

SNOWY SCHEME LONG TERM WATER ARRANGEMENTS DEED

Dated 3 June 2002

PARTIES

THE COMMONWEALTH OF AUSTRALIA

THE STATE OF NEW SOUTH WALES

THE STATE OF VICTORIA

CONFORMED EXECUTION VERSION

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DEED made 3 June 2002

PARTIES THE COMMONWEALTH OF AUSTRALIA

AND THE STATE OF NEW SOUTH WALES

AND THE STATE OF VICTORIA

INTRODUCTION

- A. On the Corporatisation Date, the Commonwealth, New South Wales and Victoria transferred the Existing Snowy Hydro Undertaking to the Licensee under the Corporatisation Legislation. The Licensee now owns and operates the Snowy Scheme.
- B. Prior to the Corporatisation Date, the water operations of the Snowy Scheme were governed by a combination of:
- (1) the provisions of the *Snowy Mountains Hydro-electric Act 1949 (Cth)* and associated Acts of New South Wales and Victoria;
 - (2) the terms of the Snowy Mountains Hydro-electric Agreement annexed to those Acts;
 - (3) decisions of the Snowy Mountains Council; and
 - (4) in certain circumstances, some provisions of the MDB Agreement.
- C. Under those arrangements, the Commonwealth, New South Wales and Victoria were given some control over the timing of water releases from the Snowy Scheme through the role of the Snowy Mountains Council (comprising representatives from the Commonwealth, New South Wales, Victoria and the Snowy Mountains Hydro-electric Authority) in approving annual water operating plans.
- D. Also under those arrangements, Victoria was given certain rights to water. Those rights were underpinned by requirements including:
- (1) the controls referred to in **recital C** above; and
 - (2) an agreement between New South Wales and Victoria for the purposes of the MDB Agreement to share equally water released from the Murray 1 Power Station on the Snowy-Murray Development.
- D. Those previous arrangements were terminated on the Corporatisation Date and, on that date, a new set of arrangements governing the water operations of the Snowy Scheme took effect. The post-corporatisation arrangements are contained in a series of instruments.
- E. Under the post-corporatisation arrangements:
- (1) the principal instrument through which the water operations of the Snowy Scheme will be governed is the Snowy Water Licence. Under that Licence, the Licensee is given the right to collect, divert, store, use and release water within the Snowy Water Catchment; and

-
- (2) the water operations of the Snowy Scheme are under the New South Wales regulatory regime.
- F. The Snowy Water Licence is issued and administered by the Ministerial Corporation. The Commonwealth and Victoria do not have:
- (1) any formal role in determining the timing of water releases from the Snowy Scheme under the Snowy Water Licence; or
- (2) except for any rights in contract that they may have against the Licensee, any legal ability to enforce the provisions of the Snowy Water Licence.
- G. As an integral part of the arrangements that underpin corporatisation of the Snowy Scheme, the purpose of this Deed is to protect the interests of the Commonwealth and Victoria on the expiration or sooner revocation of the Snowy Water Licence.

IT IS AGREED

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

- (1) **"Act"** means the *Snowy Hydro Corporatisation Act 1997 (NSW)*;
- (2) **"Annual Water Operating Plan"** means the annual water operating plan to be prepared annually by the Licensee under the Snowy Water Licence;
- (3) **"Commonwealth"** means the Commonwealth of Australia;
- (4) **"Corporatisation Date"** means the date on which the *Snowy Mountains Hydro-electric Power Act 1949 (Cth)* is repealed by the *Snowy Hydro Corporatisation Act 1997 (Cth)*;
- (5) **"Corporatisation Legislation"** means:
- (a) the *Snowy Hydro Corporatisation Act 1997 (Cth)* and the *Snowy Hydro Corporatisation (Consequential Amendments) Act 1997 (Cth)*;
- (b) the *Snowy Hydro Corporatisation Act 1997 (NSW)*; and
- (c) the *Snowy Hydro Corporatisation Act 1997 (Vic)*;
- (6) **"Deed"** means this Deed, including any schedule or annexure to it;
- (7) **"Existing Snowy Hydro Undertaking"** has the same meaning as in the Corporatisation Legislation;
- (8) **"Licensee"** means Snowy Hydro Limited or, if the Snowy Water Licence is transferred, the licensee under that Licence;
- (9) **"MDB Agreement"** means the agreement made on 24 June 1992 between the parties which comprises the first schedule to:

