this deed is terminated or reduced in scope the **GBCMA** will only be liable for:
- (a) subject to clause 25.3 and 25.4, payments under the payment provisions of this deed; and
 - (b) subject to clauses 25.4, 25.4(b)(i) and 25.6, any reasonable costs incurred by the **landowner** and directly attributable to the termination of this deed or reduction in scope of this deed.
- 25.2 Upon receipt of a notice of termination or reduction in scope the **landowner** must:
- (a) cease or reduce the performance of the **landowner's** obligations under this deed in accordance with the notice;
 - (b) immediately do everything possible to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope contained in the notice;
 - (c) immediately return to the **GBCMA** any **funding** in accordance with paragraph 25.3(b) or clause 25.4 or otherwise deal with any such **funding** as the **GBCMA** may direct in writing; and
 - (d) ensure that its **subcontractors** are required to comply with the requirements of this clause to the extent necessary to give effect to the notice issued by the **GBCMA**.
- 25.3 Where the **GBCMA** terminates this deed under clause 25.1 the **GBCMA**:
- (a) will not be obliged to pay to the **landowner** any outstanding amount of the **funding** except to the extent that those monies have been spent by the **landowner**, or are legally due and payable or legally and irrevocably committed by the **landowner** in accordance with this deed (written evidence of which will be required) for **works** done up to the earlier of the **activity period**, or the date on which the notice of termination given under clause 25.1 is deemed to be received in accordance with clause 40; and
 - (b) will be entitled to recover from the **landowner** any part of the **funding** which:
 - (i) is not legally due and payable or has not been legally and irrevocably committed by the **landowner** in accordance with this deed (written evidence of which will be required) for **works** done up to the earlier of the **activity period**, or the date on which the notice of termination given under clause 25.1 is deemed to be received in accordance with clause 40; or
 - (ii) has not, in the **GBCMA's** opinion, been expended by the **landowner** in accordance with the terms and conditions of this deed or by a **landowner** in accordance with the terms and conditions in its contract with the **subcontractor**;

and all such **funding** will, without prejudice to any other rights available to the **GBCMA** under this deed or at law or in equity, be regarded as a debt due to the **GBCMA** by the **landowner** capable of being recovered as such in any court of competent jurisdiction.

25.4 If there is a reduction in scope of the obligations under this deed:

- (a) the **GBCMA**'s liability to pay any part of the **funding** will, in the absence of the written agreement of the parties to the contrary, abate proportionately to the reduction in the **landowner's** obligations under this deed; and
- (b) the **GBCMA** will be entitled to recover from the **landowner** any **funding** that was provided for that part of the **works** that has been removed by the reduction in scope that:
 - (i) is not legally due and payable or has not been legally and irrevocably committed by the **landowner** in accordance with this deed (written evidence of which will be required) for **works** done up to the earlier of the **activity period**, or the date on which the notice of termination given under clause 25.1 is deemed to be received in accordance with clause 40; or
 - (ii) has not, in the **GBCMA**'s opinion, been expended by the **landowner** in accordance with the terms and conditions of this deed or by a **landowner** in accordance with the terms and conditions in its contract with the **subcontractor**.

25.5 The **GBCMA**'s liability to pay any compensation under or in relation to this clause 25 is subject to:

- (a) the **landowner's** strict compliance with this clause 25;
- (b) each **subcontractor's** strict compliance with the requirements in its contract with the **landowner** that are equivalent to the requirements in this clause 25;
- (c) the **landowner's** substantiation of any amount claimed under paragraph 25.1(b); and
- (d) the **landowner** agreeing that the **GBCMA** is not required to return to the **landowner** or to the **water share owner** the water shares that have been transferred to the **GBCMA** under the **Contract for transfer of water entitlements**.

25.6 The **GBCMA** will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 25 or loss of any benefits that would have been conferred on the **landowner** had the termination or reduction not occurred.

26. Termination For Default

26.1 If:

- (a) the **landowner** fails to fulfil, or is in breach of, any of its obligations under this deed and does not rectify the failure or breach within 20 **business days** of receiving a notice in writing from the **GBCMA** to do so;

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- (b) the **landowner** is unable to pay all of its debts as and when they become due and payable;
- (c) the **landowner** commits an act of bankruptcy under the provisions of Part IV of the *Bankruptcy Act 1966*;
- (d) the **landowner** fails to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
- (e) the **landowner** has applied to come under, received a notice requiring it to show cause why it should not come under, or has otherwise come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in incorporated associations legislation of the States and Territories, or an order has been made for the purpose of placing the **landowner** under external administration;
- (f) in relation to this deed, the **landowner** breaches any laws of a State or Territory;
- (g) the **landowner** ceases to carry on business;
- (h) the **GBCMA** is satisfied at any time that any statement made in the **landowner's** application for funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the funding;
- (i) the **GBCMA** is satisfied at any time that the **landowner** is unable to complete the **works** in accordance with this deed;
- (j) notice is served on the **landowner** or any proceedings are taken to wind up the **landowner** or cancel the **landowner's** incorporation or registration or to dissolve the **landowner** as a legal entity;
- (k) the **GBCMA** is not reasonably satisfied that the purposes and activities of the **landowner** remain compatible with the intent of the deed;
- (l) the **landowner**, by written notice to the **GBCMA**, withdraws from the deed; or
- (m) the **GBCMA** considers that the **landowner** is unable to perform its obligations under this deed or has breached its obligations under this deed

then, in the case of any one or more of these events, the **GBCMA** may immediately terminate this deed by giving written notice to the **landowner** of the termination.

26.2 Where the **GBCMA** terminates this deed under clause 26.1, the **GBCMA**:

- (a) will not be obliged to pay to the **landowner** any outstanding amount of the **funding** except to the extent that those monies are legally due and payable or have been legally and irrevocably committed by the **landowner** in accordance with this deed (written evidence of which will be required) for **works** done up to the earlier of the **activity period**, or the date on which the notice of termination given under clause 25.1 is deemed to be received in accordance with clause 40; and
- (b) will be entitled to recover from the **landowner** the whole of the **liquidated damages amount** as a liquidated sum payable on demand.

