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| **COMMUNITY WATER SUPPLY**  **& ACCESS AGREEMENT** |
| **DELIVERY MODEL FOR IRRIGATION AND OTHER PURPOSES**  **(ASSOCIATION AS COMMITTEE)** |
| **Land Title Registration**  **Community No…………………….**  **Access No………………………..** |

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**THIS AGREEMENT** is made on the day of   
between the parties named in Column 1 of the First Schedule.

RECITALS:-

A. The **landowners** have agreed to establish a community water supply scheme in accordance with Part 12 of the **Act** which has the primary purpose to supply water to the **lands** for irrigation and other purposes.

B. The **Committee** has constructed or will construct the **works** or has had the **works** transferred to it and will own those **works** for the purpose of delivering water to the **landowners** in accordance with this Agreement.

C. The **landowners** have agreed, where necessary, to grant a **right of access** over their respective **lands** pursuant to Part 12 of the **Act** and have further agreed to grant a licence to the **landowners** and the **Committee** to enter upon their **lands** for the purposes of constructing the **works** and repairing and **maintaining** same so as to allow the **Committee** and the **landowners** to operate the community water supply scheme.

D. Where applicable, the **Road** **Authority** has agreed to part of the **works** being constructed in or along its road reserves and a copy of that agreement is attached as **Annexure B**.

E. The **landowners** have agreed that the **works** will benefit all of the **landowners**.

F. The **landowners** are aware that this Agreement will not have any force or effect until registered under the *Transfer of Land Act 1958*.

NOW IT IS HEREBY AGREED:-

* 1. DEFINITIONS AND INTERPRETATION
     1. In this Agreement unless the context otherwise indicates the following terms and phrases have the following meanings:-

"**Act**" means the *Water Act 1989*.

"**annual charge**" means the charge set by the **Committee** each year as provided in clause 11.3.

"**allocation**" means the volume of water allocated by the **Corporation** from time to time in a **financial year** in respect to any Water Share owned by the **Committee** or a **landowner** or any **allocation** purchased by the **Committee** or a **landowner** from a third party and shall otherwise have the same meaning as given in the **Act**.

"**Association**" means the body constituted under the *Associations Incorporation Reform Act 2012* described in part 1 of the Fifth Schedule.

"**Business** **Day**" means any day except a Public Holiday throughout Victoria or a Saturday or a Sunday.

"**child** **meter**" means the meter and associated locking mechanisms, the property of the **Committee** or a **landowner** which directly records the volume of water delivered to a **landowner's** **land**.

"**Committee**" means the **Committee** as from time to time constituted under clause 3.1.

"**Connections** **Agreement**" means any agreement made between the **Corporation** and the **Committee** in accordance with the **Act** or any other enabling provision which sets out the manner and the terms and conditions by which the **Corporation** must undertake the function of delivering water to the **Committee** or any alterations or amendments to such agreement as adopted from time to time by the **Corporation**.

*Note- see Divisions 2 and 3 of Part 11 of the* ***Act***

"**Conveyance** **Loss**" means, in respect to a specified period, the difference between the volume of water recorded by the **parent meter** as delivered by the **Corporation** and the total volume of water recorded as supplied to each **landowner's** **land** by the **child meters** or assessed in accordance with clause 9.2 or both.

"**Corporation**" means the Goulburn-Murray Rural Water **Corporation** and its successors.

"**Council**" means a municipal council in who's municipal district **land** affected by this Agreement is situated.

"**financial** **year**" means the year ending 30 June, unless the **Committee** determines otherwise.

"**landowner**" means the persons named in column 1 of the First Schedule, the persons described as **landowners** in any amending Agreement or are otherwise described or required to be described in column 1 of the **Register** (as the case may be), together with their respective personal representatives, transferees and assigns. The number allocated to each **landowner** in column 1 of the First Schedule or the **Register** may be used in this Agreement to describe that **landowner**.

"**lands**" means the respective **lands** owned by the **landowners** and which at the date of this Agreement are described in column 2 of the First Schedule, are described in any amending Agreement or are otherwise described or required to be described in column 2 of the **Register** (as the case may be).

**“levies”** means, but is not limited to, annual fees and charges, capital and special charges as defined in this Agreement.

"**maintain**" includes to repair, alter and replace and "**maintenance**" or "**maintaining**" has a similar meaning.

"**Manager**" means a person or body with whom the **Committee** has entered into a contract in accordance with clause 10.4.

"**Metering** **Standards**" means the National Non-Urban Metering Standards in force from time to time.

"**parent** **meter**" means the meter, the property of the **Corporation**, which records the total volume of water delivered by the **Corporation** to the **Committee**.

"**private** **works**" means the **works** (including any channel or pipeline) located on a **landowner's** **land** that are required to convey water from the **tapping** **point** to the **landowner's** **land** and includes any storage tanks or dams necessary to store the water but does not include a **child** **meter**.

"**Register**" means the register required to be kept by the **Committee** in accordance with clause 14.1 of this Agreement.

"**right of access**" means access for water supply purposes over **land** owned by another person and as more specifically provided in the **Act**.

*Note- see section 234 of the* ***Act****.*

"**Road Authority**" means **Vic Roads** or the **Council** or both as the case may be.

"**Secretary**" means the **Secretary** of the **Committee**.

"**sells**" includes to transfer or assign.

"**special** **resolution**" means a resolution, proposed as a special resolution and passed by two thirds of the **landowners** present in person or by proxy, at a meeting of **landowners** called to consider the resolution.

"**tapping** **point**" means the **child meter** in respect to the **landowner's land**.

"**Vic Roads**" means the **Roads** **Corporation** trading as "Vic Roads" in accordance with Section 80 of the *Transport Integration Act 2010*.