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- (a) the *Murray-Darling Basin Act 1993 (Cth)*;
 - (b) the *Murray-Darling Basin Act 1992 (NSW)*;
 - (c) the *Murray-Darling Basin Act 1993 (Vic)*; and
 - (d) the *Murray-Darling Basin Act 1993 (SA)*;
- (10) **"MDB Amending Agreement"** means the MDB Amending Agreement dated on or about the Corporatisation Date between the parties;
 - (11) **"Ministerial Corporation"** means the Water Administration Ministerial Corporation constituted under section 371 of the *Water Management Act 2000 (NSW)*;
 - (12) **"Month"** means calendar month and **"Monthly"** means once each calendar month;
 - (13) **"New South Wales"** means the State of New South Wales;
 - (14) **"Snowy-Murray Development"** means the component of the Snowy Scheme comprising works that regulate the waters of the Upper Snowy River and the waters of the Geehi River and Bogong Creek;
 - (15) **"Snowy Bilateral Deed"** means the Snowy Bilateral Deed dated on or about the Corporatisation Date between Victoria and the Licensee;
 - (16) **"Snowy Hydro Limited"** means Snowy Hydro Limited ACN 090 574 431;
 - (17) **"Snowy Scheme"** means the dams, tunnels, power stations, aqueducts and other structures that comprise the Snowy-Murray Development and the Snowy-Tumut Development that together are known as the Snowy Mountains Hydro-electric Scheme;
 - (18) **"Snowy-Tumut Development"** means the component of the Snowy Scheme comprising works that regulate the waters of the Eucumbene River, the Tooma River, the Upper Murrumbidgee River and the Upper Tumut River;
 - (19) **"Snowy Water Catchment"** has the same meaning as in the Act;
 - (20) **"Snowy Water Inquiry Outcomes Implementation Deed"** means the Snowy Water Inquiry Outcomes Implementation Deed between the Commonwealth, New South Wales and Victoria dated on or about the Corporatisation Date;
 - (21) **"Snowy Water Licence"** means the Snowy Water Licence issued under Part 5 of the Act;
 - (22) **"South Australia"** means the State of South Australia;
 - (23) **"Upper Snowy River"** means the main course of the Snowy River upstream of Jindabyne Dam and all tributaries, effluents and anabranches of that main course including the Mowamba River and the Cobbon Creek but excluding the Eucumbene River;
 - (24) **"Victoria"** means the State of Victoria; and

- (25) “**Water Year**” means the period of twelve Months commencing on 1 May in each year.

1.2 Interpretation

- (1) Reference to:
- (a) one gender includes the other;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a firm, an unincorporated association, a Government Agency or body corporate;
 - (d) a party includes:
 - (i) in the case of a body corporate, its successors, assigns and substitutes (including persons taking by novation); and
 - (ii) in the case of a natural person, the person’s executors, administrators, assigns and substitutes (including persons taking by novation);
 - (e) an officer or body of persons includes any other officer or body for the time being exercising the powers or performing the functions of that officer or body;
 - (f) a right includes a remedy, authority or power;
 - (g) this Deed or any other instrument includes any amendment, variation or replacement of any of them;
 - (h) a Schedule or Annexure is to a schedule or annexure to this Deed;
 - (i) any statute, regulation, rule, proclamation, order, ordinance or by-law (“**Statutory Provision**”) includes:
 - (i) any such Statutory Provision as amended or re-enacted from time to time; and
 - (ii) any statute, regulation, rule, proclamation, order, ordinance or by-law enacted in replacement of that Statutory Provision;
 - (j) any thing includes the whole and each part of it separately; and
 - (k) a right or interest of a party is to a right or interest of that party:
 - (i) protected under the Snowy Water Licence as at the Corporatisation Date or as subsequently varied to the extent necessary to reflect a variation to the Snowy Water Inquiry Outcomes Implementation Deed; and/or
 - (ii) protected under the MDB Amending Agreement, the Snowy Bilateral Deed and/or the Snowy Water Inquiry Outcomes Implementation

Deed to the extent to which that protection is affected by the revocation or expiration of the Snowy Water Licence.

- (2) "Including" and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings are for convenience only and do not form part of this Deed or affect its interpretation.

2. COMMENCEMENT AND TERMINATION

2.1 Commencement Date

This Deed will take effect on and from the Corporatisation Date.

2.2 Termination

This Deed may be terminated only by agreement between the parties.

3. INTENTION TO CREATE LEGAL RELATIONS

3.1 Legally Binding

The parties intend that this Deed will be legally binding and enforceable.

4. ACKNOWLEDGEMENT WITH RESPECT TO RIGHTS OF PARTIES

4.1 Acknowledgement

The parties acknowledge that this Deed does not, except where expressly stated, give to any party any rights prior to the expiration or revocation of the Snowy Water Licence.

5. REMEDIES

5.1 Damages Insufficient

The parties acknowledge and agree that:

- (1) monetary damages alone would not be a sufficient remedy for breach of this Deed; and
- (2) in addition to any other remedy which may be available in law or in equity, the Commonwealth and Victoria are entitled to interim, interlocutory or permanent injunctions or any of them to prevent a breach and to compel specific performance of this Deed.

6. PARTIES TO INCLUDE SOUTH AUSTRALIA IN ARRANGEMENTS**6.1 Parties to Admit South Australia as a Party To These Arrangements**

If South Australia indicates to the parties that it wishes to become a party to the arrangements set out in this Deed, the parties must enter into a deed with South Australia in the form set out in **0**.

6.2 Parties to Sign Further Deed

The parties must sign the deed as soon as practicable after South Australia indicates to the parties that it wishes to become a party to the arrangements set out in this Deed.

7. REVOCATION OF SNOWY WATER LICENCE**7.1 Application of this Clause 7**

This **clause 7** applies if, following the revocation of the Snowy Water Licence, or any other licence issued by the Ministerial Corporation under section 24(2)(b) of the Act, the Ministerial Corporation proposes to issue a further licence under that section ("**Further Licence**").

7.2 New South Wales to Negotiate Terms of Further Licence

As soon as practicable after the Ministerial Corporation determines to revoke the Snowy Water Licence or any other licence issued by the Ministerial Corporation under section 24(2)(b) of the Act, New South Wales must negotiate in good faith with the Commonwealth and Victoria upon the terms of the Further Licence to protect the rights and interests of the Commonwealth and Victoria after the revocation.