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- 26.3 If the **landowner** does not repay to the **GBCMA** the amount referred to in clause 26.2 within 10 **business days** of receipt of the notice provided under clause 26.1 (or if a different period is stated in the notice, that period) the **landowner** must also pay the **GBCMA Interest** on the outstanding amount which the **landowner** acknowledges represents a reasonable pre-estimate of the loss incurred by the **GBCMA** as a result of the loss of investment opportunity for, or the reasonable cost of borrowing other money in place of, the amount which should have been repaid. The amount set out in the notice, and **interest** owed under this clause will, without prejudice to any other rights available to the **GBCMA** under this deed or at law or in equity, be recoverable by the **GBCMA**, at its sole discretion, as a debt due to the **GBCMA** by the **landowner**.
- 26.4 This clause 26 does not limit or exclude any of the **GBCMA's** other rights, including the right to recover any other amounts from the **landowner** on termination of this deed.

27. Subcontracting

- 27.1 The **landowner** is fully responsible for the performance of all of its obligations under this deed, even though the **landowner** may have entered into agreements with **subcontractors** to carry out the **works**.
- 27.2 The **landowner** is responsible for ensuring the suitability of a **subcontractor** for the **works** and for ensuring that such **work** meets the requirements of this deed.
- 27.3 The **landowner** must ensure that any contract placed with a **subcontractor**:
- (a) is consistent with, and gives effect to, the **landowner's** obligations in this deed including, without limitation, the obligations to comply with clause 45 (Animal Ethics); clause 46 (The National Code of Practice for the Construction Industry) and clause 47 (Building and Construction OHS Accreditation Scheme); and
 - (b) reserves a right of termination to take account of the **GBCMA's** right of termination under clauses 25 or 26, and the **landowner** must, where appropriate, make use of that right in the event of a termination or revocation by the **GBCMA**.

28. Acknowledgment and Publicity

- 28.1 The **landowner** must obtain the **GBCMA's** written approval for each public announcement, or publication issued by, the **landowner** that relates to the **works**, the **funding** or this deed prior to the making of that announcement or issuing of that publication. In all publications, promotional and advertising materials, public announcements and public activities the **landowner** must acknowledge the financial and other support provided by the **State** and the **Commonwealth** for the **works**.
- 28.2 The **landowner** acknowledges that the **State** or **Commonwealth**:
- (a) reserves the right to publicise the funding for the **works**; and
 - (b) may do this by media releases, general announcements about the **funding** and in annual reports specifying the **landowner's** name, the **GBCMA's** name, the amount of the **funding** provided and the title and a brief description of the **works**.

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- 28.3 The rights and obligations pursuant to this clause 28 survive the suspension, expiration or termination of this deed.

29. Compliance with Laws and GBCMA Policies

- 29.1 The **landowner** must in carrying out its obligations under this deed, and must ensure that its **subcontractors**, comply with the provisions of all relevant statutes, regulations, by-laws and requirements of the **Commonwealth**, or any State, Territory or local authority.
- 29.2 The **landowner** must, in carrying out its obligations under this deed, comply, and ensure each **subcontractor** complies, with any of the **GBCMA's** policies as notified referred to, or made available, by the **GBCMA** to the **landowner** in writing.

30. Negation of legal relationship of employment, partnership and agency

- 30.1 The **landowner**, its employees, officers, volunteers, partners or **advisers** will not, by virtue of this deed, be or for any purpose be deemed to be the **GBCMA's** legal subcontractors, employees, partners or agents.
- 30.2 The **landowner** must not, and must ensure that its subcontractors, employees, officers, volunteers, partners, or **advisers** do not, represent the **landowner** or themselves as being the **GBCMA's** subcontractors, employees, officers, volunteers, partners or **advisers** or as otherwise able to bind or represent the **GBCMA**.

31. Entire deed, variation and severance

- 31.1 This deed records the entire agreement between the parties to this deed in relation to its subject matter.
- 31.2 Except to the extent the **GBCMA** is expressly authorised to unilaterally vary this deed, no variation of this deed is binding unless it is agreed in writing and signed by the Parties.
- 31.3 If a court or tribunal says any provision of this deed has no effect or interprets a provision to reduce an obligation or right, this does not invalidate any other provision.

32. Essential Terms

- 32.1 The obligations in clauses 3.1; 3.8 ; 3.10; 3.11 ;4 ; 5.1; 6.1; 6.3; 6.4; 6.5; 8.1; 9.1; 9.2; 10.1; 10.2; 11; 12.1; 13.1; 13.3; 14; 15; 16; 17.1;18; 19.5; 20.1; 20.2; 21.2; 22; 23.1; 24.1; 28.1; 29; 34; 37.2; 38 ; 42; 44; 46; 47 and 48 are essential terms of this deed the breach of which constitutes a material breach of this deed.
- 32.2 Where the **landowner** or the water share owner commits a material breach of an essential term of this deed, the **GBCMA** has the remedies set out in clause 26 is also relieved of a duty of further performance under this deed.

33. Waiver

- 33.1 If either party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.
- 33.2 A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right.

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33.3 Waiver of any provision of, or right under, this deed:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in the written waiver.

33.4 In this clause 33, 'rights' means rights or remedies provided by this deed or at law.

34. Assignment and Novation

34.1 The **landowner** must not assign its rights under this deed, without prior written approval from the **GBCMA** and upon such conditions as the **GBCMA** deems reasonable, including that the costs of obtaining consent to assignment or novation of this deed and of satisfying the **GBCMA's** requirements will be borne by the **landowner**.

34.2 The **landowner** agrees not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of this deed without first obtaining the prior written approval of the **GBCMA**.

35. Dispute Resolution

35.1 Subject to clause 35.3, both Parties agree not to commence any legal proceedings in respect of any dispute arising under this deed, which cannot be resolved by informal discussion, until the procedure provided by this clause has been utilised.