"**unanimous** **resolution**" means a resolution, proposed in accordance with clause 14.12 and passed by all **landowners** present in person or by proxy, at a meeting of **landowners** called to consider the resolution.

"**works**" means the works required to deliver the water and includes:

* + - 1. the **works** more particularly described in the Fourth Schedule;
      2. the plant and machinery necessary to allow the **works** to function as a water delivery system;
      3. the **child** **meters**; and
      4. any **land** owned by the **Committee** and used in conjunction with any of the **works** for the delivery of water; but
      5. does not include **private** **works**.
    1. The terms "Allocation Bank Account", "Delivery Share", "Limited Term Transfer", "Serviced Property", "Water Share", "Water Use Licence", Water Use Registration" and "Water Season" have the same meaning as is given to them by the **Act**.
    2. Words in bold type, unless the context otherwise indicates, are to be construed according to the meaning of them given in clause 1.1 of this Agreement.
    3. This Agreement is to be interpreted as including any agreements varying this Agreement and registered under the *Transfer of Land Act 1958*.
    4. The singular includes the plural and vice versa.
    5. A word denoting any gender includes all genders.
    6. A reference to a person includes a reference to a firm, corporation or other corporate body and vice versa.
    7. If a party consists of more than one person this Agreement binds them jointly and each of them severally.
    8. A reference to a statute includes any statutes amending, consolidating or replacing same and will also include any regulations made under such statutes as those regulations are in force from time to time.
    9. All headings are for ease of reference only and must not be taken into account in the construction or interpretation of this Agreement.
    10. Notwithstanding anything else contained in this Agreement for the purposes for Recital B and clauses 5.1 and 13.6 the term "**landowner**" shall mean the joint registered proprietors of each parcel of **land** set out in column 2 of the First Schedule or the **Register**.

*[By way of illustration if there were 3 registered proprietors of a parcel of land (whether jointly or as Tenants in Common) for the purposes of this clause they would be considered one landowner]*

* + 1. A reference in a footnote to a section of an **Act** is a reference to the section as it exists on the First of December 2011. All such references are to be taken into account in constructing or interpreting this Agreement.
  1. OBJECTIVES OF THIS AGREEMENT
     1. This Agreement is entered into by the **landowners** as a mutual and co-operative agreement to facilitate the delivery of water for irrigation and other purposes to their **lands**. The consideration given by all and each of the **landowners** for this Agreement are the mutual covenants given by each to each other for the purposes of providing the delivery of water to their **lands**. In the interpretation of this Agreement the **landowners** agree that any court, tribunal, arbitrator, expert or other person adjudicating on the construction of or the interpretation of this Agreement must take into account the mutual objectives of the **landowners** as set out in this clause and the Agreement generally, and that each **landowner** benefits from the delivery of water from the **works** and carries the obligation of facilitating, within the terms of this Agreement, other **landowners** receiving their delivery of water.
  2. THE COMMITTEE

Committee

* + 1. The **Association** shall be the **Committee** provided however if there is no **Association** or should the **Association** cease to exist or legally be unable to act as the **Committee**, then until otherwise determined by the **landowners** by **special resolution**, the **Committee** shall consist of three **landowners** elected by the **landowners**.
    2. The **Committee** shall carry out the duties and obligations of the **Committee** in accordance with this Agreement, and without limiting this clause may:
       1. impose **levies** on all **landowners**;
       2. enter into contracts;
       3. take or defend legal proceedings; and
       4. hold the **works**, water share or **allocation** and other assets in trust for the **landowners**
    3. All **landowners** must be members of the **Association** and the rules adopted by the **Association** from time to time must not be inconsistent with this Agreement. Where an inconsistency arises by operation of the law, the Water Act shall apply.
  1. MEETINGS OF LANDOWNERS
     1. The **landowners** may hold general meetings for the purposes of exercising any powers under this Agreement or the **Act** and the provisions of the Sixth Schedule will apply to such meetings.
  2. ACCESS OVER LAND

Grant of rights of access by agreement

* + 1. Each person (if any) named in column 1 of part 1 of the Second Schedule, in consideration of this Agreement and the mutual covenants contained herein, hereby grants to the **landowners** and the **Committee** named opposite in column 3 thereof, in favour of the **lands** described in column 4 thereof, and without payment of any compensation by any party to this Agreement, rights of access for water delivery over such parts of their respective **lands** described in column 2 thereof and as further delineated on the map in annexure A:-
       1. to construct, **maintain**, operate or remove the **works** and to pass water along, through or into the **works**; and
       2. to enter onto such **lands**, between the hours of 7.00am and 6.00pm on any **business day**, with or without machinery or equipment, except in the case of an emergency, for the purpose of constructing, **maintaining**, operating or removing the **works**.
    2. Each person agrees that this Agreement is the notice required to be given under the **Act**.

*Note- see section 234(1) of the* ***Act***

Grant of rights of access by declaration

* + 1. Each person named in column 1 of part 2 of the Third Schedule, pursuant to the provisions of the **Act**, has declared that the **lands** described in column 4 thereof have **rights of access** for water supply over the **lands** described in column 2 thereof and as are further delineated on the map in Annexure A for the purposes described in clause 5.1 and upon the terms and conditions contained in this Agreement. A copy of each person's declaration is annexed as Annexure C.

*Note- see section 234(5) of the* ***Act***

Access by the Committee

* + 1. The **landowners** agree to permit any person appointed by the **Committee**, including that person's servants and agents, together with vehicles and machinery, the right to enter upon each of their respective **lands**, between the hours of 7.00am and 6.00pm on any **business day**, except in the case of an emergency, for the purpose of constructing, operating, **maintaining** or removing the **works**.