7.3 Terms of Further Licence to be Agreed with the Commonwealth and Victoria

The Commonwealth, New South Wales and Victoria must use their best endeavours to agree upon the terms of the Further Licence.

8. EXPIRATION AND REVOCATION OF SNOWY WATER LICENCE**8.1 Acknowledgment**

Each party acknowledges that, as at the date of this Deed, the Act provides that the Snowy Water Licence:

- (1) must have a term of 75 years;
- (2) may not be renewed; and
- (3) a further licence may not be issued unless it is issued on the revocation of the Snowy Water Licence and then the further term may not exceed the balance of the term of the revoked licence.

8.2 Application of this Clause 8

This **clause 8** applies:

- (1) with respect to the expiration of the Snowy Water Licence or any other licence issued by the Ministerial Corporation under section 24(2)(b) of the Act; and
- (2) if, following the revocation of the Snowy Water Licence or any such other licence, the Ministerial Corporation does not propose to issue a further licence under that section.

8.3 New South Wales to Negotiate Continuing Arrangements

At a reasonable time prior to the expiration of the Snowy Water Licence or as soon as practicable after the revocation of the Snowy Water Licence, New South Wales must negotiate in good faith with the Commonwealth and Victoria upon either or both of a set of legislative and other legally binding arrangements to protect the rights and interests of the Commonwealth and Victoria after the expiration or revocation of the Snowy Water Licence.

8.4 Continuing Arrangements to be Agreed With the Commonwealth and Victoria

- (1) The parties must use their best endeavours to agree upon either or both of a set of legislative and other legally binding arrangements to protect the rights and interests of the Commonwealth and Victoria after the expiration or revocation of the Snowy Water Licence.
- (2) New South Wales must take all action and do all things reasonably necessary to introduce into the New South Wales Parliament the set of legislative arrangements as may be agreed between the Commonwealth, New South Wales and Victoria as soon as practicable after agreement is reached.

8.5 Parties to Negotiate if New South Wales Parliament Fails To Pass Agreed Legislative Arrangements

If:

- (1) the parties agree a set of legislative arrangements; and
- (2) the New South Wales Parliament does not pass those legislative arrangements,
then:
 - (3) New South Wales must negotiate in good faith with the Commonwealth and Victoria; and
 - (4) the parties must use their best endeavours to agree upon a set of other legally binding arrangements that give reasonable satisfaction to the Commonwealth and Victoria.

9. DEFAULT PROVISIONS

9.1 Application of this Clause 9

The provisions of this **clause 9** apply from the date of expiration or sooner revocation of:

- (1) the Snowy Water Licence; and

- (2) where applicable, each further licence issued by the Ministerial Corporation under section 24(2)(b) of the Act and each authority under any other Act of Parliament to collect, divert, store and use water in the Snowy Water Catchment,
- until otherwise agreed by the Commonwealth and Victoria to the extent practicable given the then applicable legislative regime.

9.2 Default Provisions: Information to the Commonwealth and Victoria

- (1) Each Water Year New South Wales must provide the Commonwealth and Victoria with a document:
- (a) that:
- (i) is developed according to the same process as required under the Snowy Water Licence as at the Corporatisation Date or as subsequently varied to the extent necessary to reflect a variation to the Snowy Water Inquiry Outcomes Implementation Deed; and
- (ii) contains the same information and provisions about water releases from the Snowy Scheme as was required to be contained in the last Annual Water Operating Plan prepared under the Snowy Water Licence according to all of the provisions of that Licence; or
- (b) developed according to another process and in another form agreed between the parties; and
- (2) New South Wales must consult with the Commonwealth and Victoria with respect to the development of that document and variations (if any) to that document.

9.3 Default Provisions: Operation of the Snowy Scheme

New South Wales must procure that the Snowy Scheme is operated so as to comply with:

- (1) the requirements relating to environmental flows as contained in the Snowy Water Licence as at the Corporatisation Date and as subsequently amended (if at all) with the agreement of the Commonwealth and Victoria; and
- (2) the document referred to in **subclause 9.2(1)**.

10. COMPENSATION FOR NEW SNOWY SCHEME LICENSEE

10.1 New South Wales May Enter Into Compensation Deed With New Licensee

- (1) If the Snowy Water Licence is revoked and another licence issued either to Snowy Hydro Limited or to another licensee, New South Wales may enter into an agreement with Snowy Hydro Limited or the other licensee to compensate it for any action taken by the Ministerial Corporation or New South Wales in relation to that other licence that has an adverse financial impact on the licensee.
- (2) In exercising its discretion to enter into an agreement with Snowy Hydro Limited or another licensee, New South Wales must have regard to the viability of the Snowy Scheme.

11. SNOWY BILATERAL DEED**11.1 New South Wales to Procure New Licensee to Enter into Snowy Bilateral Deed**

If the Ministerial Corporation issues to a person other than the Licensee:

- (1) a further licence under section 24(2)(b) of the Act; or
- (2) an authority under any other Act of Parliament to collect, divert, store and use water in the Snowy Water Catchment,

New South Wales must procure the licensee under that further licence or the holder of that authority (as the case may be) to enter into an agreement with Victoria either:

- (3) in a form agreed between Victoria and that person; or
- (4) in default, on the same terms as the Snowy Bilateral Deed as at the date immediately before the revocation or expiration of the Snowy Water Licence.