35.2 Both parties agree that any dispute arising during the course of this deed is dealt with as follows:

- (a) the party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
- (b) the parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute;
- (c) the parties have 10 **business days** from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
- (d) if:
 - (i) there is no resolution of the dispute;
 - (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 **business days** of the submission, or such extended time as the Parties may agree in writing before the expiration of the 15 **business days**,

then either party may commence legal proceedings.

35.3 This clause 35 does not apply to the following circumstances:

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- (a) either party commences legal proceedings for urgent interlocutory relief;
 - (b) action by the **GBCMA** under or purportedly under clauses 24; 25 or 26; or
 - (c) an authority of the **Commonwealth**, a State or Territory is investigating a breach or suspected breach of the law by the **landowner**.
- 35.4 Despite the existence of a dispute, both Parties must (unless requested in writing by the other party not to do so) continue to perform their respective obligations in accordance with this deed.
- 35.5 The **landowner** must inform the **GBCMA** of any significant dispute between the **landowner** and a **subcontractor**. The **GBCMA** will not however, be responsible for mediating or resolving any such dispute.

36. Review

- 36.1 The **landowner** agrees to provide all reasonable assistance required by the **GBCMA** in relation to the **State** or the **Commonwealth** conducting any review and final evaluation of the **project**.

37. Transfer of right, title and interest in land

- 37.1 Subject to clause 37.2, nothing in this deed will prevent a **landowner** from entering into a transfer, lease or mortgage whereby the right, title and interest of the **landowner** in any land affected by this deed is transferred to a third party.
- 37.2 The **landowner** must ensure that, upon any transfer, lease or mortgage mentioned in clause 37.1 the transferee/lessee/mortgagee is made aware of the existence of this deed.
- 37.3 This deed survives a transfer, lease or mortgage of the **land** to a third party and will continue to bind the parties to it despite such transfer, lease or mortgage of the **land**. The **landowner** must make its own arrangements with any transferee, lessee or mortgagee to deal with implications of this deed.

38. Trust capacity

- 38.1 If the **landowner** is specified in Item 1 of SCHEDULE 1 to be acting in the capacity of trustee for the trust specified in Item 1 of SCHEDULE 1 (the "**trust**"), then the **landowner** makes the following warranties:
- (a) the **landowner** is the sole trustee of the **trust** and is authorised by the trust to enter into this deed;
 - (b) the **landowner** will not, without the written consent of the **GBCMA**:
 - (i) resign as trustee of the **trust**;
 - (ii) cause the **trust** to vest;
 - (iii) distribute the whole or any part of the capital of the **trust** fund;
 - (iv) allow the **landowner** to become disqualified from continuing to act as trustee of the **trust**;

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- (v) exercise any trustee powers under the **trust** deed which would result in the rights of the **GBCMA** under this deed to be compromised;
- (vi) do anything which will or might constitute a breach of the **trust**, nor cause or allow anything to be done which would prejudice the right of the **landowner** as trustee of the **trust** to be indemnified from the assets of the **trust** fund; nor
- (vii) cause or suffer any instrument constituting the **trust** to be varied in any respect.

39. Giving of notice

- 39.1 Any notice, consent, approval, demand, request, offer or other communication (each a "notice") given by a party under this deed must be:
- (a) in writing;
 - (b) directed to the recipient's address (as specified in this clause or as varied by any notice); and
 - (c) hand delivered, sent by prepaid mail or transmitted by facsimile to that address.

40. Receipt of notice

- 40.1 A notice given in accordance with this clause is taken as having been given and received:
- (a) if hand delivered, on the day of delivery if a **business day** or otherwise on the next **business day**;
 - (b) if sent by prepaid mail, on the second **business day** after the date of posting; and
 - (c) if transmitted by facsimile and the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice, on the day of transmission if a **business day** or otherwise on the next **business day**.

41. Address of parties

- 41.1 Unless varied by notice in accordance with this clause, the parties' addresses and facsimile numbers are:

Party:	GOULBURN BROKEN CATCHMENT MANAGEMENT AUTHORITY ABN 89 184 039 725
Attention:	Megan McFarlane
Address:	168 Welsford Street, Shepparton Victoria 3630
Postal Address:	PO Box 1752, Shepparton Victoria 3632
Facsimile No.:	(03) 5831 6254

Party: **landowner** details contained in Item 1 of SCHEDULE 1

Attention: Person contained in Item 1 of SCHEDULE 1

Address: **landowner** address details contained in Item 1 of SCHEDULE 1

Facsimile No.: **landowner** facsimile contained in Item 1 of SCHEDULE 1

Party: **water share owner** details contained in Item 2 of SCHEDULE 1

Attention: Person contained in Item 2 of SCHEDULE 1

Address: **water share owner** address details contained in Item 2 of SCHEDULE 1

Facsimile No.: **water share owner** facsimile contained in Item 2 of SCHEDULE 1

Party: **guarantor** details contained in Item 3 of SCHEDULE 1

Attention: Person contained in Item 3 of SCHEDULE 1

Address: **guarantor** address details contained in Item 3 of SCHEDULE 1

Facsimile No.: **guarantor** facsimile contained in Item 3 of SCHEDULE 1

42. Guarantee

42.1 This clause only applies if there is a guarantor named in Item 3 of SCHEDULE 1.

Guarantee given

42.2 In consideration of the **GBCMA** at the request of the **guarantor** entering into this deed, the **guarantor** unconditionally guarantees the **landowner's** obligations under this deed.

Nature of guarantee

42.3 The guarantee:

- (a) is a principal obligation and will not be treated as ancillary or collateral to any other right or obligation however created or arising;
- (b) may be enforced against the **guarantor** without the **GBCMA** first being required to exhaust any remedy it may have against the **landowner** or to enforce any security it may hold with respect to the **landowner's** obligations;

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- (c) is a continuing guarantee and indemnity for the whole of the **landowner's** obligations and will be irrevocable and will remain in full force and effect until discharged; and
- (d) will not be considered as wholly or partially discharged by the performance at any time of any of the **landowner's** obligations or by any settlement of account or by any other matter or thing whatever and will apply to the present and future scope of the **landowner's** obligations.