Entry by the Corporation

* + 1. The **landowners** hereby agree that the **Corporation**, including its servants and agents, together with vehicles and machinery, may enter upon each of their respective **lands** for the purpose of:
       1. reading or inspecting any **child meter**; and
       2. fulfilling its functions.
    2. The **landowners** acknowledge that the **Corporation** has, in certain circumstances, legislative powers under the **Act** to enter the **landowners**' **lands**.

*Example: section 133 of the* ***Act****.*

Authorisation to seek access

* + 1. The **landowners** by this Agreement authorise the **Committee** to act as their agent to seek a **right of access** over **land** owned by other persons or any **landowner**.

*Note- see section 245(2) of the* ***Act***

* 1. CONSTRUCTION AND MAINTENANCE OF WORKS BY COMMITTEE

Construction and ownership

* + 1. The **Committee** will be responsible for constructing the **works**, where applicable, and will hold the **works** in trust for the **landowners**.
    2. The **Committee** will obtain all the necessary consents and permits required to construct the **works**.

Maintenance

* + 1. The **Committee** is responsible for ensuring that the **works** are properly **maintained** and kept free of obstructions. Notwithstanding anything contained in this clause the maintenance of any fence is the responsibility of the **landowner** upon whose **land** the fence is erected unless otherwise determined by the **Committee**.
    2. The **Committee** shall obtain the consent of the **Road Authority** before carrying out maintenance to the **works** within the road reserve.
    3. If at a general meeting of **landowners** resolutions are carried-
       1. requiring maintenance to be carried out upon the **works**; and
       2. imposing a special charge in accordance with clause 11.5,

then the **Committee** must, subject to clause 6.4 cause such maintenance to be carried out upon the **works**.

* + 1. Notwithstanding the obligations under clause 6.5 the **Committee** may postpone the carrying out of the maintenance of the **works** until such amount of the special charge has been paid by the **landowners** or the **Committee** has made such other financial arrangements as to pay for such maintenance.
    2. Each **landowner** is responsible for the construction and maintenance of that **landowner's** **private works**.

Compliance with conditions imposed by affected bodies

* + 1. The **Committee** and the **landowners** must at all times comply with any directions given by the **Corporation**, a **Road Authority** or any public statutory Authority relating to the construction, maintenance or use of the **works**.

Interference with the works

* + 1. Except as provided by the **Act**, a **landowner** must not, without first obtaining the consent of the **Committee**:-
       1. construct any crossing or other obstruction in or across the **works**;
       2. interfere with the **works** or the flow of water within the **works**;
       3. interfere with access to the **works**; or
       4. intentionally cause any other water to enter in or flow along the **works**.
  1. USE OF WORKS

Use of Works to deliver water

* + 1. Subject to clauses 7.2 and 7.3 and any resolution of the **landowners**, the **Committee** must, upon a reasonable request by a **landowner** and subject to any conditions or limitations imposed by the **Corporation**, make available the **works** for the delivery of water to that **landowner**'s **land**.

Conditions on use of works

* + 1. The **Committee** may impose terms and conditions on a **landowner** in respect of:-
       1. the use of the **works** for the delivery of water;
       2. the time, volume and duration of use of the **works**;
       3. the construction or **maintenance** of any **private works**;
       4. any directions or requirements of the **Corporation,** or the **Road Authority**;
       5. the terms and conditions of the **Connections Agreement**.
       6. any other matter regulated by or affecting the implementation of this Agreement.

Reduction or restriction of use of works

* + 1. The **Committee** may refuse or limit the use of the **works** by any **landowner** if:-
       1. any **private works** are, in the opinion of the **Committee**, inadequate or not properly constructed or **maintained**;
       2. the **landowner**'s **child meter** does not comply with the National Non-Urban **Metering Standards**;
       3. the **landowner** contravenes or is in breach of this Agreement or the **Act**;
       4. the **landowner** refuses or obstructs entry upon the **landowner's** **land** to the **Corporation**, the **Committee** or any person authorised by the **Committee** in accordance with this Agreement;

*Note- see clause 5.1.*

* + - 1. the **landowner** refuses or fails to pay any money due to the **Committee** pursuant to this Agreement or to the **Corporation** pursuant to the **Act**; or
      2. the **Corporation** directs the **Committee** in writing not to permit the use of works in respect to a **landowner**.
  1. OBLIGATIONS OF THE LANDOWNERS

Landowner obligations relating to works

* + 1. A **landowner** must not, and must ensure that the occupier of a **landowner's land** does not:-
       1. interfere with any **works** of the **Corporation** or the **works**; or
       2. interfere with the taking by another **landowner** of the delivery of water to another **landowner**.

Licences and Entitlements held by Landowner

* + 1. Each of the **landowners** warrant with the **Committee** that in respect to their **land** at the date of this Agreement they hold or own:-
       1. a Water Use Licence or a Water Use Registration;
       2. adequate Delivery Share to enable the delivery of the **allocation** relating to any Water Share they own and any **allocation** they have purchased; and
       3. an Allocation Bank Account.

Ordering of Water

* + 1. Unless otherwise determined by the **Committee** each **landowner** is responsible for the ordering of their water directly with the **Corporation**.

Use of Water

* + 1. The **landowners** each agree and acknowledge that they shall not breach the terms of their Water Use Licence or Water Use Registration as the case may be.