12. AMENDMENT OR VARIATION**12.1 Amendment or Variation**

This Deed may be amended or varied at any time with the agreement of the parties.

12.2 Form

An amendment to or variation of this Deed under **clause 12.1** is not effective unless it is in writing and signed by the parties.

13. GOODS AND SERVICES TAX**13.1 Interpretation**

In this **clause 13**:

- (1) except for defined terms, capitalised expressions have the same meaning as in the GST Law; and
- (2) “**GST Law**” has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*.

13.2 GST

- (1) Unless otherwise expressly stated, any amounts payable or any form of consideration to be provided for a Supply made under this Deed are exclusive of GST (“**GST Exclusive Amount**”).
- (2) If GST is payable by any party making a Taxable Supply (“**Supplier**”) under this Deed, the Recipient must pay to the Supplier an amount equal to the GST payable on the Taxable Supply (“**GST Amount**”) in addition to and at the same time and in the same manner as the GST Exclusive Amount or other consideration otherwise payable for the Supply.

13.3 Tax Invoice

The Supplier must issue a Tax Invoice to the Recipient in respect of any Taxable Supply made under this Deed before the Consideration for the Supply is due.

13.4 Adjustments

- (1) If at any time an Adjustment Event arises in respect of a Taxable Supply made by the Supplier under this Deed, the Supplier must provide the Recipient with an Adjustment Note for the Adjustment immediately upon becoming aware of the Adjustment.
- (2) Where an Adjustment Event requires that a payment be made by the Supplier to the Recipient, or the Recipient to the Supplier, as the case may be, the payment must be made within ten days from the date of issue of the Adjustment Note.

13.5 Reimbursements

Where a party is required under this Deed to pay for or reimburse a cost, expense or outgoing of another party, the amount to be paid by the first party is the sum of:

- (1) the amount of the cost, expense or outgoing less any Input Tax Credits in respect of the cost, expense or outgoing to which the other party is entitled; and
- (2) **if the payment by the first party is Consideration for a Taxable Supply:** an amount equal to the GST Amount payable by the other party in respect of the Taxable Supply.

13.6 Supplier's obligations

The Supplier is responsible for determining the GST treatment of any Supply made under this Deed, or any Adjustment Event in relation to any Supply made under this Deed, in accordance with the GST Law applicable at the time.

13.7 Commissioner's assessment, ruling or determination

- (1) If the Commissioner makes an assessment, ruling or determination which results in a GST outcome in respect of any Supply or Adjustment Event in relation to a Supply made under this Deed which differs from the determination of the Supplier under **clause 13.6**, the Supplier and the Recipient must respectively make the necessary refunds and payments to correctly reflect the Commissioner's assessment, ruling or determination.
- (2) If the Commissioner determines that interest or a penalty is payable in relation to the GST treatment of a Supply or an Adjustment Event relating to a Supply made under this Deed the interest and penalty must be paid by the Supplier, to the extent to which the Supplier's determination under **clause 13.6** was incorrect. However, if a party other than the Supplier is responsible for the incorrect application of the GST Law to the transaction, then that party is responsible for any interest or penalty. The parties may also agree that in appropriate circumstances each party must bear the interest and penalty imposed on it.

13.8 Claims

If any party ("**Payer**") must make a payment to another party ("**Payee**") in respect of any loss, damages, claim, compensation or any other matter ("**Claim**") arising under this Deed, whether that payment is determined by agreement of the parties, in terms of a court order, under arbitration or mediation or in any other manner, and the payment gives rise to a liability for GST in the hands of the Payee, the Payee must issue a Tax Invoice to the Payer and the Payer must pay the amount of GST stated on that Tax Invoice within ten days of receipt of the Tax Invoice.

14. FURTHER ASSURANCE

14.1 Further Assurance

Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Deed.

15. SEVERABILITY

15.1 Severance of Provisions

- (1) All the provisions of this Deed will so far as possible be construed so as not to be invalid, illegal or unenforceable in any respect.
- (2) Despite **subclause 15.1(1)**, if any provision in this Deed is illegal, invalid or unenforceable, that provision will as far as possible be read down to such extent as may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation of a partial character.
- (3) If any provision in this Deed or any part of it cannot be so read down, then that provision or part is severed and the rest of the Deed remains in force.

16. ENTIRE UNDERSTANDING

16.1 Deed Contains Entire Understanding

This Deed:

- (1) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Deed; and
- (2) supersedes any prior agreement or understanding on anything connected with that subject matter.

16.2 No Reliance on Representations

Each party has entered into this Deed without relying on any representation by the other party or any person purporting to represent that party.

17. EXECUTION OF COUNTERPARTS

17.1 Counterpart is Original

This Deed may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same Deed.

18. GOVERNING LAW AND JURISDICTION**18.1 Governing Law and Jurisdiction**

- (1) The law of and applicable in New South Wales governs this Deed.
- (2) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and the Federal Court of Australia.

EXECUTED as a Deed.

SIGNED for and on behalf of)
THE COMMONWEALTH OF AUSTRALIA by the)
HON JOHN HOWARD in the presence of:)

[SIGNATURE OF M.J. HAZELL]

[SIGNATURE OF JOHN HOWARD]

Signature of Witness

M.J. HAZELL

Name of Witness (BLOCK LETTERS)

SIGNED for and on behalf of)
THE STATE OF NEW SOUTH WALES by the)
HON BOB CARR in the presence of:)

[SIGNATURE OF ALDO PENNINI]

[SIGNATURE OF BOB CARR]

Signature of Witness

ALDO PENNINI

Name of Witness (BLOCK LETTERS)

SIGNED for and on behalf of)
THE STATE OF VICTORIA by the)
HON STEVE BRACKS in the presence of:)

[SIGNATURE OF DAVID ROBERTSON]

[SIGNATURE OF STEVE BRACKS]

Signature of Witness

DAVID ROBERTSON

Name of Witness (BLOCK LETTERS)

ANNEXURE ONE: DEED TO BE ENTERED INTO WITH SOUTH AUSTRALIA

DEED made

2002

PARTIES THE COMMONWEALTH OF AUSTRALIA

AND THE STATE OF NEW SOUTH WALES

AND THE STATE OF VICTORIA

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INTRODUCTION

- A. On the Corporatisation Date, the Commonwealth, New South Wales and Victoria transferred the Existing Snowy Hydro Undertaking to the Licensee under the Corporatisation Legislation. The Licensee now owns and operates the Snowy Scheme.
- B. Prior to the Corporatisation Date, the water operations of the Snowy Scheme were governed by a combination of:
- (1) the provisions of the *Snowy Mountains Hydro-electric Act 1949 (Cth)* and associated Acts of New South Wales and Victoria;
 - (2) the terms of the Snowy Mountains Hydro-electric Agreement annexed to those Acts;
 - (3) decisions of the Snowy Mountains Council; and
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- C. Under those arrangements, the Commonwealth, New South Wales and Victoria were given some control over the timing of water releases from the Snowy Scheme through the role of the Snowy Mountains Council (comprising representatives from the Commonwealth, New South Wales, Victoria and the Snowy Mountains Hydro-electric Authority) in approving annual water operating plans.
- D. Also under those arrangements, Victoria and South Australia were given certain rights to water. In the case of Victoria, those rights were underpinned by requirements including:
- (1) the controls referred to in **recital C** above; and
 - (2) an agreement between New South Wales and Victoria for the purposes of the MDB Agreement to share equally water released from the Murray 1 Power Station on the Snowy-Murray Development.

- D. Those previous arrangements were terminated on the Corporatisation Date and, on that date, a new set of arrangements governing the water operations of the Snowy Scheme took effect. The post-corporatisation arrangements are contained in a series of instruments.
- E. Under the post-corporatisation arrangements:
- (1) the principal instrument through which the water operations of the Snowy Scheme will be governed is the Snowy Water Licence. Under that Licence, the Licensee is given the right to collect, divert, store, use and release water within the Snowy Water Catchment; and
 - (2) the water operations of the Snowy Scheme are under the New South Wales regulatory regime.
- F. The Snowy Water Licence is issued and administered by the Ministerial Corporation. The Commonwealth and Victoria do not have:
- (1) any formal role in determining the timing of water releases from the Snowy Scheme under the Snowy Water Licence; or
 - (2) except for any rights in contract that they may have against the Licensee, any legal ability to enforce the provisions of the Snowy Water Licence.
- G. As an integral part of the arrangements that underpin corporatisation of the Snowy Scheme, the purpose of this Deed is to protect the interests of the Commonwealth, Victoria and South Australia on the expiration or sooner revocation of the Snowy Water Licence.

IT IS AGREED

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

- (1) “**Act**” means the *Snowy Hydro Corporatisation Act 1997 (NSW)*;
- (2) “**Annual Water Operating Plan**” means the annual water operating plan to be prepared annually by the Licensee under the Snowy Water Licence;
- (3) “**Commonwealth**” means the Commonwealth of Australia;
- (4) “**Corporatisation Date**” means the date on which the *Snowy Mountains Hydro-electric Power Act 1949 (Cth)* is repealed by the *Snowy Hydro Corporatisation Act 1997 (Cth)*;
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- (6) **“Deed”** means this Deed, including any schedule or annexure to it;
- (7) **“Existing Snowy Hydro Undertaking”** has the same meaning as in the Corporatisation Legislation;
- (8) **“Licensee”** means Snowy Hydro Limited or, if the Snowy Water Licence is transferred, the licensee under that Licence;
- (9) **“MDB Agreement”** means the agreement made on 24 June 1992 between the parties which comprises the first schedule to:
- (a) the *Murray-Darling Basin Act 1993 (Cth)*;
 - (b) the *Murray-Darling Basin Act 1992 (NSW)*;
 - (c) the *Murray-Darling Basin Act 1993 (Vic)*; and
 - (d) the *Murray-Darling Basin Act 1993 (SA)*;
- (10) **“MDB Amending Agreement”** means the MDB Amending Agreement dated on or about the Corporatisation Date between the parties;
- (11) **“Ministerial Corporation”** means the Water Administration Ministerial Corporation constituted under section 371 of the *Water Management Act 2000 (NSW)*;
- (12) **“Month”** means calendar month and **“Monthly”** means once each calendar month;
- (13) **“New South Wales”** means the State of New South Wales;
- (14) **“Snowy Hydro Limited”** means Snowy Hydro Limited ACN 090 574 431;
- (15) **“Snowy-Murray Development”** means the component of the Snowy Scheme comprising works that regulate the waters of the Upper Snowy River and the waters of the Geehi River and Bogong Creek;
- (16) **“Snowy Bilateral Deed”** means the Snowy Bilateral Deed dated on or about the Corporatisation Date between Victoria and the Licensee;
- (17) **“Snowy Scheme”** means the dams, tunnels, power stations, aqueducts and other structures that comprise the Snowy-Murray Development and the Snowy-Tumut Development that together are known as the Snowy Mountains Hydro-electric Scheme;
- (18) **“Snowy-Tumut Development”** means the component of the Snowy Scheme comprising works that regulate the waters of the Eucumbene River, the Tooma River, the Upper Murrumbidgee River and the Upper Tumut River;
- (19) **“Snowy Water Catchment”** has the same meaning as in the Act;
- (20) **“Snowy Water Inquiry Outcomes Implementation Deed”** means the Snowy Water Inquiry Outcomes Implementation Deed between the Commonwealth, New South Wales and Victoria dated on or about the Corporatisation Date;
- (21) **“Snowy Water Licence”** means the Snowy Water Licence issued under Part 5 of the Act;
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- (22) **“South Australia”** means the State of South Australia;
- (23) **“Upper Snowy River”** means the main course of the Snowy River upstream of Jindabyne Dam and all tributaries, effluents and anabranches of that main course including the Mowamba River and the Cobbon Creek but excluding the Eucumbene River;
- (24) **“Victoria”** means the State of Victoria; and
- (25) **“Water Year”** means the period of twelve Months commencing on 1 May in each year.

1.2 Interpretation

- (1) Reference to:
- (a) one gender includes the other;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a firm, an unincorporated association, a Government Agency or body corporate;
 - (d) a party includes:
 - (i) in the case of a body corporate, its successors, assigns and substitutes (including persons taking by novation); and
 - (ii) in the case of a natural person, the person’s executors, administrators, assigns and substitutes (including persons taking by novation);
 - (e) an officer or body of persons includes any other officer or body for the time being exercising the powers or performing the functions of that officer or body;
 - (f) a right includes a remedy, authority or power;
 - (g) this Deed or any other instrument includes any amendment, variation or replacement of any of them;
 - (h) a Schedule or Annexure is to a schedule or annexure to this Deed;
 - (i) any statute, regulation, rule, proclamation, order, ordinance or by-law (**“Statutory Provision”**) includes:
 - (i) any such Statutory Provision as amended or re-enacted from time to time; and
 - (ii) any statute, regulation, rule, proclamation, order, ordinance or by-law enacted in replacement of that Statutory Provision;
 - (j) any thing includes the whole and each part of it separately; and
 - (k) a right or interest of a party is to a right or interest of that party:

- (i) protected under the Snowy Water Licence as at the Corporatisation Date or as subsequently varied to the extent necessary to reflect a variation to the Snowy Water Inquiry Outcomes Implementation Deed; and/or
 - (ii) protected under the MDB Amending Agreement, the Snowy Bilateral Deed and/or the Snowy Water Inquiry Outcomes Implementation Deed to the extent to which that protection is affected by the revocation or expiration of the Snowy Water Licence.
- (2) "Including" and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings are for convenience only and do not form part of this Deed or affect its interpretation.

2. COMMENCEMENT AND TERMINATION

2.1 Commencement Date

This Deed will take effect on and from the Corporatisation Date.

2.2 Termination

This Deed may be terminated only by agreement between the parties.

3. INTENTION TO CREATE LEGAL RELATIONS

3.1 Legally Binding

The parties intend that this Deed will be legally binding and enforceable.

4. ACKNOWLEDGEMENT WITH RESPECT TO RIGHTS OF PARTIES

4.1 Acknowledgement

The parties acknowledge that this Deed does not, except where expressly stated, give to any party any rights prior to the expiration or revocation of the Snowy Water Licence.

5. REMEDIES

5.1 Damages Insufficient

The parties acknowledge and agree that:

- (1) monetary damages alone would not be a sufficient remedy for breach of this Deed; and

- (2) in addition to any other remedy which may be available in law or in equity, the Commonwealth and Victoria are entitled to interim, interlocutory or permanent injunctions or any of them to prevent a breach and to compel specific performance of this Deed.

6. REVOCATION OF SNOWY WATER LICENCE

6.1 Application of this Clause 6

This **clause 6** applies if, following the revocation of the Snowy Water Licence, or any other licence issued by the Ministerial Corporation under section 24(2)(b) of the Act, the Ministerial Corporation proposes to issue a further licence under that section ("**Further Licence**").

6.2 New South Wales to Negotiate Terms of Further Licence

As soon as practicable after the Ministerial Corporation determines to revoke the Snowy Water Licence or any other licence issued by the Ministerial Corporation under section 24(2)(b) of the Act, New South Wales must:

- (1) to protect the rights and interests of the Commonwealth and Victoria after the revocation, negotiate in good faith with the Commonwealth and Victoria upon the terms of the Further Licence ; and
- (2) actively consult with South Australia on those terms.

6.3 Terms of Further Licence to be Agreed with the Commonwealth and Victoria

The Commonwealth, New South Wales and Victoria must use their best endeavours to agree upon the terms of the Further Licence.

7. EXPIRATION AND REVOCATION OF SNOWY WATER LICENCE

7.1 Acknowledgment

Each party acknowledges that, as at the date of this Deed, the Act provides that the Snowy Water Licence:

- (1) must have a term of 75 years;
- (2) may not be renewed; and
- (3) a further licence may not be issued unless it is issued on the revocation of the Snowy Water Licence and then the further term may not exceed the balance of the term of the revoked licence.

7.2 Application of this Clause 7

This **clause 7** applies:

- (1) with respect to the expiration of the Snowy Water Licence or any other licence issued by the Ministerial Corporation under section 24(2)(b) of the Act; and

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- (2) if, following the revocation of the Snowy Water Licence or any such other licence, the Ministerial Corporation does not propose to issue a further licence under that section.

7.3 New South Wales to Negotiate Continuing Arrangements

At a reasonable time prior to the expiration of the Snowy Water Licence or as soon as practicable after the revocation of the Snowy Water Licence, New South Wales must:

- (1) negotiate in good faith with the Commonwealth and Victoria upon either or both of a set of legislative and other legally binding arrangements to protect the rights and interests of the Commonwealth and Victoria after the expiration or revocation of the Snowy Water Licence; and
- (2) actively consult with South Australia on those proposed arrangements.

7.4 Continuing Arrangements to be Agreed With the Commonwealth and Victoria

- (1) The Commonwealth, New South Wales and Victoria must use their best endeavours to agree upon either or both of a set of legislative and other legally binding arrangements to protect the rights and interests of the Commonwealth and Victoria after the expiration or revocation of the Snowy Water Licence.
- (2) New South Wales must take all action and do all things reasonably necessary to introduce into the New South Wales Parliament the set of legislative arrangements as may be agreed between the Commonwealth, New South Wales and Victoria as soon as practicable after agreement is reached.

7.5 Parties to Negotiate if New South Wales Parliament Fails To Pass Agreed Legislative Arrangements

If:

- (1) the Commonwealth, New South Wales and Victoria agree a set of legislative arrangements; and
- (2) the New South Wales Parliament does not pass those legislative arrangements, then:
- (3) New South Wales must negotiate in good faith with the Commonwealth and Victoria; and
- (4) those parties must use their best endeavours to agree upon a set of other legally binding arrangements that give reasonable satisfaction to the Commonwealth and Victoria.

8. DEFAULT PROVISIONS

8.1 Application of this Clause 8

- (1) The provisions of this **clause 8** apply from the date of expiration or sooner revocation of: the Snowy Water Licence; and

- (2) where applicable, each further licence issued by the Ministerial Corporation under section 24(2)(b) of the Act and each authority under any other Act of Parliament to collect, divert, store and use water in the Snowy Water Catchment,
- until otherwise agreed by the Commonwealth and Victoria to the extent practicable given the then applicable legislative regime.

8.2 Default Provisions: Information to the Commonwealth and Victoria

- (1) Each Water Year New South Wales must provide the Commonwealth and Victoria with a document:
- (a) that:
- (i) is developed according to the same process as required under the Snowy Water Licence as at the Corporatisation Date or as subsequently varied to the extent necessary to reflect a variation to the Snowy Water Inquiry Outcomes Implementation Deed; and
- (ii) contains the same information and provisions about water releases from the Snowy Scheme as was required to be contained in the last Annual Water Operating Plan prepared under the Snowy Water Licence according to all of the provisions of that Licence; or
- (b) developed according to another process and in another form agreed between the Commonwealth, New South Wales and Victoria; and
- (2) New South Wales must consult with the Commonwealth and Victoria with respect to the development of that document and variations (if any) to that document.

8.3 Default Provisions: Operation of the Snowy Scheme

New South Wales must procure that the Snowy Scheme is operated so as to comply with:

- (1) the requirements relating to environmental flows as contained in the Snowy Water Licence as at the Corporatisation Date and as subsequently amended (if at all) with the agreement of the Commonwealth and Victoria; and
- (2) the document referred to in **subclause 8.2(1)**.

9. COMPENSATION FOR NEW SNOWY SCHEME LICENSEE

9.1 New South Wales May Enter Into Compensation Deed With New Licensee

- (1) If the Snowy Water Licence is revoked and another licence issued either to Snowy Hydro Limited or to another licensee, New South Wales may enter into an agreement with Snowy Hydro Limited or the other licensee to compensate it for any action taken by the Ministerial Corporation or New South Wales in relation to that other licence that has an adverse financial impact on the licensee.
- (2) In exercising its discretion to enter into an agreement with Snowy Hydro Limited or another licensee, New South Wales must have regard to the viability of the Snowy Scheme.

10. SNOWY BILATERAL DEED**10.1 New South Wales to Procure New Licensee to Enter into Snowy Bilateral Deed**

If the Ministerial Corporation issues to a person other than the Licensee:

- (1) a further licence under section 24(2)(b) of the Act; or
- (2) an authority under any other Act of Parliament to collect, divert, store and use water in the Snowy Water Catchment,

New South Wales must procure the licensee under that further licence or the holder of that authority (as the case may be) to enter into an agreement with Victoria either:

- (3) in a form agreed between Victoria and that person; or
- (4) in default, on the same terms as the Snowy Bilateral Deed as at the date immediately before the revocation or expiration of the Snowy Water Licence.

11. AMENDMENT OR VARIATION**11.1 Amendment or Variation**

This Deed may be amended or varied at any time with the agreement of the parties.

11.2 Form

An amendment to or variation of this Deed under **clause 11.1** is not effective unless it is in writing and signed by the parties.

12. GOODS AND SERVICES TAX**12.1 Interpretation**

In this **clause 12**:

- (1) except for defined terms, capitalised expressions have the same meaning as in the GST Law; and
- (2) “**GST Law**” has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*.

12.2 GST

- (1) Unless otherwise expressly stated, any amounts payable or any form of consideration to be provided for a Supply made under this Deed are exclusive of GST (“**GST Exclusive Amount**”).
- (2) If GST is payable by any party making a Taxable Supply (“**Supplier**”) under this Deed, the Recipient must pay to the Supplier an amount equal to the GST payable on the Taxable Supply (“**GST Amount**”) in addition to and at the same time and in the same manner as the GST Exclusive Amount or other consideration otherwise payable for the Supply.

12.3 Tax Invoice

The Supplier must issue a Tax Invoice to the Recipient in respect of any Taxable Supply made under this Deed before the Consideration for the Supply is due.

12.4 Adjustments

- (1) If at any time an Adjustment Event arises in respect of a Taxable Supply made by the Supplier under this Deed, the Supplier must provide the Recipient with an Adjustment Note for the Adjustment immediately upon becoming aware of the Adjustment.
- (2) Where an Adjustment Event requires that a payment be made by the Supplier to the Recipient, or the Recipient to the Supplier, as the case may be, the payment must be made within ten days from the date of issue of the Adjustment Note.

12.5 Reimbursements

Where a party is required under this Deed to pay for or reimburse a cost, expense or outgoing of another party, the amount to be paid by the first party is the sum of:

- (1) the amount of the cost, expense or outgoing less any Input Tax Credits in respect of the cost, expense or outgoing to which the other party is entitled; and
- (2) **if the payment by the first party is Consideration for a Taxable Supply:** an amount equal to the GST Amount payable by the other party in respect of the Taxable Supply.

12.6 Supplier's obligations

The Supplier is responsible for determining the GST treatment of any Supply made under this Deed, or any Adjustment Event in relation to any Supply made under this Deed, in accordance with the GST Law applicable at the time.

12.7 Commissioner's assessment, ruling or determination

- (1) If the Commissioner makes an assessment, ruling or determination which results in a GST outcome in respect of any Supply or Adjustment Event in relation to a Supply made under this Deed which differs from the determination of the Supplier under **clause 12.6**, the Supplier and the Recipient must respectively make the necessary refunds and payments to correctly reflect the Commissioner's assessment, ruling or determination.
- (2) If the Commissioner determines that interest or a penalty is payable in relation to the GST treatment of a Supply or an Adjustment Event relating to a Supply made under this Deed the interest and penalty must be paid by the Supplier, to the extent to which the Supplier's determination under **clause 12.6** was incorrect. However, if a party other than the Supplier is responsible for the incorrect application of the GST Law to the transaction, then that party is responsible for any interest or penalty. The parties may also agree that in appropriate circumstances each party must bear the interest and penalty imposed on it.

12.8 Claims

If any party ("**Payer**") must make a payment to another party ("**Payee**") in respect of any loss, damages, claim, compensation or any other matter ("**Claim**") arising under this Deed, whether that payment is determined by agreement of the parties, in terms of a court order, under arbitration or mediation or in any other manner, and the payment gives rise to a liability for GST in the hands of the Payee, the Payee must issue a Tax Invoice to the Payer and the Payer must pay the amount of GST stated on that Tax Invoice within ten days of receipt of the Tax Invoice.

13. FURTHER ASSURANCE

13.1 Further Assurance

Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Deed.

14. SEVERABILITY

14.1 Severance of Provisions

- (1) All the provisions of this Deed will so far as possible be construed so as not to be invalid, illegal or unenforceable in any respect.
- (2) Despite **subclause 14.1(1)**, if any provision in this Deed is illegal, invalid or unenforceable, that provision will as far as possible be read down to such extent as may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation of a partial character.
- (3) If any provision in this Deed or any part of it cannot be so read down, then that provision or part is severed and the rest of the Deed remains in force.

15. ENTIRE UNDERSTANDING

15.1 Deed Contains Entire Understanding

This Deed:

- (1) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Deed; and
- (2) supersedes any prior agreement or understanding on anything connected with that subject matter.

15.2 No Reliance on Representations

Each party has entered into this Deed without relying on any representation by the other party or any person purporting to represent that party.

16. EXECUTION OF COUNTERPARTS

16.1 Counterpart is Original

This Deed may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same Deed.

17. GOVERNING LAW AND JURISDICTION

17.1 Governing Law and Jurisdiction

- (1) The law of and applicable in New South Wales governs this Deed.
- (2) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and the Federal Court of Australia.

EXECUTED as a deed.

SIGNED, SEALED AND DELIVERED for)
and on behalf of **THE COMMONWEALTH**)
OF AUSTRALIA by the **HON JOHN**)
HOWARD in the presence of:

Signature of Witness

Name of Witness
(BLOCK LETTERS)

SIGNED, SEALED AND DELIVERED for)
and on behalf of **THE STATE OF NEW**)
SOUTH WALES by the **HON BOB CARR** in)
the presence of:

Signature of Witness

Name of Witness
(BLOCK LETTERS)

SIGNED, SEALED AND DELIVERED for)
and on behalf of **THE STATE OF VICTORIA**)
by the **HON STEVE BRACKS** in the)
presence of:

Signature of Witness

Name of Witness
(BLOCK LETTERS)

SIGNED, SEALED AND DELIVERED for)
and on behalf of **THE STATE OF SOUTH**)
AUSTRALIA by the **HON MIKE RANN** in the)
presence of:

Signature of Witness

Name of Witness
(BLOCK LETTERS)