Interest

42.4 The **guarantor** will on demand pay interest on any monetary amount from time to time owing under this Guarantee but unpaid from the due date at the same rate and in the same manner as the **landowner** is required to pay interest in respect of the **landowner** under this deed or, if no rate is specified in this deed, at the rate of 15% per annum, both before and (as a separate, independent obligation) after any judgment.

Guarantor's liability absolute

42.5 The liability of the **guarantor** is absolute and will not be affected by any act, omission, matter or thing which but for this provision might operate to release or otherwise exonerate him from his obligations in whole or in part including, without limitation:

- (a) the grant to the **landowner** or any other person of any time, waiver or other indulgence or concession, or the discharge or release of any security held by the **GBCMA** in respect of the **landowner's** obligations;
- (b) any transaction or arrangement that may take place between the **GBCMA** and the **landowner**, the **guarantor** or any other person;
- (c) the insolvency or bankruptcy of the **landowner**;
- (d) the variation (including a variation which increases the **landowner's** obligations) extinguishment, unenforceability, failure, loss, release, discharge, abandonment or transfer either in whole or in part of this deed;
- (e) the **landowner's** obligations or any part of them being or becoming wholly or partially illegal, void, voidable or unenforceable;
- (f) the failure by the **GBCMA** to give notice to the **guarantor** of any default by the **landowner** under this deed;
- (g) any legal limitation, disability, incapacity or other circumstances related to the **landowner**; or
- (h) the failure of the **guarantor** to execute this deed giving the Guarantee or the granting of this Guarantee by any **landowner** being or becoming void or voidable.

Limitation on guarantor's rights

42.6 Until the **landowner's** obligations have been discharged in full the **guarantor** shall not:

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- (a) be entitled to share in any security held or money received by the **GBCMA** or to stand in the place of the **GBCMA** in respect of any security or money;
- (b) take any steps to enforce a right or claim against the **landowner** in respect of any money paid by the **guarantor** to the **GBCMA** under the Guarantee; or
- (c) have or exercise any rights as surety in competition with the **GBCMA**.

Insolvency of landowner

- 42.7 If the **landowner** becomes insolvent or bankrupt, the **guarantor** authorises the **GBCMA** to prove for all moneys which the **guarantor** will have paid under this Guarantee and to retain and to carry into a suspense account and to appropriate at the discretion of the **GBCMA** any dividends received in the liquidation, bankruptcy or other insolvency of the **landowner** and all other moneys received in respect of the **landowner's** obligations until the **GBCMA** has been paid in full in respect of the **landowner's** obligations.

Indemnity

- 42.8 If the whole or any part of the **landowner's** obligations are or may be irrecoverable from the **landowner** by the **GBCMA** for any reason whatever and the amount is not recoverable from the **guarantor** as a surety, then and in each such case:
- (a) the **guarantor** as a separate and additional liability under this Guarantee indemnifies the **GBCMA** in respect of the **landowner's** obligations;
 - (b) as a principal debtor agrees to pay the **GBCMA**, when demanded in writing, a sum equal to the amount of the moneys due and payable pursuant to the **landowner's** obligations, or the losses and expenses resulting from the failure to perform the **landowner's** obligations; and
 - (c) for the purposes of this indemnity, this clause shall be construed as if the moneys were recoverable and the terms of this Guarantee will apply as far as possible, with any necessary changes being made.

Expenses

- 42.9 The **guarantor** must reimburse the **GBCMA** for the expenses of the **GBCMA** incurred in connection with the enforcement of, or the preservation of any rights under, this Guarantee including legal costs and expenses on a full indemnity basis.

43. Miscellaneous

Variations

- 43.1 This deed may be varied in writing signed by the parties.

Consents

- 43.2 Where this deed contemplates that a party may agree or consent to something (however it is described), the party may:
- (a) agree or consent, or not agree or consent, in its absolute discretion; and
 - (b) agree or consent subject to conditions,

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but must do so reasonably, unless this deed expressly contemplates otherwise.

Counterparts

43.3 This deed may be executed in counterparts.

Liability of Expenses

43.4 Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this document.

Further action

43.5 Each party must do or cause to be done all such things necessary or desirable to give full affect to this deed.

Governing law

43.6 This deed will be governed by and construed in accordance with the laws in force in the **State**.

44. Continuing obligations - no merger

44.1 Each obligation and warranty which is capable of having future operation continues in force although this **deed** has otherwise been fully performed.

45. Animal Ethics

45.1 The **landowner** agrees to comply, with any legislation, regulations, guidelines and/or codes of practice relating to animal welfare in force in the States or Territories where the **works** is to be carried out.

46. Compliance with the National Code Of Practice For The Construction Industry

46.1 In this clause 46:

Code

means the National Code of Practice for the Construction Industry, Building Code 2013, a copy of which can be downloaded from

<http://employment.gov.au/building-code-2013>

Guidelines

means the Australian Government Implementation Guidelines for National Code of Practice for the Construction Industry, February 2013, a copy of which can be downloaded from

<http://employment.gov.au/building-code-2013>

**Office of the Australian
Building and
Construction
Commissioner**

has the same meaning as it has in the Building and Construction Industry Improvement Act 2005 (Cth)

Project Parties

means all contractors, subcontractors, consultants and employees of the **landowner** who perform on the **land** work in relation to the **works**.