Notification of changes in landowner's details

* + 1. A **landowner** must notify the **Secretary**;
       1. of any changes in respect to that **landowner** or that **landowner**'**s** **land** within 30 days of that change occurring, which changes must be recorded by the **Secretary** in the **Register**; and
       2. upon being requested by the **Committee**, the **landowner**'s Allocation Bank Account number.
    2. Upon a **landowner** ceasing to own the **lands** described in the First Schedule or as otherwise described in the **Register**, the **landowner** must within 30 days of ceasing to own the **lands** resign as a member of the **Association**.
    3. The **landowners** jointly and severely appoint the chairman of the **Committee** to be their lawful attorney for the purpose of putting into effect paragraphs 8.5 and 8.6, if required.
    4. Each **landowner** hereby authorises the **Secretary** to obtain from the **Corporation** information regarding ownership of any or all of the **lands**.

Landowners to read meter

* + 1. Unless otherwise agreed by the **Corporation**, each **landowner** must, immediately after each use by the **landowner** of the **works** to deliver water to his **land**, read the recording meter of his **child meter** and report that reading directly to the **Corporation** and also the **Secretary** in accordance with any **Connections Agreement**.

Private Works

* + 1. The **landowners** each agree and acknowledge that:-
       1. each **landowner** is responsible for constructing and installing the **private works** relating to their respective **lands** and to ensure that they are properly **maintained** and kept free of obstructions by such reasonable and usual methods as the **Committee** may determine;
       2. those **private works** must, if required by the **Committee**, include a pump, tank or other infrastructure as the **Committee** may determine; and
       3. each **landowner** must construct or install the **private works** (if any) set out opposite their name in column 4 of the First Schedule.

Point of Supply

* + 1. The **landowners** agree and acknowledge that by executing this Agreement, they have agreed with the **Corporation** that the point of supply of water to their respective **lands** is at the **parent meter** and that the delivery of water from **parent meter** to their respective **lands** lies with the **landowners** and the **Committee**.

Serviced Property

* + 1. Each **landowner** covenants with the **Committee** that the **landowner's** **land**, where it is situated within an Irrigation District, is a serviced property.

*Note- see section 144 of the* ***Act***

Acknowledgement

* + 1. Each **landowner** acknowledges that:
       1. the **Corporation** may not deliver any water to the **parent meter** in response to an order by a **landowner**, unless in the opinion of the **Corporation**, the **Committee** has sufficient **allocation** in its Allocation Bank Account to cover any actual or anticipated **conveyance loss**; and
       2. each **landowner** will be responsible for the operation of the **works**, subject to any directions of the **Committee**, to deliver water from the **parent meter** to the **landowner**'s specified **child meter**.

Damage to works

* + 1. If a **landowner** in the course of delivering water through in or along the **works** causes damage to any part of the **works**, (fair wear and tear excepted), that **landowner** shall be liable to pay the cost of any repairs necessary to rectify such damage unless otherwise exempted by a general meeting of **landowners**.

Payment of monies

* + 1. Each **landowner** shall within the time limitations allowed by the **Corporation**, pay all monies from time to time due by the **landowner** to the **Corporation**.

Transfer of Water Share or Allocation

* + 1. A **landowner** may, at his own cost and expense and in accordance with the **Act** and any requirements of the **Corporation**:-
       1. transfer the whole or any part of his **allocation**;
       2. grant a Limited Term Transfer in respect to the whole or any part of any Water Share he owns;
       3. transfer the whole or part of his Delivery Share; or
       4. purchase any Water share, **allocation** or a Limited Term Transfer
    2. Upon a **landowner** completing any of the matters referred to in clause 8.16 he shall forthwith advise the **Secretary** full details of the transactions entered into.
    3. A **landowner** transferring the whole or part of any Water Share he owns shall remain liable to pay the **annual charge** as set by the **Committee**, unless the **Committee** otherwise determines.
  1. OBLIGATIONS OF THE COMMITTEE

Licences and Agreements

* + 1. The **Committee** must hold:
       1. if required, a licence from the **Corporation** in respect to the construction, use and **maintenance** of the **works**;
       2. at all times, sufficient **allocation** in its Allocation Bank Account to cover the **conveyance loss** (if any);
       3. an Allocation Bank Account;
       4. if applicable, a Water Use Registration in respect to the **conveyance loss**;
       5. if applicable, a Delivery Share sufficient to cover the **conveyance loss** (if any);
       6. if the source of the supply of water is from an unregulated waterway or a bore, a licence under the **Act** to take and use water;

*Note- see section 51 of the* ***Act***

* + - 1. if the source of the **allocation** is from a regulated waterway, an extraction share;

*Note- see section 67 of the* ***Act***

* + - 1. if necessary, an agreement with the **Corporation** in accordance with the **Act** for the delivery of water;

*Note- see section 124(7) of the* ***Act***

* + - 1. if required by the **Corporation**, a **Connections Agreement**; and
      2. any other licence, authority or agreement as is reasonably required by the **Corporation** or the **Road Authority** for the purpose of this Agreement.

Meters

* + 1. Unless the **Committee** otherwise determines, the **child meters** must comply with the National Non-Urban **Metering Standards** in force from time to time.
    2. Subject to clause 9.2 the **Committee** must, at the cost of the relevant **landowner**, have the **child meters** tested from time to time as to their compliance with the National Non-Urban **Metering Standards**.
    3. In the event that:
       1. a **child meter** malfunctions;
       2. the **Secretary** fails to record the readings of a **child meter**; or
       3. in any other case there is no accurate recording of the water delivered to a **landowner**,

then the **Committee** must determine the volume of water delivered to each **landowner** in accordance with the **Act** as if the **Committee** was a **Corporation**.