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- 46.2 Where the **funding** specifically relates to building and construction activity, subject to the thresholds specified in the **Guidelines**, the **landowner** must comply with the **Code** and **Guidelines**.
- 46.3 The **Guidelines** require the **landowner** to ensure that:
- (a) all requests for application or tender, expressions of interest, submissions and invitations to join common use agreements in relation to the **works** made by the **landowner** contain the commitment to apply the **Code** and **Guidelines** as set out in the model tender documents available at <http://www.deewr.gov.au/WorkplaceRelations/Policies/BuildingandConstruction/Pages/default.aspx>; and
 - (b) all agreements and contracts entered into in relation to the **works** by the **landowner** or any third parties contain the commitment to apply the **Code** and **Guidelines** as set out in the model contract clauses available at: <http://www.deewr.gov.au/buildingWorkplaceRelations/Policies/BuildingandConstruction/Pages/default.aspx>.
- 46.4 The **landowner** must maintain adequate records of compliance by it and each of the **Project Parties** with the **Code** and the **Guidelines**. The **landowner** must permit the **Commonwealth** and any person authorised by the **Commonwealth**, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, full access to premises and records of the **landowner** and the **Project Parties** to:
- (a) inspect any work, material, machinery, appliance, article or facility;
 - (b) inspect and copy any record relevant to the **works** and works governed by this deed; and
 - (c) interview any person
- as is necessary to monitor compliance with the **Code** and the **Guidelines**.
- 46.5 In addition to clause 46.4, the **landowner** undertakes that it, and each of the **Project Parties** will agree to a request from the **Commonwealth**, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.
- 46.6 The **Commonwealth** and those authorised by it may publish or otherwise disclose information in relation to compliance by the **landowner** and the **Project Parties** with the **Code** and the **Guidelines**. The **landowner** must obtain the consent of the **Project Parties** to the publication or disclosure of information under this clause.
- 46.7 While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when issuing tenders the **landowner** may preference contractors, subcontractors and consultants that have a demonstrated commitment to:
- (a) adding and/or retaining trainees and apprentices;
 - (b) increasing the participation of women in all aspects of the industry; or

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- (c) promoting employment and training opportunities for indigenous Australians in regions where significant indigenous populations exist.
- 46.8 The **landowner** must not appoint a contractor, subcontractor or consultant in relation to the **works** where:
- (a) the appointment would breach a sanction imposed by the **Commonwealth Minister for Employment**; or
 - (b) the contractor, subcontractor or consultant has had a judicial decision against them relating to employee entitlements, not including decisions under appeal, and has not paid the claim.

47. Compliance with the Building and Construction OHS Accreditation Scheme

- 47.1 In this clause:
- (a) 'the **Act**' means the *Building and Construction Industry Improvement Act 2007 (Cth)*;
 - (b) 'builder' has the meaning given in section 35(8) of the **Act**;
 - (c) 'building work' has the meaning given in section 5 of the **Act**;
 - (d) 'the **Regulations**' means the *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005*; and
 - (e) '**Scheme**' means the Australian Government Building and Construction OHS Accreditation Scheme established under the **Act**.
- 47.2 Subject to any exclusions specified in the **Regulations**, construction projects that utilise **funding** provided under this deed are bound by application of the **Scheme** and the requirements of this clause.
- 47.3 The **landowner** must ensure that all contracts for **building work** that are valued at \$3 million or more must:
- (a) be notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity (that is, when approaching the market); and
 - (b) contain a requirement that the **builder**:
 - (i) is accredited under the **Scheme**;
 - (ii) maintains **Scheme** accreditation for the life of that contract; and
 - (iii) must comply with all conditions of the **Scheme** accreditation.
- 47.4 The **landowner** agrees to notify the **GBCMA** immediately if a **builder** under those categories of contract contemplated by clause 47.3 above, has ceased, or is likely to cease, to meet the accreditation requirements in clause 47.3(b).

48. Non-Urban Water Metering

- 48.1 The **landowner** must for all purposes under this deed comply with the **Commonwealth's** "National Framework for Non-Urban Water Metering" which

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incorporates the Victorian State Implementation Plan (refer to Department of the Environment website (<http://www.environment.gov.au/water/policy-programs/srwui/metering/index.html>)).

49. Caveatable Interest

- 49.1 In order to secure the **landowner's** and the **water share owner's** obligations in this deed, the **landowner** hereby charges in favour of the **GBCMA** all its right title and interest both present and future in the **land**.
- 49.2 The **landowner** acknowledges that by giving a charge over the **land** to the **GBCMA** under this deed, the **GBCMA** may at its own cost register a caveat on the title(s) to the **land** at the land registry.
- 49.3 Upon completion of all of the obligations contained in this deed, the **GBCMA** must register a withdrawal caveat instrument on the title(s) to the **land** at its own cost.

50. Indemnity and Enforcement Expenses

- 50.1 The **landowner** indemnifies the **GBCMA** against:
- (a) all losses incurred by the **GBCMA**;
 - (b) all liabilities incurred by the **GBCMA**;
 - (c) all costs actually payable by the **GBCMA** to its own legal representatives (whether or not under a costs agreement) and other expenses incurred by the **GBCMA** in connection with a demand, action, arbitration or other proceeding (**including** mediation, compromise, out of court settlement or appeal); and
 - (d) arising directly or indirectly as a result of any breach or failure by the **landowner** to complete its obligations under this deed.
- 50.2 In addition to the rights of the **GBCMA** in clause 50.1, the **landowner** must pay the expenses of the **GBCMA**:
- (a) in obtaining advice as to its rights under or in relation to this deed and information relevant to those rights; and
 - (b) in taking legal proceedings against the **landowner** to enforce its rights under or in relation to this deed including legal costs on a solicitor and own client or full indemnity basis, whichever is greater.
- 50.3 The **landowner** must pay the expenses immediately upon written request from the **GBCMA**.
- 50.4 This obligation survives the termination of expiry of this deed.