*Note- see section 142(2) of the* ***Act****.*

Conveyance Loss

* + 1. The **Committee** may, for the purpose of covering the **conveyance loss**, from time to time purchase or sell Water Share or **allocation** or enter into a Limited Term Transfer.
    2. Unless otherwise agreed by the **landowners**, the **conveyance loss** shall be distributed amongst the **landowners** in proportion to the total volume of water each **landowner** has used in a **financial year**.
    3. Notwithstanding clause 9.6 the **Committee** may assess the **conveyance loss** from time to time during a **financial year** in accordance with the criteria (if any) set forth in part 2 of the Fifth Schedule.

Comply with the Water Act 2007 (Cth)

* + 1. Notwithstanding anything else contained in this agreement, if the **Committee** or the **landowners** are an infrastructure operator within the meaning of the *Water Act 2007 (Cth)*, they must comply with all obligations imposed on an irrigation infrastructure operator by the *Water Act 2007 (Cth)* and, without limiting this clause in particular, in respect to any charges or fees regulated by the *Water Act 2007 (Cth).*

*Note- see Section 7 of the Water Act 2007 (Cth)*

* 1. DUTY OF SECRETARY

Secretary to be the contact person

* + 1. Subject to clause 8.3, unless otherwise determined by the **Committee**, the **Secretary** is the only person authorised to deal with the **Corporation**.

Obligations of secretary

* + 1. The **Secretary** must:-
       1. keep a record of the volume of the water delivered to each **landowner** in each **financial year**, and if requested by any **landowner** or the **Corporation** advise in writing the volume so delivered for any period;
       2. pay on behalf of the **Committee** all monies owing to the **Corporation** by it; and
       3. carry out all other dealings with the **Corporation**.

Delegation of secretary duties

* + 1. Notwithstanding the provisions of this clause 10, the **Secretary** may delegate in writing any of his or her powers, discretions or functions under this Agreement except:
       1. this power of delegation; or
       2. the duty of the **Secretary** to be the contact person under clause 10.1.

Contracting out of Secretary Duties

* + 1. Notwithstanding the provision of this clause 10, the **Committee** may contract out all or any of the administrative functions, including the maintenance of the **Register**, of the **Committee** and the **Secretary** to a **Manager**.
  1. FINANCIAL MATTERS

Capital charges

* + 1. The **Committee** may impose on each of the **landowners** a capital charge for the purposes of constructing, obtaining, installing, replacing or **maintaining** the **works** in the year the capital charge is imposed.
    2. The **Committee** shall determine the capital charge in accordance with the criteria (if any) set forth in part 3 of the Fifth Schedule.

Annual and Special Charges

* + 1. In each **financial year**, the **Committee** must prepare an estimate of the expenses of administering this Agreement and the delivering of water to each **landowner** and must set an **annual charge** in respect of each **landowner**. In setting the **annual charge** the **Committee** must include:-
       1. any charges by the **Corporation** in respect to the **conveyance loss**;
       2. the cost and expenses of purchasing any **allocation**, Water Share or a Limited Term Transfer;
       3. the costs and expenses relating to the operation and **maintenance** of the **works**, administration expenses (including legal fees), insurance premiums (including Public Liability Insurance) and other necessary and incidental expenses relating to the implementation of this Agreement, including any costs of a **Manager** and any costs and expenses incurred by the **Committee** pursuant to the **Act** after implementation of this Agreement;

*Note- see section 245 of the* ***Act***

* + - 1. the costs and expenses of administering this Agreement and the delivery of water to each **landowner**; and
      2. any other costs and expenses that the **Committee** considers relevant.
    1. The **annual charge** shall be fixed in accordance with the criteria (if any) set forth in part 4 of the Fifth Schedule.
    2. A general meeting of the **landowners** may, at any time, direct the **Committee** to set a special charge, in accordance with the resolution of the **landowners**.
    3. The **Committee** must give notice to each **landowner** of the **annual charge** or special charge payable by that **landowner**.

Payment and recovery of monies

* + 1. The **Committee** may require payment of money due under this Agreement at such time and in such manner as the **Committee** may determine. If the time for payment of any amount is not stipulated by the **Committee**, then such amount must be paid within 30 days of notice being given.
    2. Notwithstanding anything contained in clauses 11.3, 11.4 and 11.5 a **landowner** must pay the **annual charge** or any special charge whether or not in any **financial year** that **landowner** has used the **works** to deliver water to his **land**.
    3. Any money due to the **Committee** under this Agreement bears interest, calculated on a daily basis, from the date that the money becomes due to the date that the money is paid, at the rate fixed by the **Committee**, not exceeding the rate fixed from time to time under the **Act** for unpaid fees imposed under tariffs.
    4. The **landowners** authorise the **Committee** to sue any **landowner** to recover payment of any monies due under this Agreement in any court of competent jurisdiction.
    5. Each **landowner** hereby charges his **land** and any Water Share(s) owned by him in favour of the **Committee** for any monies owed by the **landowner** to the **Committee**.

Accounts

* + 1. The **Secretary** must keep proper books of accounts in relation to the moneys received and expended by the **Committee**.
    2. The **Secretary** must present a statement of receipts and expenditure at the annual general meeting of **landowners**. The statement must be audited if required by law or previously requested by a meeting of **landowners**.

Requests for information

* + 1. At the request of any person, the **Secretary** must provide that person with a statement of any monies owing by a **landowner** under this Agreement, and a copy of, or an extract from, the **Register**, insofar as it affects the **landowner's** **land** inquired of. The **Committee** may from time to time fix a fee for carrying out the provisions of this clause, provided that such fee shall not exceed the fee from time to time charged by the **Corporation** or prescribed under the **Act** for the provision of Information Statements by the **Corporation**.