Infrastructure Works Deed (VFMP)

Executed as a Deed

SIGNED for and on behalf of **Goulburn Broken
Catchment Management Authority ABN
89 184 039 725** by the Chief Executive Officer:

.....
sign here

in the presence of:

.....
print name of witness

.....
witness sign here

SIGNED by

(landowner)

in the presence of:

)
)

.....
Witness

.....
Name (please print)

.....
Witness

.....
Name (please print)

SIGNED by

(water share owner)

in the presence of:

)
)

.....
Witness

.....
Name (please print)

.....
Witness

.....
Name (please print)

Infrastructure Works Deed (VFMP)

EXECUTED by)
)
(landowner))
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

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

Infrastructure Works Deed (VFMP)

EXECUTED by _____)
_____)
(guarantor) _____)
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

SAMPLE

SCHEDULE 1

Item 1 landowner	Full names: ABN: Address: Telephone: Mobile Telephone: Contact Person:		
Item 2 water share owner	Full names: ABN: Address: Telephone: Mobile Telephone: Contact Person:		
Item 3 guarantor	Full name: Address:		
Item 4 land	land description	Certificate of Title	
		Volume	Folio
Item 5 latest date for completion of works (clause 1.1)	30 April 2016		
Item 6 Total of funding payable to the landowner (clauses 1.1 and 7.1(a), 7.1(b) and 7.1(c))	\$	<u>Payment 1</u> (clause 7.1(a)) Payable on completion of the contract for transfer of water share (50% of total funding)	
	\$	<u>Payment 2</u> (clause 7.1(b)) Payable on completion of part of the works (limited to a maximum of 20% of total funding)	
	\$	<u>Payment 3</u> (clause 7.1(c)) Payable on final completion of all works , being the balance of the total funding (30% of the total funding , but subject always to clause 7.2).	
	\$	TOTAL PAYMENTS (equals total of funding)	
Item 7 landowner's contribution (clauses 1.1 and 6.2, 6.3; 6.5(a) and SCHEDULE 2)	\$		

Signed by **landowner**: _____

Signed by **water share owner**: _____

Signed by **GBCMA**: _____

Item 8	water share owner's contribution (clause 7.1(a))	\$
Item 9	agreed water savings (clauses 1.1)	ML of High Reliability water share
Item 10	GBCMA'S share of agreed water savings (clauses 1.1)	ML of High Reliability water share (being 59% of the agreed water savings)
Item 11	insurances required by the landowner (clause 18)	<ul style="list-style-type: none"> a. Public liability insurance of \$20 million dollars in respect of a single claim or occurrence giving rise to a claim in respect of activities undertaken in relation to the Works; b. Workers Compensation insurance as required by law; and c. Insurance against loss or damage to all assets and insurable works for full reinstatement or replacement cost.
Item 12	Liquidated damages amount (clauses 1.1 and 26.2(b))	10% of the total funding approved for the works (being 10% of the TOTAL PAYMENTS specified in Item 6) \$

Signed by **landowner**: _____

Signed by **water share owner**: _____

Signed by **GBCMA**: _____

SCHEDULE 2

The works (include detailed design drawings, whole farm plan and copies of quotes)

PART A - SUMMARY OF COSTINGS

Total value of the works (The sum of Part B and Part C below)			\$
Total of VFMP funding (from Item 6 of SCHEDULE 1)		\$	
Total landowner's contribution (cash or in-kind): (being % of the value of the works , comprising: <ul style="list-style-type: none"> part of the "water savings works" as specified in Part B below "other works" specified in Part C below 		\$	
	\$		
	\$		
		\$	\$

Initialed by **landowner**: _____

Initialed by **water share owner**: _____

Initialed by **GBCMA**: _____

Infrastructure Works Deed (VFMP)

PART B - Detailed quotes for the "water savings works"

PART C - "Other works" (cash or in-kind)

Activity
Pre-construction activities including engineering design and site set-out costs
Decommissioning of existing infrastructure (including removal of existing infrastructure, cultivation, set-out survey costs)
Project Management of the works in Part B
Installation of on-farm operational infrastructure on the land (including new fencing, installation of piping and stock troughs and creation of laneways)
Total Value \$

Initialed by **landowner**: _____

Initialed by **water share owner**: _____

Initialed by **GBCMA**: _____

Infrastructure Works Deed (VFMP)

PART D - Farm Water Program Costings

Activity	Detail	\$	Unit
PRE-CONSTRUCTION			
Engineering design	Site Establishment - set out	1,500.00	Each
DECOMMISSIONING			
Site Preparation for works	Clear site	100.00	/Ha
Remove old Farm channel	Rip and grade in	600.00	/Km
Remove old Bay Outlets/Channel stops	Remove and cart from project area	100.00	Each
Remove Old fencing	Remove and cart from project area	1,200.00	Km
PROJECT AREA INSTALLATION COSTS			
Channel Structures			
Pipe and door bay outlet	Install	300.00	Each
Channel stop	Install	700.00	Each
Farm Crossing- Smaller than 450	Rock Beaching and Geotextile	150.00	Each
	Installation	50.00	/metre
Farm Crossing- Greater than 450	Rock Beaching and Geotextile	200.00	Each
	Installation	60.00	/metre
Farm Crossing - 900Ø/mini flow	Rock Beaching and geotextile	200.00	Each
	Installation	800.00	Each
Laneways			
Farm Laneways	Grade include place gravel	4.00	/metre
	Gravel	40.00	/m ³
	Cart in Soil	3.00	/m ³
Fencing			
Fencing	7 wire post and dropper	9,000.00	/Km
	Electric fence three wires say	4,000.00	/Km
Stock Watering Systems			
Tank 20, 000 litres	20000L	3,000.00	Each
Stock Troughs installed on pad		1,000.00	Each
Stock watering system	Broad Acre	100.00	/Ha
	Dairy/intensive	250.00	/Ha
Solar pump set up for stock watering	Only low flow	12,000.00	Each
PROJECT MANAGEMENT			
Manage project development and works	Time, travel costs	100.00	/Hour

Initialed by **landowner**: _____

Initialed by **water share owner**: _____

Initialed by **GBCMA**: _____

SAMPLE

SAMPLE

SAMPLE

SAMPLE

SAMPLE

SCHEDULE 3
Declaration of Interest and/or Conflict of Interest Statement

I,.....
[insert full name]

of.....
[insert address]

declare that to the best of my knowledge, I do not have:

- any financial interest in any applications (save for the funding I am to receive under my own application) for the VFMP ("the Project");
- any immediate relatives or close friends with a financial interest in the Project;
- any personal bias or inclination which would in any way affect my decisions in relation to the Project;
- any personal obligation, allegiance or loyalty which would in any way affect my decisions in relation to the Project;

(a "**conflict**"), except as set out below:

.....

.....

.....

.....

.....

I undertake to make further declaration detailing any Conflict, potential **conflict** or apparent **conflict** that may arise during the Project period.

I agree to abstain from any assessment or any decision in relation to a proposal or proposals where a **conflict** exists.

Signed.....

Dated.....

SCHEDULE 4
Statutory Declaration by landowner (Clauses 7.1(b)(i) and 9.2)

I
[full name of person making this declaration]

of.....
[address of person making this declaration]

do hereby solemnly and sincerely declare that:

1. I make this declaration in my capacity as authorised agent of the **landowner** in relation to the **Infrastructure Works Deed** between the Goulburn Broken Catchment Management Authority ("the **GBCMA**") and the **landowner** dated ("the **deed**").
2. The **landowner** has in all respects complied with the terms of the **deed** and in particular (without limitation), the **landowner** has:
 - a. completed the on-farm works required by the **deed** (the "**works**");
 - b. paid salaries and allowances to persons involved in this project in accordance with any applicable award or agreement in force under any relevant law;
 - c. complied in all respects with the National Code of Practice for the Construction Industry specified in clause 46 of the **deed**;
 - d. complied in all respects with the Building and Construction OHS Accreditation Scheme requirements specified in clause 47 of the **deed**; and
 - e. where an asset has been created or acquired with the funding received under the **deed**, complied with clauses 14 and 15 of the **deed** in respect of those assets.
3. All funds received pursuant to the **deed** including:
 - a. all **funding** (as defined in the deed) and
 - b. the "landowner contributions" specified in Item 7 of Schedule 1 of the **deed** ("**landowner contributions**"); and
 - c. all **works generated income** (as defined in the **deed**)were spent for the purpose of the completing the **works** in accordance with the **deed**.
4. In respect of **works** completed by subcontractors I attach:
 - a. invoices for that **work**; and
 - b. receipts for those invoices.
5. In respect of the **landowner contributions** I attach:
 - a. invoices for that **work**.
6. All the amounts claimed relate to the **works** carried out pursuant to the **deed** and do not include any costs or expenses for **works** not required by the **deed**.
7. The **landowner** is, at the date of this declaration, able to pay all of its debts as and when they fall due.
8. I acknowledge that the **GBCMA** may, in addition to this statutory declaration, require the audited financial statements of its income and expenditure and a statement of financial position pursuant to clause 15 of the **deed**.

I acknowledge that this Declaration is true and correct and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

DECLARED at in the State)
of Victoria this..... day of)
.....20.....)

Before me:

.....

Signature of Authorised Witness

.....

Name of Authorised Witness

.....

Address of Authorised Witness

.....

Qualification of Authorised Witness

Statutory Declarations

In accordance with s107A of the *Evidence Act* 1958, any of the following persons may witness the signing of a statutory declaration within Victoria:

- A justice of the peace or bail justice
- A public notary
- A barrister and solicitor of the Supreme Court
- A clerk to a barrister and solicitor of the Supreme Court
- The prothonotary or a deputy prothonotary of the Supreme Court
- The register or a deputy registrar of the County Court
- The principal registrar of the Magistrates' Court
- The register of probates or an assistant registrar of probates
- The associate to a judge of the Supreme Court or the County Court
- The secretary of a master of the Supreme Court or the County Court
- A person registered as a patent attorney under Part XV of the Patents Act 1952 (Cth)
- A member of the police force
- The sheriff or a deputy sheriff
- A member or former member of either House of the Parliament of Victoria
- A member or former member of either House of the Parliament of the Commonwealth
- A councillor of a municipality
- A senior officer of a council as defined in the Local Government Act 1989
- A registered medical practitioner within the meaning of the Medical Practice Act 1994
- A registered dentist within the meaning of the Dental Practice Act 1999
- A veterinary practitioner
- A pharmacist
- A principal in the teaching service
- The manager of an authorised deposit-taking institution
- A member of the Institute of Chartered Accountants in Australia or CPA Australia or the National Institute of Accountants
- The secretary of a building society
- A minister of religion authorised to celebrate marriages (not a civil celebrant)
- A person employed under Part 3 of the Public Sector Management and Employment Act 1998 with a classification that is prescribed as a classification to which this section applies or who holds office in a statutory authority with such a classification
- A fellow of the Institute of Legal Executives (Victoria)

SCHEDULE 5
Reporting requirements by landowner

A PROGRESS REPORT

Progress Reports to be provided by the **landowner** within **10 business days** if requested by the **GBCMA**:

The Progress Report information required is:

1 PERIOD _____ to _____ [dates]

2 FUNDING

Total funding <i>approved</i> in infrastructure works deed		Total amounts spent by the landowner <i>since execution</i> of infrastructure works deed		Amounts <i>spent</i> by the landowner <i>this reporting period</i>		Amount <i>paid</i> to the landowner <i>this reporting period</i>		Total funds remaining	
<i>GST exclusive</i>	<i>GST inclusive</i>	<i>GST exclusive</i>	<i>GST inclusive</i>	<i>GST exclusive</i>	<i>GST inclusive</i>	<i>GST exclusive</i>	<i>GST inclusive</i>	<i>GST exclusive</i>	<i>GST inclusive</i>

3 LANDOWNER CONTRIBUTIONS

Total landowner contributions <i>approved</i> in infrastructure works deed		Total landowner contributions made <i>this reporting period</i>		Total cumulative landowner contributions made <i>since execution</i> of infrastructure works deed	
<i>Cash (GST incl.)</i>	<i>In-Kind (GST excl.)</i>	<i>Cash (GST incl.)</i>	<i>In-Kind (GST excl.)</i>	<i>Cash (GST incl.)</i>	<i>In-Kind (GST excl.)</i>

4 PROGRESS OF ACTIVITIES

Specific activities undertaken during reporting period	Consistency with infrastructure works deed	% completion	Expected completion date
<i>e.g. pipes ordered, contract with contractor signed</i>	<i>e.g. On track, slight delay due to weather</i>	<i>e.g. 0- 25%</i>	<i>Eg May 2014</i>

Infrastructure Works Deed (VFMP)

5 DELAY (if delay reported in Progress of activities report, complete this report)

Variation from planned activity specified in infrastructure works deed	Reasons for delay	Expected effects (if any) the delay will have on the project	Planned action to address delays

6 OTHER

Are there any other issues which you wish to report about your project.