Public Liability Insurance

* + 1. Unless otherwise agreed in writing by the **Corporation**, the **Committee** must use its best endeavours to take out Public Liability Insurance in respect to the **Committee** and the **Works** in such sum as is agreed between the **Committee and** the **Corporation** but such sum not being not less than $20,000,000 or such other higher amount as may be determined by the **Committee** from time to time.
    2. The **Committee** must ensure that the insurance policies: 
       1. extend cover to the **landowners** for liability arising from any act, error or omission by the **Committee** or a **landowner**; and
       2. include the **landowner** as a named insured.
    3. The **Committee** must provide each **landowner** with written evidence of the currency and terms of the insurance policy referred to in clause 11.15 annually upon renewal.
    4. The **Committee** must provide a **landowner** with written evidence of the currency and terms of the insurance policy referred to in clause 11.15 on request by the Member.
    5. The **Committee** must notify each **landowner** immediately of the cancellation of an insurance policy, or any change to an insurance policy which affects the Member’s interests.
    6. If any event occurs which may give rise to a claim involving the **landowner** under an insurance policy required under this clause, then the **Committee** must: 
       1. notify the **landowner** within 14 days of that event; and
       2. ensure that the **landowner** is kept fully informed of any subsequent actions and developments concerning the relevant claim.

Remuneration of Secretary

* + 1. The **Committee** may remunerate the **Secretary** in such sum as determined by the **landowners** at an annual general meeting.
  1. SALE OF LAND

Obligations on the Sale of Land

* + 1. If a **landowner** **sells** any part of the **landowner's** **land** which is entitled to have water delivered to the **land** through the **works** and that **land** does not have legal access to receive such a delivery through the **works**, the **landowner** must grant to the purchaser, as part of the consideration of such sale, an easement for the delivery of water or rights of access for the delivery of water over any other **lands** retained by the **landowner** to provide legal access for the delivery of **allocation**.
  1. RELEASE FROM AGREEMENT

Landowner may apply to be released from Agreement

* + 1. Notwithstanding anything else contained in this Agreement a **landowner** may apply to the **Committee** for the Agreement to be varied so that the **landowner** and the **landowner**'s **lands** no longer form part of this Agreement.
    2. A copy of such application shall as soon as reasonably possible be served on all other **landowners** and the **Corporation**.
    3. The **Corporation** and any other **landowner** may, prior to the date set by the **Committee**, being not less than 30 days from the serving of the notice under clause 13.2, object to the application.
    4. The **Committee**, shall take into account all objections received to the proposal, but shall not unreasonably refuse the application.
    5. The **Committee** shall serve notice of its decision whether or not to grant the request upon the requesting **landowner**, the **Corporation** and all other **landowners**.
    6. Notwithstanding clause 13.4 the **Committee** must only approve the request on the condition (including any other conditions that the **Committee** may impose) that:-
       1. it is satisfied that the requesting **landowner** has granted all and any easements or rights of access necessary for the continuance of the delivery of water through the **works**;
       2. the requesting **landowner** has entered into an agreement amending this Agreement pursuant to the **Act** incorporating these amendments;

*Note- see section 245 of the* ***Act***

* + - 1. all monies due under this Agreement have been paid by the requesting **landowner** to the **Committee**;
      2. the requesting **landowner** has paid or has agreed to the satisfaction of the **Committee** to pay all the costs, legal expenses, stamp duties or any other expenses or imposts required to implement the amending agreement; and
      3. the requesting **landowner** paying to the **Committee** such reasonable termination fee as determined by the **Committee** provided that any such termination fee must not exceed any limits imposed by law.
  1. GENERAL Register
     1. The **Committee** must keep the **Register** in the form (or its like) of the Third Schedule and ensure that it shows any changes in the ownership of each **landowner's land** or description of such **land** and the **landowner**'s Water Share. The **Committee** may contract the **maintaining** of the **Register** to a **Manager**.

Disputes

* + 1. A dispute arises when a party gives written notice to the other party of the dispute.
    2. Disputes between the **landowners** arising under this Agreement shall be determined by the **Committee** or a person or persons appointed by the **Committee** to act in its stead. The **Committee** or any persons appointed must act according to the principles of natural justice and their decision shall be final and binding on all parties.
    3. Clause 14.3 does not apply to disputes in respect of which the **Act** provides a method of resolution or confers a right of appeal on a party to the dispute.

*Note- see part 12 of the* ***Act***

Mediation

* + 1. Notwithstanding clauses 14.3 and 14.4, the parties to a dispute may agree to determine their dispute by mediation as follows:-
       1. the parties must jointly agree to appoint a mediator within 14 days after a dispute arising;
       2. if the parties are unable to agree upon a mediator, either party may, within 14 days after the parties have failed to agree, request the President of the Law Institute of Victoria Ltd or the President's Nominee to appoint a mediator and determine the mediator's remuneration;
       3. the parties must comply with the mediator's instructions;
       4. the fees and expenses of the mediator are to be paid equally by the parties;
       5. the parties must bear their own costs of the mediation;
       6. if the dispute is settled, the parties must sign terms of settlement which are binding on the parties;
       7. if:
          1. the dispute is not resolved within 30 days after the appointment of the mediator (or any longer period agreed to by the parties in writing);
          2. the mediator is of the opinion that the mediation is likely to be unsuccessful; or
          3. the parties advise the mediator that the mediation will be unsuccessful,

the mediation will thereupon cease.

* + 1. The mediation is confidential and statements made by the mediator and the parties, or discussions between the participants in the mediation before, during or after the mediation, cannot be used in any subsequent arbitration or legal proceedings between the parties.
    2. The mediator is not bound by the rules of natural justice and may discuss the dispute with the party in the absence of the other party.
    3. The mediator may otherwise determine the procedure of the mediation.

Victorian laws apply

* + 1. This Agreement shall be governed by the law relating to the State of Victoria.

Corporation Indemnified

* + 1. The **landowners** and the **Committee** jointly and severally indemnify the **Corporation** in respect to any claims, damage, liability, loss or expense suffered by the **Corporation** arising out of the use by the **landowners** or the **Committee** of any water delivered by the **Corporation** to the **parent meter** in accordance with a request by any of the **landowners** or any authorised person.

Changes to or revocation of Agreement

* + 1. The **landowners** may, by **special resolution**, authorise the **Committee** to sign an agreement for the purposes of the **Act** to vary this Agreement provided however, that no such alteration shall operate so as to vitiate any agreement with or conditions imposed by the **Corporation**, a **Road Authority** or any other public statutory authority, without their consent.

*Note- see section 245 of the* ***Act***

* + 1. The **landowners** may, by **unanimous resolution**, authorise the **Committee** to sign an agreement for the purposes of the **Act** to revoke this Agreement.

*Note- see section 245 of the* ***Act***

* + 1. A copy of any proposed **special resolution** or **unanimous resolution** must be served on the **Corporation** at least 14 **business day**s prior to the date of the meeting called to consider such resolutions.
    2. The **landowners** appoint the **Committee** to be their joint and several lawful attorneys for the purposes of signing any variation or revocation of this Agreement pursuant to the **Act** as agreed to by a **special resolution** or **unanimous resolution** (as the case may be) of **landowners**.

*Note- see section 245 of the* ***Act***

* + 1. If the **landowners**, by **unanimous resolution** resolve to revoke this Agreement, then, subject to any contrary terms in the resolution:-
       1. the **landowners** appoint the **Committee** to act as their agent pursuant to the **Act**; and

*Note-see section 245 (2) of the* ***Act***

* + - 1. the **Committee** shall:-
         1. execute and register at the Land Titles Office an agreement terminating this Agreement;
         2. sell or otherwise dispose of the **works** and, insofar as the **Committee** can within its existing resources, pay the costs of filling any channels or removing any pipelines constituting part of the **works** on a **landowner's** **land**;
         3. sell any Water Share or **allocation** it may own; and
         4. after payment of all expenses, costs and fees necessary to complete the revocation of this Agreement, divide any monies left between the **landowners** equally.

Transfer of Committee functions

* + 1. The **Committee** must, if directed by a **special resolution** of the **landowners**, request the **Corporation** or the **Council** to perform the functions and exercise the powers of the **Committee** as provided by the **Act**.

*Note- see section 246 of the* ***Act***

Notices

* + 1. Where this Agreement provides for notice to be given to a person or party then, unless the Agreement provides otherwise, notice must be in writing and may be given:-
       1. by delivering it personally to the person to whom it is to be given;
       2. by pre-paid post, addressed to the person to whom it is to be given at that person's last known address;
       3. by facsimile to the facsimile number of the addressee; or
       4. by any other method of electronic service or communication approved at law.
    2. A notice or other communication is deemed served:-
       1. if delivered, upon delivery;
       2. if posted, on the expiration of 2 **business days** after the date of posting;
       3. if sent by facsimile prior to 5.00 pm on a **business day** - that day;
       4. if sent by facsimile after 5.00 pm - at 9.00 am on the next **business day** at the place where it is received; or
       5. if sent by any other method of electronic service or communication - at the time the notice or communication is communicated to the person intended to receive same.

Severance

* + 1. If any provision of this Agreement is either held void or unenforceable by any arbitrator, court or tribunal, then to the extent possible at law that provision shall be struck out and the balance of this Agreement shall continue to apply.

Waiver

* + 1. No consent or waiver by a **landowner** or the **Committee** of any breach by a **landowner** of this Agreement shall amount to a waiver of the relevant party's rights arising from this Agreement.

Power of Attorney

* + 1. For the purposes of facilitating registration of this Agreement at the Land Titles Office pursuant to the **Act** the **landowners** jointly and severally appoint the Legal Practitioner lodging this Agreement for registration in the Land Titles Office to be their lawful attorney for the purposes of correcting, altering, amending or signing this Agreement and without limiting the generality of this clause including deleting, substituting or amending any **lands** described in any item of the First Schedule or deleting or amending the names or addresses of any parties to this Agreement.

*Note- see section 236 of the* ***Act***

* + 1. This Power of Attorney shall cease and be automatically revoked upon registration of this Agreement at the Land Titles Office.
  1. CHANGES TO THE WATER ACT 1989

Procedure if amendments to Act

* + 1. The **landowners** and the **Committee** agree, that if directed by the **Corporation**, they will call a special meeting of the **landowners** for the purposes of amending this Agreement to incorporate any amendments made to the **Act** and that the **landowners** will use their best endeavours to pass the necessary **special resolution**.
    2. The **landowners** acknowledge that they have been put on notice by the **Corporation**, by virtue of this clause, that if the **landowners** do not pass the necessary **special resolution** in accordance with clause 15.1 the **Corporation** may not, either legally or practically, be able to make available a delivery of water for use by the **landowners**.

**SIGNED AS A DEED** **by the persons granting rights of access who are not landowners**

|  |  |  |
| --- | --- | --- |
| **Signing for and on behalf of properties referred to in the first schedule and numbered:** | **Registered Landowner** |  |
|  |  |  |
| **1** | **SIGNED SEALED AND DELIVERED** by the said **##**  in the presence of: | )  )  ) |
|  | Witness |  |
| **2** | **SIGNED SEALED AND DELIVERED** by the said **##** in the presence of: | )  )  ) |
|  | Witness |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **EXECUTED** by **## INCORPORATED (##)** by being signed those persons who are authorised to sign for the Incorporated Association in accordance with **Section 38(1)** of the *Associations Incorporation Reform Act 2012* | | | | |
|  | | | | |
| Committee Member: | |  | Full Name: |  |
|  | | | | |
| Usual Address: |  | | | |
|  | | | | |
| Committee Member / Public Officer : | |  | Full Name: |  |
|  | | | | |
| Usual Address: |  | | | |
|  |  |  |  |  |

**SIGNED AS A DEED** **by the landowners**

|  |  |  |
| --- | --- | --- |
| **Signing for and on behalf of properties referred to in the first schedule and numbered:** | **Registered Landowner** |  |
|  |  |  |
| **1** | **SIGNED SEALED AND DELIVERED** by the said **##**  in the presence of: | )  )  ) |
|  | Witness |  |
| **2** | **SIGNED SEALED AND DELIVERED** by the said **##** in the presence of: | )  )  ) |
|  | Witness |  |

**First schedule**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **NO.** | **COLUMN 1**  Name and address of **landowners** | **COLUMN 2**  **Lands** affected by this Agreement | **COLUMN 3**  Volume of water entitlement | **COLUMN 4**  Volume of Delivery Share | **COLUMN 5**  **Private Works** to be constructed |
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**SECOND SCHEDULE**

**Rights of Access by Agreement**

|  |  |  |  |
| --- | --- | --- | --- |
| **COLUMN 1**  Number of **landowner** granting rights of access | **COLUMN 2**  Description of land over which access granted | **COLUMN 3**  Name of access holders receiving rights of access | **COLUMN 4**  Description of **land** receiving rights of access |
| (Vol / Fol) | (Vol / Fol) |
| 1 |  |  |  |
| 2 |  |  |  |
| 3 |  |  |  |
| 4 |  |  |  |
| 5 |  |  |  |

**Part 2**

**Rights of Access by Declaration**

**[Section 234(5)]**

|  |  |  |  |
| --- | --- | --- | --- |
| **COLUMN 1**  Name of **landowner** declaring **right of access** | **COLUMN 2**  Description of land over which access is declared | **COLUMN 3**  Name of access holders receiving rights of access | **COLUMN 4**  Description of land receiving rights of access |
| (Vol / Fol) | (Vol / Fol) |
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**THIRD SCHEDULE**

Form of **Register**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **NO.** | **COLUMN 1**  Name and address of **landowners** | **COLUMN 2**  **Lands** affected by this Agreement | **COLUMN 3**  Volume of water entitlement | **COLUMN 4**  Volume of Delivery Share | **COLUMN 5**  **Private Works** to be constructed |
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**FOURTH SCHEDULE**

**Works**

FIFTH SCHEDULE

**Part 1 (clause 1.1)**

Name of body constituting the **Committee**

**Part 2 (clause 9.7)**

Criteria for distributing **Conveyance Loss**.

**[***insert agreed criteria]*

**Part 3 (clause 11.2)**

Criteria for assessing **capital charge**

[*insert agreed criteria]*

**Part 4 (clause 11.4)**

Criteria for assessing **annual charge**.

*[Insert agreed criteria]*

*Examples –*

1. *a fixed amount;*
2. *an amount fixed according to the volume of water used by each* ***landowner****;*
3. *an amount fixed according to the number of times the* ***landowner*** *has used the* ***works*** *to supply water to the* ***landowner's land****;*
4. *any other matter the* ***Committee*** *thinks relevant;*
5. *the conveyance loss (if any); or*
6. *any combination of amounts referred to in paragraphs 1, 2, 3, 4 or 5.*

***SIXTH SCHEDULE***

***Meetings of landowners***

1. The **Committee** may at any time, or the **secretary** upon the request in writing of at least 10% of the **landowners**, must call a general meeting of all **landowners**. Any such meeting called by the **landowners** shall be held upon such date determined by the **Committee** but as soon as possible after receipt by the **secretary** of such request. Fourteen (14) days notice of the date, place and business of the meeting shall be given to the **landowners**.
2. A quorum for a general meeting shall be 20% of **landowners** **entitled to vote.**
3. Where the registered ownership of a parcel of **land** is shared in any way:
   1. each registered proprietor is entitled to be a member however only one registered proprietor of that **land** is entitled to vote at any one time;
   2. if more than one registered proprietor votes, then only the vote of the person whose name is the first name in the Agreement and that person must have a present interest in the parcel of **land**; and
   3. the **Committee** is entitled to presume that the **landowner entitled to vote** is lawfully authorised to vote on behalf of the remaining registered proprietors of that **land**.
4. Where a **landowner** is the registered owner of more than one parcel of **land** within the **Community Land**, including **land** where ownership is shared in any way, then irrespective of who else ownership of that parcel or parcels of **land** may be shared with, all parcels are to be considered one parcel of **land** for the purposes of a **landowner**’s entitlement to vote.
5. The Chairperson of the **Committee** shall be the chairperson of the annual general meeting or any general meeting of **landowners** or in the Chairperson’s absence the meeting shall elect one of the **landowners** to chair such meeting.
6. A question arising at a meeting shall be determined by a majority of votes of **landowners** **entitled to vote** and voting on that question, and if voting is equal, the Chairperson has a casting as well as a deliberative vote.
7. A **landowner** can appoint in writing another person to act as a proxy at any meeting.
8. The **secretary** shall be responsible for keeping minutes of any general meeting of the **landowners**.
9. The Chairperson of the meeting can otherwise determine procedures at any meeting of **landowners**.

**ANNEXURE A**

*[Plan]]*

**ANNEXURE B**

*[Road Authority Consent]*