Signed by **landowner(s)** _____

Date of Report _____ Project Number _____ 300-1- _____

Infrastructure Works Deed (VFMP)

FINAL REPORT

A Final Report on the project will be needed from the **landowner** when the **landowner's works** are completed. The report is due within 20 **business days** after the **latest date for completion of the works**. The Final Report information required is:

1 REPORTING PERIOD _____ to _____ [please insert the dates of the entire **activity period**.]

2 FUNDING

Total funding <i>approved</i> in infrastructure works deed		Total amounts spent by the landowner <i>since execution</i> of infrastructure works deed		Amount <i>paid</i> to the landowner <i>this reporting period</i>		Total funds remaining	
<i>GST exclusive</i>	<i>GST inclusive</i>	<i>GST exclusive</i>	<i>GST inclusive</i>	<i>GST exclusive</i>	<i>GST inclusive</i>	<i>GST exclusive</i>	<i>GST inclusive</i>

3 LANDOWNER CONTRIBUTIONS

Total landowner contributions <i>approved</i> in infrastructure works deed		Total landowner contributions made	
<i>Cash (GST excl.)</i>	<i>In-Kind (GST excl.)</i>	<i>Cash (GST excl.)</i>	<i>In-Kind (GST excl.)</i>

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- 4 Your evaluation of the works program to date including conduct, benefits, outcomes and the extent to which the objectives of the VFMP and your project have been achieved (labour savings, increased productivity etc).

SAMPLE

- 5 Describe how your project has linked in with the G-MW Connections program (if applicable).

SAMPLE

Infrastructure Works Deed (VFMP)

6 Water Savings.

In your view, are or will be the actual water savings achieved:

Less than expected ☐ Same as expected ☐ More than expected ☐ Not watered yet ☐

Do you have any other comments about the water savings?

7 Any other comments that you wish to make about your works program or the VFMP (e.g. percentage of whole farm plan now implemented, improvements that could be made etc).

8 Would you be willing to showcase the benefits of your project through potential case studies, media events or field days?

Yes ☐

No ☐

Signed by **landowner(s)** _____

Date of Report _____ Project Number _____ 300-1- _____

SCHEDULE 6
EFT Registration Form and Direction to Pay

(clause 7.3 and 7.5)

[NOTE: This part of the Schedule MUST BE COMPLETED]

The **landowner** hereby DIRECTS the **GBCMA** to make the payments due to the **landowner** under Clause 7.1 of this **deed** to the following **landowner's nominated bank account** and confirms that such payment will constitute satisfaction of the **GBCMA's** obligations under this **deed** to pay the **landowner**:

Bank Details (for Payment via EFT)

Trading Name _____

Account Name: _____

Bank Name: _____ Branch: _____

BSB: _____ - Account Number: _____

Email Address for confirmation of remittance:.....

Signed by **landowner**: _____

Signed by **water share owner**: _____

Signed by **GBCMA**: _____

SCHEDULE 7

Apportionment of Taxable and Non-Taxable Supplies on payments due to the landowner

(clause 3.11)

This form should be used where the landowner is making a mixed supply (i.e. where the landowner consists of more than one party, and some of those parties are registered for GST and some are not)

- Please apportion the payments received by the parties comprising the **landowner**.
- You may use any reasonable method to apportion the payments between the parties. The method you use must be supportable in the particular circumstances (for example, based on the value of the works on each parcel of affected land, or based on the water savings achieved on each parcel of land).
- You should keep records that explain the method you use to apportion the payments.

APPORTIONMENT of Payments to be received by the landowner:

We, the parties comprising the **landowner** as defined in this **deed** hereby advise that the payments to the **landowner** are to be apportioned as follows:

.....%
	Name <i>[as shown in the deed]</i>	Signature	Date
.....%
	Name <i>[as shown in the deed]</i>	Signature	Date
.....%
	Name <i>[as shown in the deed]</i>	Signature	Date
.....%
	Name <i>[as shown in the deed]</i>	Signature	Date

= 100%

NOTE: In making payments under this arrangement, the **GBCMA** will apply GST only to the payments being made to those parties who are registered for GST.

Agreement for the Recipient of Supplies to Create Tax Invoices

This agreement is made on the day of 2014

Full names:	
ABN:	
Address:	

(“the Recipient”)

(d) The Recipient acknowledges that it is registered for GST at the date of entering into this agreement and it will notify the Supplier if it ceases to be registered or if it ceases to satisfy any of the requirements of the Australian Taxation Office Determination GSTR 2000/10 which is the determination related to “Goods and Service Tax: Recipient Created Tax Invoices”.

Signed by the Supplier (ensure appropriate clause is used eg company name)	In the presence of (witness)
.....
Signature	Signature
.....
Print name	Print name

GBCMA USE ONLY	
Signed for and on behalf of GBCMA	In the presence of
.....
Signature	Signature
.....
Print name	Print name

SCHEDULE 9

Notice of Authority to Insurer

(clause 18)

To:

.....
.....
.....
<i>[Landowner to insert Name and Address of Landowner's Insurer]</i>
("you")

From:

Full names:	
ABN:	
Address:	

We/I the **landowner** described above hereby authorise **you** to provide to:

GOULBURN BROKEN CATCHMENT MANAGEMENT AUTHORITY
168 Welsford Street, Shepparton VIC 3630

a certificate of currency of my insurance policies relating to:

- Public liability insurance for Farm Water Project activities on the following land:

land description	Certificate of Title	
	Volume	Folio

Signed by

Landowner:

Date: