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SNOWY WATER INQUIRY OUTCOMES IMPLEMENTATION 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. Under the Act, the States sponsored the Snowy Water Inquiry.
- B. Following the Snowy Water Inquiry, the Commonwealth and the States reached an agreement on the outcomes of the Snowy Water Inquiry known as *The Heads of Agreement on the Outcomes of the Snowy Water Inquiry*.
- C. This Snowy Water Inquiry Outcomes Implementation Deed is the legally binding agreement between the parties on the outcomes of the Snowy Water Inquiry.
- D. On the Corporatisation Date the parties transferred the Existing Snowy Hydro Undertaking to the Licensee under the Corporatisation Legislation. The Licensee now owns and operates the Snowy Scheme.
- E. The parties acknowledge that the States are each moving to establish fully functioning water markets consistent with COAG principles and resolutions of the Murray-Darling Basin Ministerial Council.
- F. The parties note that New South Wales is currently in a programme of active water policy reform and that these initiatives will underpin the operation of the Joint Government Enterprise.
- G. The purposes of this Deed are:
 - (1) to document the agreements between the parties on the outcomes of the Snowy Water Inquiry, in particular the institutional arrangements to govern the making of Increased Flows and the establishment of the Joint Government Enterprise;
 - (2) to provide for the funding by the parties of the Joint Government Enterprise;
 - (3) to establish the Water Consultation and Liaison Committee and prescribe the functions of that Committee in connection with the Annual Water Operating Plan process prescribed under the Snowy Water Licence; and
 - (4) to provide for arrangements on the transfer or revocation of the Snowy Water Licence.

IT IS AGREED**1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

In this Deed:

- (1) **"Above Target Water"** means water in each Development that is not required to provide 1,062 GL from the Snowy-Murray Development and 1,026 GL from the Snowy-Tumut Development in subsequent Water Years;
- (2) **"Act"** means the *Snowy Hydro Corporatisation Act 1997 (NSW)*;
- (3) **"Annual Water Operating Plan"** has the same meaning as in the Snowy Water Licence;
- (4) **"Appointing Agency"** means, with respect to a person appointed to the Water Consultation and Liaison Committee, the Government Agency or body corporate that appointed that person to that Committee;
- (5) **"Auditor"** means the person appointed under **clause 14.1**;
- (6) **"Base Passing Flow"** means:
 - (a) **with respect to the Snowy River**: the volume of 9 GL per Water Year from Jindabyne Dam plus the non-regulated flow past the relevant Works on the Mowamba River and Cobbon Creek prior to the Corporatisation Date;
 - (b) **in the case of the Upper Murrumbidgee River**: the long term average volume of 2 GL per Water Year from Tantangara Dam; and
 - (c) **with respect to Works on the Snowy Montane Rivers**: the non-regulated flow of the relevant river past the particular Work prior to any modification to that Work required under **Annexure Two**;
- (7) **"Business Day"** means a day that is not a Saturday, Sunday or any other day that is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (8) **"Commission"** means the Murray-Darling Basin Commission as defined in the *Murray-Darling Basin Act 1993 (Cth)*;
- (9) **"Commonwealth"** means the Commonwealth of Australia;
- (10) **"Competing Utility"** means a Government Agency or a body corporate:
 - (a) that carries on the business of the generation, transmission or supply of electricity or the storage or release of water along and into rivers and streams, or which is a Related Body Corporate, Subsidiary or Holding Company of such an Agency or body corporate; or
 - (b) that is in any way in competition with the business carried on by the Licensee of generating and trading electricity or storing and releasing water;

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- (11) **"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)*;
- (12) **"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)*;
- (13) **"Cost"** means reasonable cost and may include any cost, charge, expense, outgoing, payment or other expenditure of any nature whatsoever, including where appropriate all reasonable and proper legal fees;
- (14) **"Deed"** means this Deed, including any schedule or annexure to it;
- (15) **"Development"** means either the Snowy-Murray Development or the Snowy-Tumut Development and **"Developments"** means both of them;
- (16) **"DNRE"** means the Department of Natural Resources and the Environment established under the *Public Sector Management and Employment Act 1998 (Vic)*;
- (17) **"Environmental Entitlements"** means the Snowy-Murray Development (River Murray) Environmental Entitlements and the Snowy-Tumut Development (Murrumbidgee River) Environmental Entitlement;
- (18) **"Existing Snowy Hydro Undertaking"** has the same meaning as in the Corporatisation Legislation;
- (19) **"GL"** means gigalitre;
- (20) **"Goulburn River System"** means the Broken, Goulburn, Campaspe and Loddon Rivers and the water supply systems supplied by those Rivers;
- (21) **"Government Agency"** includes a department of State, statutory or public authority, instrumentality, corporation, body or person whether Commonwealth, State, territorial or local;
- (22) **"GWh"** means gigawatt hour;
- (23) **"Increased Flows"** means the River Murray Increased Flows, the Snowy Montane Rivers Increased Flows, the Snowy Montane Rivers External Increased Flows and the Snowy River Increased Flows;
- (24) **"Joint Government Enterprise"** means the enterprise to be established by the parties under **clause 10.1**;
- (25) **"Law"** means:
- (a) any statute, regulation, rule, proclamation, order, ordinance or by-law whether present or future and whether Commonwealth, State, territorial or local; and

- (b) the common law;
- (26) **"Licensee"** means the licensee under the Snowy Water Licence;
- (27) **"Lower Darling River System"** means the Darling River and its anabranch system from the upstream extent of the Menindee Lakes Storage and downstream and the water supply systems supplied by that River;
- (28) **"MDB Agreement"** means the Agreement made on 24 June 1992 between the Commonwealth, New South Wales, Victoria and South Australia 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)*;
- (29) **"MDB Amending Agreement"** means the MDB Amending Agreement dated on or about the Corporatisation Date between the parties and the State of South Australia;
- (30) **"Ministerial Corporation"** means the Water Administration Ministerial Corporation constituted under section 371 of the Water Management Act;
- (31) **"Month"** means calendar month and **"Monthly"** means each calendar month;
- (32) **"Mowamba Borrowings Account"** means the water account referred to in subclause 24.1(1);
- (33) **"Murrumbidgee River System"** means the Murrumbidgee River and the water supply systems supplied by that River;
- (34) **"Net Forgone Revenue"** means any revenue net of costs incurred to generate that revenue lost to the Licensee as a result of an action referred to in this Deed;
- (35) **"New South Wales"** means the State of New South Wales;
- (36) **"Non-Transferable Water Savings"** means the difference between the Water Savings from a particular Water Efficiency Project and the increase in the Environmental Entitlements as a result of that Water Efficiency Project;
- (37) **"Prescribed Event"** means any of the following events:
- (a) low inflows;
- (b) spills;
- (c) equipment failure; or
- (d) public safety or environmental health risks,
- that:

- (e) is beyond the reasonable control of the Licensee; and
 - (f) occurs without the fault or negligence of the Licensee;
- (38) “**Protocols**” means the procedures by which the volume of Water Savings achieved from a Water Efficiency Project is to be calculated after the Water Efficiency Project has been partly or wholly completed (as the case may be);
- (39) “**Related Body Corporate**”, “**Subsidiary**” and “**Holding Company**” each has the same meaning as in section 9 of the *Corporations Act 2001 (Cth)*;
- (40) “**Reliability**” with respect to a supply of water means the statistical probability of being able to supply a particular volume in any Water Year;
- (41) “**Required Annual Release**” has the same meaning as in the Snowy Water Licence;
- (42) “**River**” includes any affluent, effluent, creek, anabranch or extension of and any lake or lagoon connected with, the river;
- (43) “**River Murray Annual Allocation**” with respect to each Water Year means the annual allocation from the River Murray Apportioned Entitlement determined by New South Wales under **subclause 18.1(2)**;
- (44) “**River Murray Apportioned Entitlement**” means the volume of water from the Environmental Entitlements that is apportioned to the River Murray Increased Flows by New South Wales under **clause 16.1**;
- (45) “**River Murray Increased Flows**” means releases of water made by the Commission in accordance with Schedule G to the MDB Agreement;
- (46) “**River Murray System**” means the aggregate of:
- (a) the River Murray;
 - (b) all tributaries entering the River Murray upstream of Doctors Point;
 - (c) the Ovens River; and
 - (d) the Lower Darling River System;
- (47) “**Seasonal Availability**” with respect to the water to which an entitlement refers means:
- (a) **for that part of the entitlement whose availability is determined by reference to seasonal allocations**: the final seasonal allocation announcement of the relevant State during the previous Water Year; and
 - (b) **for that part of the entitlement whose availability is determined by reference to the entitlement of South Australia**: the allocated volume received during the previous Water Year by South Australia as a proportion of its entitlement during that Water Year under the MDB Agreement;
- (48) “**Snowy Bilateral Deed**” means the Snowy Bilateral Deed dated on or about the Corporatisation Date between Victoria and the Licensee;

- (49) **"Snowy Montane Rivers"** means all rivers within the Snowy Catchment Area including the Upper Murrumbidgee River immediately below Tantangara Dam but excluding the Snowy River, the Mowamba River and Cobbon Creek;
- (50) **"Snowy Montane Rivers Increased Flow"** means releases of water in addition to the Base Passing Flow referred to in **Annexure Two**;
- (51) **"Snowy Montane Rivers External Increased Flows"** means releases of water made by the Licensee to Snowy Montane Rivers under the provisions of **Annexure Two** which would have flowed through either:
- (a) the Murray 1 Power Station in the case of the Snowy-Murray Development; or
 - (b) Jounama Pondage in the case of the Snowy-Tumut Development,
- but are accounted as part of the Required Annual Releases from those locations;
- (52) **"Snowy-Murray Development"** means the component of the Snowy Scheme comprising Works that regulate the waters of the Upper Snowy River, the Geehi River and Bogong Creek;
- (53) **"Snowy-Murray Development Annual Allocation"** means the annual allocation for any Water Year for the Snowy-Murray Development determined by New South Wales under **subclause 18.1(1)**;
- (54) **"Snowy-Murray Development Designated Entitlement"** means that part of the Environmental Entitlements designated against the Snowy-Murray Development by New South Wales under **subclause 15.6(1)**;
- (55) **"Snowy-Murray Development (River Murray) Environmental Entitlements"** means both:
- (a) a category of environmental water referred to in section 8 of the Water Management Act sourced from the River Murray System; and
 - (b) a bulk entitlement granted under the *Water Act 1989 (Vic)* that includes conditions relating to the protection of the environment sourced from the River Murray System or the Goulburn River System,
- in both cases comprising a volume of water derived from either or both of verified Water Savings funded and Water Entitlements purchased by the Joint Government Enterprise;
- (56) **"Snowy River"** means the Snowy River downstream of Jindabyne Dam;
- (57) **"Snowy River Annual Allocation"** means the annual allocation from the Snowy River Apportioned Entitlement for any Water Year, determined by New South Wales under **subclause 18.1(3)**;
- (58) **"Snowy River Apportioned Entitlement"** means the volume of water from the Environmental Entitlements apportioned to the Snowy River Increased Flows by New South Wales under **clause 16.1**;

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- (59) **“Snowy River Increased Flows”** means releases of water referred to in **Annexure One** in addition to the Base Passing Flow;
- (60) **“Snowy Scheme”** means all of the Works;
- (61) **“Snowy Scheme Deed of Indemnity”** means the Snowy Scheme Deed of Indemnity between the parties and the Licensee dated on or about the Corporatisation Date;
- (62) **“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;
- (63) **“Snowy-Tumut Development Annual Allocation”** with respect to each Water Year means the annual allocation for the Snowy-Tumut Development determined by New South Wales under **subclause 18.1(1)**;
- (64) **“Snowy-Tumut Development Designated Entitlement”** means that part of the Environmental Entitlements designated against the Snowy-Tumut Development by New South Wales under **subclause 15.6(2)**;
- (65) **“Snowy-Tumut Development (Murrumbidgee River) Environmental Entitlement”** means a category of environmental water referred to in section 8 of the Water Management Act sourced from the Murrumbidgee River System, comprising a volume of water derived from either or both of verified Water Savings funded or Water Entitlements purchased by the Joint Government Enterprise;
- (66) **“Snowy Water Catchment”** has the same meaning as in the Act;
- (67) **“Snowy Water Inquiry”** has the same meaning as in the Act;
- (68) **“Snowy Water Licence”** means the licence issued under Part 5 of the Act or, if that licence is revoked, an authority under any other Act of Parliament to collect, divert, store and use water in the Snowy Water Catchment;
- (69) **“South Australia”** means the State of South Australia;
- (70) **“States”** means New South Wales and Victoria;
- (71) **“Upper Murrumbidgee River”** means the Murrumbidgee River immediately downstream of Tantangara Dam;
- (72) **“Upper Snowy River”** means the Snowy River upstream of Jindabyne Dam (including the Mowamba River and Cobbon Creek) but excluding the Eucumbene River;
- (73) **“Victoria”** means the State of Victoria;
- (74) **“Water Consultation and Liaison Committee”** means the Water Consultation and Liaison Committee established by the parties under **clause 28.1**;
- (75) **“Water Efficiency Projects”** means projects referred to in **clause 12.1**;
- (76) **“Water Entitlement”** means:
- (a) an access licence granted under the Water Management Act; and

- (b) a water right, licence to take and use water or bulk entitlement under the *Water Act 1989 (Vic)* together with any transferable allocation of sales water made to the holder of such a water right or licence;
- (77) "**Water Management Act**" means the *Water Management Act 2000 (NSW)*;
- (78) "**Water Savings**" means the volume of water saved through one or more Water Efficiency Projects;
- (79) "**Water Year**" means the period of 12 Months commencing on 1 May in each year; and
- (80) "**Works**" means any dam, tunnel, power station, aqueduct or other structure that is listed from time to time in the Snowy Water Licence.

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) a Government Agency includes a Government Agency to which the functions of a former Government Agency are or have been allocated or assumed;
 - (f) any organisation that ceases to exist will be deemed to be a reference to an organisation having substantially the same objects as the organisation that ceases to exist;
 - (g) 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;
 - (h) a right includes a remedy, authority or power;
 - (i) this Deed or any other instrument includes any amendment, variation or replacement of any of them;
 - (j) a Schedule or Annexure is to a schedule or annexure to this Deed;
 - (k) any statute, regulation, rule, proclamation, order, ordinance or by-law ("**Statutory Provision**") includes:

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- (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;
- (l) a monetary amount is to Australian dollars;
 - (m) any thing includes the whole and each part of it separately;
 - (n) the purchase of Water Entitlements includes a temporary transfer of those Water Entitlements; and
 - (o) a release volume is a reference to that release volume measured as at the following points:
 - (i) **for the Snowy River:** immediately below the confluence of the Snowy River with the Mowamba River; and
 - (ii) **for each of the Snowy Montane Rivers:** at each of the relevant Works.
- (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 and explanatory notes are for convenience only and do not form part of this Deed or affect its interpretation.
 - (5) If an act must be done on a specified day that is not a Business Day, it must be done instead on the next Business Day.

PART ONE: INTRODUCTORY

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. REMEDIES

4.1 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, each party is entitled to interim, interlocutory or permanent injunctions or any of them to prevent a breach and to compel specific performance of this Deed.

5. WATER MANAGEMENT ACT AND OTHER LEGISLATION

5.1 Acknowledgement

The parties acknowledge that:

- (1) the provisions of Part Two of this Deed were prepared on the basis of the provisions in the Water Management Act and it is currently the intention of New South Wales to not proclaim the bulk of the provisions of that Act until 2002; and
- (2) it may be that some of the things to be done by the parties under this Deed can only be achieved through legislative amendment.

5.2 New South Wales to Achieve Same Outcomes Under Current Law

New South Wales must, prior to fully proclaiming the Water Management Act, at its own Cost do all things necessary or desirable under the current Law in New South Wales to give full effect to this Deed despite the non-proclamation of that Act.

5.3 States to Introduce Amending Legislation If Required

New South Wales and Victoria must take all action and do all things reasonably necessary to introduce into their respective Parliaments amendments (if any) to the Water Management Act and the *Water Act 1989 (Vic)* respectively that are required to give full effect to the provisions of this Deed.

6. NEW SOUTH WALES AND THE MINISTERIAL CORPORATION**6.1 New South Wales May Appoint Ministerial Corporation As Agent**

New South Wales may, by notice in writing to the other parties, appoint the Ministerial Corporation as its agent to perform its obligations under this Deed.

PART TWO: AGREED SNOWY WATER INQUIRY OUTCOMES

7. INCREASED FLOWS

7.1 Target Levels of Increased Flows

The parties acknowledge that the arrangements and actions contemplated under this Deed are intended to achieve the following target flows and allocations progressively in tandem with increases in the volume of Water Savings.

TIMING	INCREASED FLOW	TARGET VOLUME
STAGE ONE		
During the 12 Months from the Corporatisation Date until the first anniversary of the Corporatisation Date	Snowy River Increased Flows from either or both of the Mowamba River and Cobbon Creek	Target flow up to maximum of 38 GL per Water Year.
STAGE TWO		
During the period from the first anniversary of the Corporatisation Date until the seventh anniversary of the Corporatisation Date	Snowy River Increased Flows including, up until the third anniversary of the Corporatisation Date, a target flow up to a maximum of 38 GL per Water Year from either or both of the Mowamba River and Cobbon Creek	Target average annual flow of 142 GL per Water Year.
	Snowy Montane Rivers Increased Flows	Target average annual flow up to maximum volume equivalent to 100 GWh per annum of forgone electricity generation.
	River Murray Increased Flows	Target allocation of 70 GL per Water Year.
STAGE THREE		
From the seventh anniversary of the Corporatisation Date until the tenth anniversary of the Corporatisation Date	Snowy River Increased Flows	Target average annual flow of 212 GL per Water Year.
	Snowy Montane Rivers Increased Flows	Target average annual flow up to maximum volume equivalent to 150 GWh per annum of forgone electricity generation.
	River Murray Increased Flows	Target allocation of 70 GL per Water Year.

TIMING	INCREASED FLOW	TARGET VOLUME
STAGE FOUR		
From the tenth anniversary of the Corporatisation Date	Snowy River Increased Flows	Target average annual flow: (a) of 212 GL per Water Year; or (b) if applicable under clause 5 of Annexure One , from 212 GL up to 294 GL per Water Year
	Snowy Montane Rivers Increased Flows	Target average annual flow up to maximum volume equivalent to 150 GWh per annum of forgone electricity generation.
	River Murray Increased Flows	Target allocation of: (a) 70 GL per Water Year; or (b) more than 70 GL per Water Year if agreed between the parties.

7.2 Release Patterns of Increased Flows

The parties acknowledge that, in the case of Snowy River Increased Flows and Snowy Montane Rivers Increased Flows, the arrangements and actions contemplated under this Deed are intended to ensure that water releases will to the extent possible mimic seasonal natural flows under prevailing climatic conditions subject to the size of the relevant outlet.

7.3 Derivation of Increased Flows Volumes

- (1) The parties acknowledge that, in the case of Snowy River Increased Flows, the volumes referred to in **clause 7.1** were calculated for the purposes of the Snowy Water Inquiry and:
 - (a) **in the case of references to 142 GL:** when added to the Base Passing Flow of the Snowy River, was the annual equivalent to 15% of the average natural flow of the Snowy River;
 - (b) **in the case of references to 212 GL:** when added to the Base Passing Flow of the Snowy River, was the annual equivalent to 21% of the average natural flow of the Snowy River; and
 - (c) **in the case of references to 294 GL:** when added to the Base Passing Flow of the Snowy River, was the annual equivalent to 28% of the average natural flow of the Snowy River.
- (2) This **clause 7.3** is inserted for the avoidance of doubt and does not affect the interpretation of this Deed.

8. PROVISIONS TO ADDRESS THE REALITIES OF WATER OPERATIONS

8.1 Acknowledgement

The parties acknowledge that in operating the Snowy Scheme the Licensee cannot achieve precise release volumes in each Water Year but, rather, can only target a release volume by reference to operational arrangements including for example inflow-diversion relationships in the case of aqueduct flows.

8.2 Release Requirements

Despite any other provision in this Deed:

- (1) a requirement on New South Wales to procure, through the Snowy Water Licence, that the Licensee makes a release of water in a Water Year is a requirement for New South Wales to procure, through the Snowy Water Licence, that the Licensee uses its best endeavours to release that water in that Water Year by targeting the volume to be released:
 - (a) by reference to average annual inflows into the relevant Works;
 - (b) having regard to the operational characteristics of the relevant Works; and
 - (c) where relevant, by reference to simulated available stream flow data for the applicable Works as modified;
- (2) in the case of:
 - (a) the Snowy River Increased Flows to be made under **subclause 3.3(2) of Annexure One**; and
 - (b) the Snowy Montane Rivers Increased Flows to be made from Tantangara Dam under **Part Two of Annexure Two**,if in any Water Year the actual release made varies from the volume targeted for release, then:
 - (c) **in the case of a shortfall**: the difference is to be added to the release otherwise required during the subsequent Water Year; and
 - (d) **in the case of an excess**: the difference is to be subtracted from the release otherwise required during the subsequent Water Year except where the excess is the result of a flood or necessary operational releases from the spillway gates;
- (3) Increased Flows are to be in addition to the relevant Base Passing Flow;
- (4) Snowy River Increased Flows to be made by the Licensee from Jindabyne Dam and Snowy Montane Rivers Increased Flows to be made by the Licensee from Tantangara Dam include increased evaporation in those storages compared to the volume of evaporation under water operations that achieve a uniform daily distribution of releases from those storages;
- (5) Snowy Montane Rivers Increased Flows are to be in addition to the Base Passing Flow of the relevant Snowy Montane River and include increased spill from relevant weir structures; and

- (6) Snowy Montane Rivers Increased Flows to be made by the Licensee from Tantangara Dam include spill from Tantangara Dam up to a maximum volume being the volume to be targeted for release from Tantangara Dam in the applicable Water Year.

9. WORKS REQUIRED UNDER THIS DEED

9.1 Acknowledgement

The parties acknowledge that:

- (1) Part 7 of the Act contains provisions that apply to the granting of "initial approvals"; and
- (2) for the purposes of that Part, the term "initial approval" includes an approval for a thing that is agreed between the States and identified in the agreement between the States as an agreed outcome of the Snowy Water Inquiry.

9.2 Agreed Works

For the purposes of section 41(1) of the Act, the outlet at Jindabyne Dam referred to in **clause 2.1 of Annexure One** is a thing agreed between the States as an agreed outcome of the Snowy Water Inquiry.

9.3 Outlet at Tantangara Dam and Snowy Montane Rivers Works

- (1) The parties acknowledge that the timeframes specified in this Deed with respect to:
- (a) construction of the outlet at Tantangara Dam referred to in **clause 4.1 of Annexure Two**; and
- (b) modifications to the Works along the rivers that are referred to **Annexure Three**,

were agreed by the parties on the assumption that those activities did not require approval within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979 (NSW)*.

- (2) New South Wales must procure that the Snowy Water Licence provides that, if in fact approval is required under Part 5 of that Act for those activities, the Licensee is to be given a reasonable time to obtain those approvals in addition to the times referred to in this Deed.

10. THE JOINT GOVERNMENT ENTERPRISE

10.1 Parties to Establish Joint Government Enterprise

The parties must:

- (1) at their own Cost; and
- (2) as quickly as possible and in any event not later than six Months after the Corporatisation Date,

establish a separate legal entity referred to in this Deed as the Joint Government Enterprise.

10.2 Form of Joint Government Enterprise

The parties must establish the Joint Government Enterprise in a form that enables it:

- (1) to carry out the functions contemplated under this Deed to be carried out by the Joint Government Enterprise; and
- (2) to enter into binding arrangements to give effect to the outcomes contemplated under this Deed.

10.3 Purposes of Joint Government Enterprise

The purposes of the Joint Government Enterprise are:

- (1) to fund Water Savings and purchase Water Entitlements in volumes sufficient to achieve the target levels of Increased Flows in stages two and three referred to in **clause 7.1**; and
- (2) to commission necessary environmental and riverine works in the Snowy River, the Snowy Montane Rivers and the River Murray System as nominated and agreed by the parties.

10.4 Functions of the Joint Government Enterprise

The parties must procure that the functions of the Joint Government Enterprise are:

- (1) to investigate Water Efficiency Projects;
- (2) to fund and commission Water Efficiency Projects and to contract with third parties to carry out the Projects;
- (3) to purchase Water Entitlements from willing sellers of those Water Entitlements in the River Murray System upstream of the South Australian border, the Murrumbidgee River System and the Goulburn River System;
- (4) to appoint and pay the Costs of the Auditor;
- (5) to commission necessary environmental and riverine works in the Snowy River, the Snowy Montane Rivers and the River Murray System as nominated and agreed by the parties in accordance with its approved business plan;
- (6) if required, to be able to temporarily hold Water Entitlements prior to their transfer to the respective State as Environmental Entitlements;
- (7) to deal with the States with respect to the salinity impacts (if any) of its activities;
- (8) to implement each approved business plan; and
- (9) to do other things necessary or incidental to its other functions.

10.5 Constitution of the Joint Government Enterprise

The parties must procure that the constituting documents of the Joint Government Enterprise:

- (1) **ownership/membership:** allow for other governments to participate in the ownership/membership of the Joint Government Enterprise with the unanimous agreement of the Commonwealth and the States;
- (2) **governance:** require the Joint Government Enterprise to carry out its functions, activities and operations in conformity with the arrangements contemplated by the parties as set out in this Deed;
- (3) **financial:** provide that the Joint Government Enterprise is not required to make a profit but will have a defined capacity:
 - (a) to make short term investments;
 - (b) to carry over of funds between financial years;
 - (c) to borrow money in an amount (including interest) that does not exceed the balance of the financial contributions yet to be paid to the Joint Government Enterprise under **clause 11.1**; and
 - (d) to expend funds but only in accordance with an approved business plan;
- (4) **business plans:** require the Joint Government Enterprise to prepare annual business plans that:
 - (a) outline (amongst other things) the proposed expenditure of funds on Water Efficiency Projects and purchases of Water Entitlements; and
 - (b) must be approved by the parties; and
- (5) **amendment:** can only be amended by agreement between the parties.

10.6 States to Promote Water Trade

Prior to the establishment of fully operating water markets in New South Wales and Victoria, the States must take all reasonable steps to promote access by the Joint Government Enterprise to the holders of Water Entitlements (including individuals) in both States for the purpose of purchasing Water Entitlements for the purposes of this Deed.

11. GOVERNMENT FINANCIAL CONTRIBUTIONS TO THE JOINT GOVERNMENT ENTERPRISE

11.1 Government Financial Contribution to Joint Government Enterprise

The States must each pay \$150 million and the Commonwealth must pay \$75 million to the Joint Government Enterprise to fund its activities and operations.

11.2 Timing of Payment of Government Financial Contributions

Each year during the period of 10 years after the Corporatisation Date:

- (1) the Commonwealth must pay from its consolidated fund the sum of \$7.5 million dollars; and
- (2) the States must each pay from their consolidated funds the sum of \$15 million dollars,

to the Joint Government Enterprise in quarterly instalments which are to be paid on the first days of July, October, January and April.

11.3 Limit on Amount of Instalments

Nothing in this Deed requires or obliges the parties to do either or both of:

- (1) pay any moneys to the Joint Government Enterprise in excess of the amounts referred to in **clause 11.1**; and
- (2) pay in any year during the period of 10 years after the Corporatisation Date an amount in excess of the annual amounts referred to in **clause 11.2**.

11.4 Priority For River Murray Increased Flows

- (1) The States acknowledge that it is the intention of the Commonwealth that all amounts paid by the Commonwealth under **clause 11.1** are to be applied to the provision of River Murray Increased Flows.
- (2) The Commonwealth agrees with the States that its intention is satisfied by the provisions in this Deed with respect to the apportionment of the Environmental Entitlements.

12. WATER EFFICIENCY PROJECTS

12.1 What Is A Water Efficiency Project?

- (1) A project or package of projects may be treated under this Deed as a Water Efficiency Project if the project or package of projects saves water:
 - (a) by reducing transmission losses, evaporation or system inefficiencies; or
 - (b) by achieving either or both of water management and environmental improvements,in diversions from the River Murray System, the Murrumbidgee River System and/or the Goulburn River System.
- (2) The scope of activity for a Water Efficiency Project includes conducting feasibility studies and detailed designs, carrying out environmental assessments, obtaining necessary planning approvals and carrying out post-project monitoring to assist in the verification of Water Savings.

12.2 Costed Water Efficiency Projects Recommended By The Parties

Any one of the parties may:

- (1) provide the Joint Government Enterprise with a costed Water Efficiency Project or package of projects to be investigated by the Joint Government Enterprise; or

- (2) provide the Joint Government Enterprise with water from a Water Efficiency Project or package of projects initiated by the relevant party at the lesser of:
 - (a) the cost of the Project(s); or
 - (b) a price comparable to the prevailing market price in the market from which the Water Savings were drawn.

12.3 Obligations of Joint Government Enterprise With Respect to Costed Water Efficiency Projects

Subject to **clause 12.4**, the parties must procure that the Joint Government Enterprise may but need not:

- (1) fund a costed Water Efficiency Project provided to it by one of the parties under **subclause 12.2(1)**; and
- (2) purchase water from a Water Efficiency Project or package of projects initiated by one of the parties and provided to the Joint Government Enterprise under **subclause 12.2(2)** at the price determined in accordance with that subclause.

12.4 Victorian Water Efficiency Projects Already Commenced

Despite any other provision in this Deed, the parties must procure that the Joint Government Enterprise purchases water from the following Water Efficiency Projects initiated by Victoria at the price determined by the parties:

- (1) pipelining the Tungamah Domestic and Stock System;
- (2) pipelining the Normanville Domestic and Stock System; and
- (3) metering of unmetered domestic and stock outlets in the Goulburn Murray Irrigation District.

12.5 Joint Government Enterprise to Provide Parties with Information

The parties must procure that the Joint Government Enterprise provides the parties with all information necessary to enable them to refer proposed Water Efficiency Projects and proposed purchases of Water Entitlements to the Commission under clause 46 of the MDB Agreement, including:

- (1) reports from the Auditor;
- (2) sections of draft business plans relating to the development of Water Efficiency Projects and the purchase of Water Entitlements; and
- (3) analyses referred to in **clause 13.1**.

13. FUNDING OF WATER SAVINGS AND PURCHASE OF WATER ENTITLEMENTS BY JOINT GOVERNMENT ENTERPRISE**13.1 Conditions Precedent to Funding of Water Savings and Purchase of Water Entitlements**

The parties must procure that, when submitting a draft business plan to the parties for approval, the Joint Government Enterprise provides the parties with an analysis that demonstrates:

- (1) the need for the purchase of Water Entitlements (if any) proposed in the draft business plan; and
- (2) the extent to which the Water Efficiency Projects and purchase of Water Entitlements (if any) proposed in that plan may have a significant adverse impact on:
 - (a) the level of Reliability of Water Entitlements in diversions from the River Murray System, the Murrumbidgee River System and the Goulburn River System;
 - (b) water flows currently providing environmental benefits in the River Murray System, the Murrumbidgee River System and the Goulburn River System;
 - (c) the Seasonal Availability of the entitlement to be received by South Australia under the MDB Agreement;
 - (d) the quality of the water supplied to South Australia;
 - (e) the relevant market for Water Entitlements; and
 - (f) stakeholders including rural communities.

13.2 Limits on Joint Government Enterprise

Despite any other provision in this Deed, the parties must procure that in funding Water Savings and purchasing Water Entitlements the Joint Government Enterprise must:

- (1) not fund Water Efficiency Projects in or acquire Water Entitlements from South Australia or the Lower Darling River System unless the parties and South Australia agree in writing;
- (2) primarily fund Water Savings and only purchase Water Entitlements if necessary;
- (3) in the case of Water Savings, fund them for the least cost per unit of water having regard to the level of Reliability;
- (4) in the case of Water Entitlements, purchase them for the least cost per unit of water; and
- (5) have regard to potential Water Savings and Water Entitlements collectively available from:
 - (a) diversions from the River Murray System;
 - (b) the Murrumbidgee River System and diversions from it; and

- (c) the Goulburn River System and diversions from it.

14. AUDITOR

14.1 Joint Government Enterprise to Appoint Auditor

Subject to **clause 14.2**, the parties must procure that the Joint Government Enterprise from time to time appoints an appropriately qualified person as an auditor to carry out the following tasks:

- (1) **prior to the carrying out of a Water Efficiency Project**: to review the calculation of prospective Water Savings from the Project; and
- (2) **after a Water Efficiency Project has been partly or wholly completed (as the case may be)**: to certify that the calculations are reasonable and to verify the actual Water Savings achieved by the Project in accordance with the Protocols.

14.2 Parties To Approve Appointment of Auditor

- (1) The parties must procure that the Joint Government Enterprise must not appoint a person under **clause 14.1** without the prior written agreement of the parties to the appointment of that person.
- (2) The parties must consult with the Commission prior to agreeing to the appointment of that person.

15. WHAT HAPPENS WHEN WATER IS TRANSFERRED TO ENVIRONMENTAL ENTITLEMENTS

15.1 New South Wales to Transfer Water

New South Wales must transfer to the relevant Environmental Entitlement:

- (1) Water Savings as verified by the Auditor under **subclause 14.1(2)** from New South Wales; and
- (2) Water Entitlements purchased by the Joint Government Enterprise (being access licences granted under the Water Management Act).

15.2 Victoria to Transfer Water

Victoria must transfer to the relevant Environmental Entitlement:

- (1) Water Savings as verified by the Auditor under **subclause 14.1(2)** from Victoria; and
- (2) Water Entitlements purchased by the Joint Government Enterprise (being water rights, water licences or bulk entitlements under the *Water Act 1989 (Vic)*).

15.3 Form of New South Wales Environmental Entitlement

Prior to the first transfer of either or both of Water Savings and Water Entitlements under **clause 15.1** or **15.2**, the parties must determine the most appropriate category of environmental water defined in section 8 of the Water Management Act in which Water

Savings and Water Entitlements transferred to the Environmental Entitlements under that clause are to be held.

15.4 Water Saved That Temporarily Cannot Be Transferred

The States or the Joint Government Enterprise may combine Non-Transferable Water Savings from Water Efficiency Projects to achieve Water Savings that can be transferred to an Environmental Entitlement.

15.5 States Not to Reallocate Increased Flows for Consumptive Use

The States must not, with respect to water transferred to an Environmental Entitlement under either or both of **clauses 15.1 and 15.2**, allocate that water for consumptive use.

15.6 New South Wales to Designate Water Transferred to an Environmental Entitlement Against the Developments

As soon as practicable after a State transfers water to an Environmental Entitlement under **clause 15.1 or 15.2**, New South Wales must designate that water against the Developments as follows:

- (1) water held in the Environmental Entitlements and sourced from the River Murray System and from the Goulburn River System must be designated against the Snowy-Murray Development; and
- (2) water held in the Environmental Entitlements and sourced from the Murrumbidgee River System must be designated against the Snowy-Tumut Development.

16. APPORTIONMENT OF ENVIRONMENTAL ENTITLEMENTS BETWEEN INCREASED FLOWS

16.1 Total Volume of Environmental Entitlements to be Apportioned

Each Water Year after the first anniversary of the Corporatisation Date, New South Wales must apportion to the Increased Flows the water that during the previous 12 Months was transferred to an Environmental Entitlement under **clause 15.1 or 15.2** as follows:

- (1) on a 2:1 basis (both in terms of volume and Reliability) where:
 - (a) 2 GL is apportioned to Snowy River Increased Flows; and
 - (b) 1 GL is apportioned to River Murray Increased Flows; and
- (2) from the time that the River Murray Annual Allocation is 70 GL, the balance of the Environmental Entitlements is to be apportioned to the Snowy River Increased Flows.

17. RELIABILITY OF ANNUAL APPORTIONMENTS

17.1 Reliability of Water in River Murray Apportioned Entitlement

The Reliability of the water contained in the River Murray Apportioned Entitlement is the Reliability of that water based on the point of acquisition (in the case of Water Savings) or purchase (in the case of Water Entitlements).

17.2 Reliability of Water Contained in Snowy River Apportioned Entitlement

Subject to **clauses 17.3 and 17.4**, the Reliability of the water contained in the Snowy River Apportioned Entitlement is the Reliability of that water based on the point of acquisition (in the case of Water Savings) or purchase (in the case of Water Entitlements).

17.3 New South Wales to Assess Reliability of Snowy River Apportioned Entitlement

For each Water Year occurring prior to the tenth anniversary of the Corporatisation Date, New South Wales must after consultation with DNRE assess the Reliability of the water contained in the Snowy River Apportioned Entitlement to determine:

- (1) the extent to which that water could be converted to achieve a Snowy River Apportioned Entitlement of 142 GL at a Reliability equivalent to the Reliability of the entitlement received by South Australia under the MDB Agreement; and
- (2) the portion of that water that will be converted at the start of the Water Year to a Reliability equivalent to the Reliability of the entitlement received by South Australia under the MDB Agreement.

17.4 Reliability of Water Contained in Snowy River Apportioned Entitlement After Tenth Anniversary of the Corporatisation Date

On or about the tenth anniversary of the Corporatisation Date, the parties must unless they agree otherwise convert the water contained in the Snowy River Apportioned Entitlement to achieve a Snowy River Apportioned Entitlement of 142 GL at a Reliability equivalent to the Reliability of the entitlement received by South Australia under the MDB Agreement.

18. DETERMINATION OF ANNUAL ALLOCATIONS**18.1 Determination of Annual Allocations**

Each Water Year New South Wales must, after consulting with DNRE:

- (1) determine the annual allocation for each of the Developments by reference to the Seasonal Availability of the water contained in each of the Snowy-Murray Development Designated Entitlement and the Snowy-Tumut Development Designated Entitlement;
- (2) determine the annual allocation from the River Murray Apportioned Entitlement by reference to the Seasonal Availability of the water contained in that Entitlement; and
- (3) determine the annual allocation from the Snowy River Apportioned Entitlement by reference to the Seasonal Availability of the water contained in that Entitlement.

19. TREATMENT OF ANNUAL ALLOCATIONS**19.1 Required Annual Releases: Snowy-Murray Development**

New South Wales must, through the Snowy Water Licence, procure that each Water Year the Required Annual Release for the Snowy-Murray Development includes a reduction for the volume of the Snowy-Murray Development Annual Allocation.

19.2 Required Annual Releases: Snowy-Tumut Development

New South Wales must, through the Snowy Water Licence, procure that each Water Year the Required Annual Release for the Snowy-Tumut Development includes a reduction for the volume of the Snowy-Tumut Development Annual Allocation.

19.3 Snowy-Tumut Development Annual Allocation to be Transferred

New South Wales must, through the Snowy Water Licence, procure that each Water Year the Licensee adjusts its accounts to transfer the volume of the Snowy-Tumut Development Annual Allocation to the Snowy-Murray Development.

19.4 River Murray Annual Allocation to be Transferred to Above Target Water

New South Wales must, through the Snowy Water Licence, procure that each Water Year the Licensee adjusts its accounts to transfer the volume of the River Murray Annual Allocation to Above Target Water in the Snowy-Murray Development.

19.5 Allocation of Snowy River Annual Allocation

Subject to **clause 19.6**, each Water Year after the first anniversary of the Corporatisation Date New South Wales must allocate the Snowy River Annual Allocation between the Snowy River Increased Flows and the Mowamba Borrowings Account as follows:

- (1) **until there is a zero balance in the Mowamba Borrowings Account:** on a 1:1 basis where 1 GL is allocated to the Snowy River Increased Flows and 1 GL is allocated to the Mowamba Borrowings Account; and
- (2) **otherwise:** to the Snowy River Increased Flows.

19.6 Allocation of Snowy River Annual Allocation: Special Provisions

- (1) If, during any Water Year:
 - (a) there is a debit balance in the Mowamba Borrowings Account; and
 - (b) the Required Annual Release for either Development is reduced under the dry inflow sequence provisions in clause 8 of Schedule Four to the Snowy Water Licence,

a sufficient volume of the Snowy River Annual Allocation is to be allocated to the Mowamba Borrowings Account to minimise the debit balance in that Account and prevent the debit balance triggering the dry inflow sequence provisions in clause 8 of Schedule Four to the Snowy Water Licence.

- (2) During each Water Year prior to the third anniversary of the Corporatisation Date, the Snowy River Annual Allocation is to be allocated firstly to the reduction in the balance (if any) in the Mowamba Borrowings Account.
- (3) If, during any Water Year occurring after the third anniversary of the Corporatisation Date, the allocation of the Snowy River Annual Allocation under **clause 19.5** between the Snowy River Increased Flows and the Mowamba Borrowings Account results in an allocation to the Snowy River Increased Flows of less than 38 GL, the allocation of the Snowy River Annual Allocation as between the Snowy River Increased Flows and the Mowamba Borrowings Account is to be adjusted so that as

far as practicable the volume of the Snowy River Annual Allocation allocated to the Snowy River Increased Flows is equal to 38 GL.

19.7 Licensee to Adjust Accounts for Snowy River Annual Allocation

New South Wales must, through the Snowy Water Licence, procure that each Water Year the Licensee adjusts its accounts to distribute the Snowy River Annual Allocation between:

- (1) the Mowamba Borrowings Account; and
- (2) the Snowy River Increased Flows,

as determined by New South Wales under **clauses 19.5 and 19.6**.

20. TREATMENT OF SNOWY MONTANE RIVERS EXTERNAL INCREASED FLOWS

20.1 Required Annual Releases to be Reduced

New South Wales must, through the Snowy Water Licence, procure that each Water Year the volume of the Snowy Montane Rivers External Flows are accounted as Required Annual Releases from the relevant Development.

21. LIMITS ON VOLUMES OF INCREASED FLOWS

21.1 Limits on Volumes of Increased Flows

Nothing in this Deed obliges New South Wales, through the Snowy Water Licence, to procure the Licensee in any Water Year:

- (1) to make Snowy River Increased Flows in a volume that exceeds the volume of the Snowy River Annual Allocation allocated to the Snowy River Increased Flows; or
- (2) to make Snowy Montane Rivers Increased Flows in volumes that exceed the then applicable GWh per annum limit of forgone electricity generation (taking into account **clause 6.2 of Annexure Two**).

22. JOINT GOVERNMENT ENTERPRISE TO MAINTAIN WATER ACCOUNTS

22.1 Joint Government Enterprise to Maintain Water Accounts

The parties must procure that the Joint Government Enterprise maintains a continuous and audited water account that specifies the following:

- (1) **for Water Savings:**
 - (a) the audited volume and Reliability of Water Savings and their source (New South Wales or Victoria); and
 - (b) the total volume of Water Savings available in the relevant Water Year; and
- (2) **for Water Entitlements purchased:**
 - (a) the volume and Reliability of high security Water Entitlements;

- (b) the volume and Reliability of other Water Entitlements; and
- (c) the total volume of Water Entitlements available in the relevant Water Year.

23. NEW SOUTH WALES TO MAINTAIN WATER ACCOUNTS

23.1 New South Wales to Maintain Water Accounts

New South Wales must:

- (1) maintain a continuous and audited water account and on request provide the parties with a report that specifies the following:
 - (a) the volume and Reliability of the water comprising each Environmental Entitlement;
 - (b) the source of the water comprising each Environmental Entitlement;
 - (c) the Seasonal Availability of the entitlement received by South Australia under the MDB Agreement;
 - (d) the volumes of the Snowy-Murray Development Designated Entitlement and the Snowy-Tumut Development Designated Entitlement;
 - (e) the volumes of the Snowy-Murray Development Annual Allocation and the Snowy-Tumut Development Annual Allocation;
 - (f) the volumes of the River Murray Apportioned Entitlement and the Snowy River Apportioned Entitlement;
 - (g) the volumes of the River Murray Annual Allocation and the Snowy River Annual Allocation;
 - (h) the volumes of the Snowy River Annual Allocation allocated to each of the Snowy River Increased Flows and the Mowamba Borrowings Account; and
 - (i) the volumes of water released against the River Murray Annual Allocation and the Snowy River Annual Allocation; and
- (2) on request, provide the parties with copies of the water accounts provided to it by the Licensee.

24. LICENSEE TO MAINTAIN WATER ACCOUNTS

24.1 Licensee to Maintain Water Accounts

New South Wales must, through the Snowy Water Licence, procure that the Licensee maintains the following continuous and audited water accounts:

- (1) **Mowamba Borrowings.** Subject to **clause 8 of Annexure One**, this account must specify:
 - (a) as a debit, the volume of Snowy River Increased Flows each Water Year up to the third anniversary of the Corporatisation Date; and

- (b) as a credit, the volume of the Snowy River Annual Allocation allocated to the Mowamba Borrowings Account each Water Year;
- (2) **Snowy River Increased Flows.** This account must specify:
 - (a) as a debit, the volume of Snowy River Increased Flows each Water Year after the first anniversary of the Corporatisation Date; and
 - (b) as a credit, the volume of the Snowy River Annual Allocation allocated to the Snowy River Increased Flows each Water Year;
- (3) **Snowy-Murray Development.** This account must specify the volume of water that the Licensee transfers to Above Target Water in the Snowy-Murray Development; and
- (4) **Snowy Montane Rivers Increased Flows.** This account must specify the volume of Snowy Montane Rivers Increased Flows.

25. JOINT GOVERNMENT ENTERPRISE TO PROVIDE COPIES OF WATER ACCOUNTS

25.1 Joint Government Enterprise to Provide Copies of Water Accounts

The parties must procure that, not less than once in every period of six Months, the Joint Government Enterprise sends copies of the water accounts to:

- (1) each of the parties;
- (2) DNRE;
- (3) the Commission; and
- (4) the Licensee.

26. NEW SOUTH WALES TO NOTIFY PARTIES

26.1 New South Wales to Notify Parties of Water Accounting Adjustments

Not later than 13 February each year, New South Wales must give notice to the Commonwealth, Victoria, DNRE, the Commission and the Licensee stating:

- (1) the reduction in the Required Annual Release for the Snowy-Murray Development being the volume of the Snowy-Murray Development Annual Allocation;
- (2) the reduction in the Required Annual Release for the Snowy-Tumut Development being the volume of the Snowy-Tumut Development Annual Allocation;
- (3) the amount by which the Mowamba Borrowings Account is to be credited, being the volume of the Snowy River Annual Allocation allocated to the Mowamba Borrowings Account;
- (4) the volume of the Snowy River Increased Flows being the volume of the Snowy River Annual Allocation allocated to the Snowy River Increased Flows;

- (5) the volume to be transferred to Above Target Water in the Snowy-Murray Development being the volume of the River Murray Annual Allocation;
- (6) the proposed apportionments of the Environmental Entitlements as between Snowy River Increased Flows and River Murray Increased Flows for the following Water Year; and
- (7) the volume of the Snowy-Murray Development Designated Entitlement, the Snowy-Tumut Development Designated Entitlement and the Snowy River Apportioned Entitlement.

27. REVIEW PROVISIONS

27.1 Parties to Initiate Reviews

At any time the parties may agree to initiate a review of any or all of:

- (1) the Joint Government Enterprise;
- (2) mechanisms to deliver water for Increased Flows; and
- (3) the Increased Flows.

27.2 Review of the Joint Government Enterprise

Reviews of the Joint Government Enterprise may include:

- (1) corporate structure;
- (2) patterns of approval for Water Efficiency Projects and purchases of Water Entitlements;
- (3) financial management and accountability;
- (4) consultation processes;
- (5) organisational processes for verification including the role of the Auditor; and
- (6) overall functions.

27.3 Review of Mechanisms to Deliver Water for Increased Flows

Reviews of the mechanisms to deliver water for Increased Flows may include:

- (1) the Protocols;
- (2) mechanisms to deliver Increased Flows; and
- (3) apportionment of Environmental Entitlements.

27.4 Review of Increased Flows

Reviews of the implementation of Increased Flows may include:

- (1) Snowy River Increased Flows; and

- (2) Snowy Montane Rivers Increased Flows.

PART THREE: CORPORATISATION OF THE SNOWY SCHEME – OTHER COMMITMENTS

28. WATER CONSULTATION AND LIAISON COMMITTEE

28.1 Parties to Establish Water Consultation and Liaison Committee

As soon as practicable after the Corporatisation Date, the parties must establish a committee to be known as the Water Consultation and Liaison Committee.

28.2 Purpose of Water Consultation and Liaison Committee

The purpose of the Water Consultation and Liaison Committee is to provide advice in good faith to the Licensee in the preparation and implementation of each Annual Water Operating Plan with a view at all times to ensuring proposed water supply operations are consistent with the obligations of the Licensee under the Snowy Water Licence.

28.3 Composition of the Water Consultation and Liaison Committee

The parties must use their best endeavours to procure that:

- (1) subject to **clauses 28.4 and 28.5**, the Water Consultation and Liaison Committee at all times comprises:
 - (a) one person nominated by the Licensee;
 - (b) one person nominated by the Commission;
 - (c) one person nominated by each of the parties; and
 - (d) one person nominated by the Ministerial Corporation,together with the other persons (if any) agreed between the parties from time to time; and
- (2) the Water Consultation and Liaison Committee will be chaired by the person agreed by the parties from time to time.

28.4 Certain Persons Not to be Members of the Water Consultation and Liaison Committee

- (1) A person is ineligible to be a member of the Water Consultation and Liaison Committee if the person is a director or employee of a Competing Utility.
- (2) **Subclause 28.4(1)** does not apply to a director or employee of the Licensee, the Ministerial Corporation, DNRE or the Commission who is ineligible to be a member of the Water Consultation and Liaison Committee by reason only that the person is a director or employee of the Licensee, the Ministerial Corporation, DNRE or the Commission.

28.5 New South Wales to Procure Execution of Confidentiality Deeds

- (1) Prior to the appointment of a person to the Water Consultation and Liaison Committee, New South Wales must:
 - (a) procure that the person agrees as a condition of his or her appointment:
 - (i) to keep confidential within his or her Appointing Agency, any committees constituted by the Appointing Agency or any other Government Agency of the relevant Government all documents, information and other material, disclosed to him or her during or with respect to his or her membership of the Water Consultation and Liaison Committee;
 - (ii) not to disclose any confidential documents, information or other material except:
 - (A) if required by Law to do so;
 - (B) within his or her Appointing Agency, any committees constituted by the Appointing Agency or any other Government Agency of the relevant Government; or
 - (C) to an adviser who has signed a confidentiality undertaking; and
 - (iii) not to use confidential documents, information or other material disclosed to him or her during or with respect to his or her membership of the Water Consultation and Liaison Committee other than:
 - (A) within his or her Appointing Agency, any committees constituted by the Appointing Agency or any other Government Agency of the relevant Government; or
 - (B) for a purpose other than to certify the accuracy of the relevant data;
 - (b) procure that the person enters into a confidentiality deed on terms reasonably acceptable to the Licensee to which the Licensee is a party unless New South Wales undertakes to the Licensee to enforce the confidentiality obligations of the person under this **subclause 28.5(1)**; and
 - (c) procure that the person enters into a deed of acknowledgment to the effect that, provided that the Licensee performs its obligations under clauses 6 and 7 of the Snowy Water Licence and, the Licensee will not be liable for any loss or damage suffered or incurred which is caused by or results from the use of information provided by the Licensee under the Snowy Water Licence.
- (2) **Subclause 28.5(1)** does not apply to persons nominated by the Licensee for membership of the Water Consultation and Liaison Committee.

28.6 Licensee to Submit Draft Annual Water Operating Plan to Water Consultation and Liaison Committee

New South Wales must, through the Snowy Water Licence, procure that not later than 27 February each year the Licensee submits to the Water Consultation and Liaison Committee its proposed draft Annual Water Operating Plan for the next Water Year.

28.7 Chairman To Convene Meeting

The parties must procure that, not later than 27 February each year, the chairman of the Water Consultation and Liaison Committee convenes a meeting of that Committee for the purpose of the Licensee submitting to the Committee its proposed draft Annual Water Operating Plan for the next Water Year.

28.8 Water Consultation and Liaison Committee to Consider Draft Annual Water Operating Plan

The parties must procure that the Water Consultation and Liaison Committee considers each draft Annual Water Operating Plan submitted to it by the Licensee and provides its advice with respect to that proposed draft Plan to the Licensee in writing not later than 20 March of the relevant year.

28.9 Licensee to Consider Advice of Water Consultation and Liaison Committee

New South Wales must, through the Snowy Water Licence, procure that the Licensee considers in good faith the advice (if any) given by the Water Consultation and Liaison Committee with respect to each proposed draft Annual Water Operating Plan.

28.10 New South Wales to Provide Copies of Annual Water Operating Plan

As soon as practicable after approval by the Ministerial Corporation of each Annual Water Operating Plan, New South Wales must send a copy of that Plan to each member of the Water Consultation and Liaison Committee.

28.11 Proposed Variations to Annual Water Operating Plan

New South Wales must, through the Snowy Water Licence, procure that if during any Water Year the Licensee wishes to release a volume of water from either Development that:

- (1) exceeds the volume of 100 GL more than the maximum probable annual water release from the relevant Development for that Water Year to meet electricity requirements and/ or to manage storage levels; or
- (2) is less than 20 GL less than the Required Annual Release for the relevant Development as at the end of that Water Year,

the Licensee:

- (3) gives notice of the proposal to amend the current Annual Water Operating Plan to each member of the Water Consultation and Liaison Committee; and
- (4) may request the chairman of the Water Consultation and Liaison Committee to convene a meeting of that committee for the purpose of considering a proposal to amend the current Annual Water Operating Plan.

29. TRANSFER OF SNOWY WATER LICENCE**29.1 Transfer of Snowy Water Licence**

- (1) New South Wales must ensure that:
- (a) before the Ministerial Corporation transfers the Snowy Water Licence to a third party; or
 - (b) before the Snowy Water Licence is revoked and a new licence is issued to a third party with respect to the Snowy Scheme and the collection, diversion, storage, use and release of water within the Snowy Water Catchment,
- that third party enters into an agreement with Victoria on the same terms and conditions (unless otherwise agreed by Victoria) as the Snowy Bilateral Deed, by which the third party agrees to be bound by the terms of that Deed.
- (2) New South Wales must ensure that the Ministerial Corporation does not effect a transfer of the Snowy Water Licence or does not issue a new licence to a third party until the Deed is executed.

30. SPECIAL PROVISIONS WITH RESPECT TO SNOWY BILATERAL DEED**30.1 Obligations of New South Wales**

If, under the Snowy Bilateral Deed, Victoria requests written confirmation from the Ministerial Corporation that it does not wish to prosecute an instance of non-compliance by the Licensee of certain provisions of the Snowy Water Licence, New South Wales must procure that the Ministerial Corporation will not unreasonably delay or withhold that confirmation.

31. SPECIAL PROVISIONS WITH RESPECT TO JINDABYNE DAM**31.1 New South Wales to Procure the Making of Snowy River Increased Flows from Jindabyne Dam**

If Jindabyne Dam and its associated works are being operated, New South Wales must procure the owner or operator of Jindabyne Dam to make the Snowy River Increased Flows.

32. AMENDMENT TO WATER MANAGEMENT ACT**32.1 Acknowledgements**

The parties acknowledge that:

- (1) under section 23(3) of the Act, the Snowy Water Licence is to give effect to any agreement between the States following the report of the water inquiry under Part 4 of the Act; and
- (2) it is their intention that the Snowy Water Licence gives full effect to the provisions of this Deed.

32.2 New South Wales to Amend Water Management Act

New South Wales must take all action and do all things reasonably necessary to introduce into the New South Wales Parliament an amendment to the Water Management Act to the effect that New South Wales' water rights are not to be exercised in contravention of the provisions of this Deed.

32.3 Default Provisions Where Water Management Act Not Amended

If the New South Wales Parliament does not pass an amendment to the Water Management Act referred to in **clause 32.2**:

- (1) New South Wales must negotiate in good faith with the other parties; and
- (2) all parties must use their best endeavours to agree upon,

a set of either or both of legislative and other legally binding arrangements that give reasonable satisfaction to the Commonwealth and Victoria.

PART FOUR: GENERAL

33. AMENDMENT OR VARIATION OF THIS DEED

33.1 Amendment or Variation

This Deed may be amended or varied:

- (1) **Annexure Three**: in accordance with **clause 8 of Annexure Two**; and
- (2) **otherwise**: at any time with the agreement of the parties.

33.2 Form

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

34. GOODS AND SERVICES TAX

34.1 Interpretation

In this **clause 34**:

- (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*.

34.2 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.

34.3 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.

34.4 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.

34.5 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.

34.6 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.

34.7 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 34.6**, 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 34.6** 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.

34.8 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.

35. MISCELLANEOUS**35.1 Consents and Agreements**

Unless otherwise stated in this Deed, if a party's consent, approval or agreement is required it:

- (1) must not be unreasonably withheld or delayed; and
- (2) will not be effective unless in writing and signed by the party.

36. SEVERABILITY**36.1 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 36.1(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.

37. ENTIRE UNDERSTANDING**37.1 Documents Contain Entire Understanding**

This Deed, together with the MDB Amending Agreement:

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

37.2 No Reliance on Representations

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

38. EXECUTION OF COUNTERPARTS**38.1 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.

39. GOVERNING LAW AND JURISDICTION

39.1 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.

ANNEXURE ONE: SNOWY RIVER INCREASED FLOWS

PART ONE: SNOWY RIVER INCREASED FLOWS GENERALLY

1. ENVIRONMENTAL OBJECTIVES FOR SNOWY RIVER INCREASED FLOWS

1.1 Environmental Objectives of the Parties

The objectives of the parties in requiring New South Wales through the Snowy Water Licence to procure that the Licensee makes Snowy River Increased Flows is to improve the habitat for a diverse range of plant and animal species through a combination of:

- (1) improving the temperature regime of river water;
- (2) achieving channel maintenance and flushing flows within rivers;
- (3) restoring connectivity within rivers for migratory species and for dispersion;
- (4) improving triggers for fish spawning; and
- (5) improving the aesthetics of currently degraded riverine environments.

2. LICENSEE TO CONSTRUCT OUTLET AT JINDABYNE DAM

2.1 Licensee To Construct Outlet At Jindabyne Dam

New South Wales must, through the Snowy Water Licence, procure that by no later than the third anniversary of the Corporatisation Date, the Licensee constructs an outlet at Jindabyne Dam that is capable of releasing water from above the thermocline.

2.2 Outlet Specifications

The outlet referred to in **clause 2.1** of this **Annexure One** must be sufficient size to enable a flow rate of at least 5 GL per day in addition to the capacity of the spillway gates.

2.3 Where Licensee Does Not Construct Outlet by Due Date

New South Wales must, through the Snowy Water Licence, procure that if the Licensee has not constructed an outlet at Jindabyne Dam by the third anniversary of the Corporatisation Date, the Licensee must:

- (1) target to release from the Mowamba River and Cobbon Creek aqueducts into the Snowy River as far as possible the same volume of water that would otherwise have been allocated from Jindabyne Dam to Snowy River Increased Flows; and
- (2) store within the Snowy Scheme the volume of water that:
 - (a) would otherwise have been allocated from Jindabyne Dam to the Snowy River Increased Flows until the date of commissioning of that outlet; and

(b) was not released by the Licensee by way of substitute releases referred to in **subclause 2.3(1)** of this **Annexure One**,

and, from the date of commissioning of that outlet, must release that volume of stored water in addition to the then applicable Snowy River Increased Flows.

2.4 Cost of Construction of Fish Ladders

If, under Law, the construction of the outlet at Jindabyne Dam must include the construction of fish ladders on that Dam, New South Wales must procure that the Snowy Water Licence provides for the subtraction from the volume of Snowy Montane Rivers Increased Flows to be made in that subsequent period a volume that in terms of its GWh equivalent is the same as the cost to the Licensee of constructing, operating and maintaining those fish ladders.

3. DATE OF COMMENCEMENT OF SNOWY RIVER INCREASED FLOWS

3.1 Parties to Agree Date of Commencement of Snowy River Increased Flows

The parties must agree upon a date that is within six Months after the proclamation of the Act, upon which Snowy River Increased Flows must commence.

3.2 New South Wales to Notify the Licensee

New South Wales must, through the Snowy Water Licence, procure that the Licensee commences Snowy River Increased Flows from the date agreed between the parties under **clause 3.1** of this **Annexure One**.

3.3 Date of Commencement

New South Wales must, through the Snowy Water Licence, procure that the Licensee operates the Works as follows:

- (1) **from the date agreed by the parties under clause 3.1 of this Annexure One until the third anniversary of the Corporatisation Date**: so as to make Snowy River Increased Flows under **Part Two** of this **Annexure One**; and
- (2) **after the later of the third anniversary of the Corporatisation Date and the date of commissioning of the outlet referred to in clause 2 of this Annexure One**: so as to make Snowy River Increased Flows under **Part Three** of this **Annexure One**.

3.4 Provision Where Snowy River Annual Allocation Exceeds Balance in Mowamba Borrowings Account During First Three Years

If, with respect to any Water Year occurring prior to the third anniversary of the Corporatisation Date, the volume of the Snowy River Annual Allocation exceeds the debit balance in the Mowamba Borrowings Account, New South Wales must through the Snowy Water Licence procure that the Licensee, in addition to the releases to be made by the Licensee during that Water Year referred to in **clause 3.3** of this **Annexure One**:

- (1) targets to release into the Snowy River as far as possible the volume of that excess; and

- (2) stores within the Snowy Scheme the portion (if any) of that excess that it was not able to release and then in subsequent Water Years releases that volume of stored water in addition to the then applicable Snowy River Increased Flows.

4. LICENSEE TO MONITOR AND RECORD FLOWS

4.1 Licensee to Monitor and Keep a Record of Snowy River Increased Flows

New South Wales must, through the Snowy Water Licence, procure that the Licensee monitors and keeps a record of the volumes of water released by it and referred to in this **Annexure One**.

5. SNOWY RIVER INCREASED FLOWS ABOVE 212 GL

5.1 Application of this Clause

The volume of Snowy River Increased Flows each Water Year may be increased from 212 GL to no more than 294 GL only in accordance with this **clause 5** of this **Annexure One**.

5.2 Precondition to Increased Flows

It is a precondition to increasing the volume of Snowy River Increased Flows each Water Year from 212 GL to no more than 294 GL that:

- (1) the States agree to share the cost of compensation payable to the Licensee for Net Forgone Revenue for any Snowy River Increased Flows implemented under this **clause 5** of this **Annexure One**;
- (2) a capital works programme referred to in **clause 5.3** of this **Annexure One** is agreed between the participating parties and the private sector participants; and
- (3) the participating parties agree that the water savings achieved from the relevant capital works programme are to be allocated to the Snowy River.

5.3 Snowy River Capital Works Programme

- (1) The volume of Snowy River Increased Flows each Water Year may be increased from 212 GL to no more than 294 GL by the implementation of an agreed capital works programme.
- (2) The capital works programme:
 - (a) may be undertaken through arrangements involving public and private sector entities;
 - (b) may be undertaken in all or any of the Lower Darling River System, the River Murray System, the Goulburn River System and the Murrumbidgee River System; and
 - (c) may allocate water savings between the participating parties and the private sector partners.

5.4 Use of Water Savings Allocated to the Parties

Water savings allocated to the parties must be used:

- (1) to offset Snowy River Increased Flows; and/or
- (2) to provide further dedicated environmental flows in the River Murray System,

provided that the parties must allocate water savings to offset Snowy River Increased Flows in volumes that are sufficient to ensure that water allocations for consumptive use are not affected on account of Snowy River Increased Flows.

PART TWO: SNOWY RIVER INCREASED FLOWS FROM MOWAMBA RIVER AND COBBON CREEK**6. SNOWY RIVER INCREASED FLOWS FROM MOWAMBA RIVER AND COBBON CREEK****6.1 Licensee to Target Snowy River Increased Flows**

Subject to the other provisions of this **Annexure One**, New South Wales must through the Snowy Water Licence procure that the Licensee operates the Works so as to allow a volume of water to pass the Mowamba River and Cobbon Creek aqueducts into the Snowy River in addition to the Base Passing Flow.

7. VOLUME OF INCREASED FLOWS**7.1 Volume**

New South Wales must, through the Snowy Water Licence, procure that each Water Year until the third anniversary of the Corporatisation Date the Licensee makes Snowy River Increased Flows under this **Part Two** of **Annexure One** up to a maximum volume of 38 GL.

8. MOWAMBA BORROWINGS ACCOUNT**8.1 Debit to Mowamba Borrowings Account**

New South Wales must, through the Snowy Water Licence, procure that each Water Year prior to the third anniversary of the Corporatisation Date the Licensee debits the Mowamba Borrowings Account by:

- (1) the volume of the Snowy River Increased Flows referred to in **clause 7** of this **Part Two** of **Annexure One** during that Water Year; or
- (2) 38 GL,

whichever is the lesser volume.

8.2 Allocation of Mowamba Borrowings Account Balance to the Developments

Despite any other provision in this Deed, the volumes of water both debited and credited to the Mowamba Borrowings Account are to be apportioned 50:50 to each Development.

PART THREE: SNOWY RIVER INCREASED FLOWS TARGETED FROM JINDABYNE DAM**9. LICENSEE TO TARGET SNOWY RIVER INCREASED FLOWS FROM JINDABYNE DAM****9.1 Licensee to Target Snowy River Increased Flows from Jindabyne Dam**

Subject to the other provisions of this **Annexure One**, New South Wales must through the Snowy Water Licence procure that the Licensee operates the Works so as to target releases from Jindabyne Dam in accordance with this **Part Three** of **Annexure One**.

10. OBLIGATIONS OF THE LICENSEE WITH RESPECT TO RELEASES FROM JINDABYNE DAM**10.1 Obligations of the Licensee With Respect to Releases From Jindabyne Dam**

New South Wales must, through the Snowy Water Licence, procure that each Water Year the Licensee:

- (1) **Annual Volumes:** targets releases of water from Jindabyne Dam that in total are within 10 percent of the volume of the Snowy River Annual Allocation allocated to the Snowy River Increased Flows for that Water Year;
- (2) **Monthly Volumes:** uses reasonable endeavours to target releases of water from Jindabyne Dam in Monthly volumes that are within 20 percent of the Monthly volumes specified in the Annual Water Operating Plan for that Water Year; and
- (3) **Daily Volumes:** uses reasonable endeavours to target releases of water from Jindabyne Dam in daily volumes that are within:
 - (a) 20 percent of the daily volumes notified by the Ministerial Corporation and referred to in **clauses 12** and **13** of this **Annexure One**; or
 - (b) 50 megalitres of the daily volumes notified by the Ministerial Corporation and referred to in **clauses 12** and **13** of this **Annexure One**,

whichever is the greater volume.

10.2 Assessing Compliance by the Licensee

New South Wales must procure that the Snowy Water Licence provides that compliance by the Licensee with the obligations referred to in **clause 10.1** of this **Annexure One** is determined:

- (1) **with respect to all of the obligations:** once within 45 days of the conclusion of each Water Year; and
- (2) **with respect to the obligations relating to daily and Monthly releases:** having regard to all of the daily releases and Monthly releases respectively made by the Licensee from Jindabyne Dam over the whole of the relevant Water Year.

10.3 Maximum of One Breach per Water Year

New South Wales must procure that the Snowy Water Licence includes a provision that for the avoidance of doubt, **clauses 10.1 and 10.2** of this **Annexure One** are intended to operate together so that if the Licensee fails to comply with its obligations under those clauses, the Licensee breaches its obligations referred to in this **Part Three** of **Annexure One** only once per Water Year.

10.4 Override Provision

- (1) Despite any other provision in this **Annexure One**, New South Wales must procure that the Snowy Water Licence provides that the Ministerial Corporation and the Licensee may agree to vary the volume of water targeted for release from Jindabyne Dam.
- (2) New South Wales must procure that any variation agreed between the Ministerial Corporation and the Licensee:
 - (a) to vary the annual volumes of water that the Licensee must target for release from Jindabyne Dam each Water Year; and
 - (b) to vary the Monthly volumes of water that the Licensee must target for release from Jindabyne Dam for each Month.is consistent with:
 - (c) the provisions of the applicable approved Annual Water Operating Plan; and
 - (d) an agreement between the Governments to that effect.

11. MONTHLY RELEASE VOLUMES TO BE TARGETED FROM JINDABYNE DAM

11.1 Ministerial Corporation to Provide Licensee With Monthly Release Volumes

New South Wales must procure that the Snowy Water Licence contains provisions enabling the Ministerial Corporation, by notice in writing to the Licensee given not later than 13 February each year, to require the Licensee to target for release from Jindabyne Dam during each Month of the following Water Year the Monthly volumes specified in the notice.

11.2 Limits on Total Monthly Volumes

New South Wales must procure that the Snowy Water Licence contains provisions to the effect that the total of the Monthly volumes specified in any notice referred to in **clause 11.1** of this **Annexure One** must not exceed the Snowy River Annual Allocation allocated to the Snowy River Increased Flows for that Water Year.

11.3 Ministerial Corporation Must Consult With Water Consultation and Liaison Committee

New South Wales must procure that the Ministerial Corporation consults with the Water Consultation and Liaison Committee prior to giving any notice referred to in **clause 11.1** of this **Annexure One**.

11.4 Default Monthly Release Volumes

New South Wales must, through the Snowy Water Licence, procure that if by 13 February in any year the Ministerial Corporation has not submitted to the Licensee the volumes of water that the Licensee must target for release from Jindabyne Dam for each Month of the next Water Year, the Licensee must target for release from Jindabyne Dam for each Month of that next Water Year the percentage of the Snowy River Annual Allocation allocated to the Snowy River Increased Flows for that Water Year as follows:

Month	% Of Total Snowy River Annual Allocation allocated to the Snowy River Increased Flows for that Water Year
January	2.6
February	3.3
March	1.9
April	2.8
May	3.8
June	6.5
July	7.7
August	9.2
September	20.4
October	24.5
November	11.8
December	5.5
TOTAL	100

11.5 Draft Annual Water Operating Plan to Include Monthly Release Volumes

New South Wales must, through the Snowy Water Licence, procure that the Licensee incorporates into each draft Annual Water Operating Plan proposed by the Licensee, volumes of water that the Licensee must target for release from Jindabyne Dam for each Month of the relevant Water Year being either:

- (1) the Monthly volumes notified by the Ministerial Corporation referred to in **clause 11.1** of this **Annexure One**; or
- (2) the Monthly volumes calculated in accordance with **clause 11.4** of this **Annexure One**,

whichever is applicable.

12. DAILY RELEASE VOLUMES TO BE TARGETED FROM JINDABYNE DAM**12.1 Ministerial Corporation to Notify Licensee of Daily Release Volumes**

New South Wales must procure that the Snowy Water Licence contains provisions enabling the Ministerial Corporation, by notice in writing to the Licensee given not less than six Business Days prior to the commencement of each Month, to require the Licensee to target for release from Jindabyne Dam on each day of the following Month the volumes specified in the notice.

12.2 Limits on Daily Volumes

New South Wales must procure that the Snowy Water Licence contains provisions that:

- (1) with respect to the daily volumes specified in any notice referred to in **clause 12.1** of this **Annexure One**:
 - (a) the total of those daily volumes must not exceed the applicable Monthly release volume;
 - (b) subject to the provisions referred to in **clause 13** of this **Annexure One**, each daily volume must not exceed 5 GL; and
- (2) each notice referred to in **clause 12.1** of this **Annexure One** must include:
 - (a) maximum rate of increase and decrease of those daily volumes; and
 - (b) maximum flow rates.

12.3 Ministerial Corporation Must Consult With Water Consultation and Liaison Committee

New South Wales must procure that the Ministerial Corporation consults with the Water Consultation and Liaison Committee prior to giving any notice referred to in **clause 12.1** of this **Annexure One**.

12.4 Default Daily Release Volumes

New South Wales must, through the Snowy Water Licence, procure that if with respect to any Month the Ministerial Corporation does not give to the Licensee a notice referred to in **clause 12.1** of this **Annexure One** within the time specified in that clause, the Licensee must in the relevant Month target for release from Jindabyne Dam the applicable Monthly release volume in equal daily volumes.

13. ACHIEVING FLUSHING FLOWS**13.1 Application of this Clause**

This **clause 13** of this **Annexure One** applies:

- (1) only with respect to Water Years where the volume of the Snowy River Annual Allocation allocated to the Snowy River Increased Flows exceeds 100 GL; and
- (2) in addition to the provisions referred to in **clause 12** of this **Annexure One**.

13.2 Water Operations for Jindabyne Dam

Despite any other provision in this Deed, a requirement under this **clause 13** of this **Annexure One** for New South Wales to procure, through the Snowy Water Licence, that the Licensee operates the Works so as to target Flushing Flows is a requirement on New South Wales to procure the Licensee to operate the Works so as to target those Flows provided that the Licensee must not be required to operate the Works to more than a 10 percent risk of spill from Jindabyne Dam.

13.3 Flushing Flows

- (1) For the purposes of this **clause 13**, "**Flushing Flow**" means a daily release targeted by the Licensee from Jindabyne Dam that exceeds 5 GL.
- (2) New South Wales must, through the Snowy Water Licence, procure that despite any other provision in the Snowy Water Licence the Ministerial Corporation may only require the Licensee to target Flushing Flows during Spring.

13.4 Ministerial Corporation to Notify Licensee of Flushing Flows

New South Wales must procure that the Snowy Water Licence contains provisions enabling the Ministerial Corporation:

- (1) with respect to any Water Year where the volume of the Snowy River Annual Allocation allocated to the Snowy River Increased Flows exceeds 100 GL; and
- (2) by notice in writing given to the Licensee not later than 13 February in the prior Water Year,

to require the Licensee to include in its draft Annual Water Operating Plan the strategy for achieving Flushing Flows set out in the notice.

13.5 Requirements With Respect to Strategy for Flushing Flows

New South Wales must, through the Snowy Water Licence, procure that any strategy for achieving Flushing Flows set out in a notice referred to in **clause 13.4** of this **Annexure One** specifies:

- (1) the conditions under which a Flushing Flow is to be released during the relevant Water Year;
- (2) the volume of the Flushing Flow;
- (3) the mechanism by which the Licensee must accumulate sufficient water in Lake Jindabyne to enable it to make the Flushing Flow; and
- (4) a contingency release plan specifying the carry over objectives and mechanisms for the management by the Licensee of the water accumulated in Lake Jindabyne if the conditions under which a Flushing Flow is to be released during the relevant Water Year are not met.

13.6 Ministerial Corporation Must Consult With Water Consultation and Liaison Committee

New South Wales must procure that the Ministerial Corporation consults with the Water Consultation and Liaison Committee prior to giving any notice referred to in **clause 13.4** of this **Annexure One**.

13.7 Ministerial Corporation and Licensee to Co-operate to Achieve Flushing Flows

- (1) New South Wales must procure that the Snowy Water Licence contains provisions requiring the Ministerial Corporation and the Licensee to co-operate to achieve Flushing Flows in accordance with each strategy referred to in **clause 13.4** of this **Annexure One**.
- (2) That co-operation must include the Licensee notifying the Ministerial Corporation of storage volumes and the rate of change of storage with a frequency that permits effective planning for the release of the Flushing Flows.

13.8 Ministerial Corporation to Prepare Safety Management Plan

- (1) New South Wales must procure that the Snowy Water Licence provides that the Ministerial Corporation prepares and keeps current a safety management plan that addresses the legal obligations (if any) of both the Ministerial Corporation and the Licensee with respect to public safety, damage to third party property and occupational health and safety in connection with the release of Flushing Flows.
- (2) New South Wales must procure that the Snowy Water Licence provides that each notice given by the Ministerial Corporation and referred to in **clause 13.4** of this **Annexure One** is given in accordance with that safety management plan.

14. FORCE MAJEURE**14.1 Suspension of Licensee's Obligations**

New South Wales must procure that the Snowy Water Licence contains provisions to the effect that if the Licensee:

- (1) is prevented from or delayed in performing an obligation referred to in this **Part Three of Annexure One** by a Prescribed Event;
- (2) as soon as possible after the Prescribed Event occurs, notifies the Ministerial Corporation of full particulars of:
 - (a) the Prescribed Event;
 - (b) the effect of the Prescribed Event on performance of the Licensee's obligations;
 - (c) the anticipated period of delays; and
 - (d) the action (if any) the Licensee intends to take to mitigate or remove the effect and delay; and
- (3) promptly and diligently acts to mitigate or remove the Prescribed Event and its effect,

then the obligation is suspended during, but for no longer than, the period the Prescribed Event and its effects continue to prevent the Licensee from meeting such obligation.

14.2 Mitigation of Prescribed Event

New South Wales must, through the Snowy Water Licence, procure that the Ministerial Corporation uses reasonable endeavours to remove or mitigate a Prescribed Event and its effects.

15. SNOWY RIVER INCREASED FLOWS AND LAKE JINDABYNE

15.1 Accounting for Increased Jindabyne Spills

(1) If as a result of a notice given by the Ministerial Corporation to the Licensee under **clause 12.1** of this **Annexure One**:

- (a) in any Month the Licensee releases from Jindabyne Dam the applicable Monthly release volume other than in equal daily release volumes (allowing for increases and decreases of volumes during the two days either side of the beginning and end of each Month to reflect differences in the Monthly apportionments applicable to consecutive Months); and
- (b) the Licensee must implement water operation arrangements that result in an increase in the volume or frequency of spills from Jindabyne Dam compared to the volume and frequency of those spills under water operations that achieve a uniform daily distribution of releases (again allowing for increases and decreases of volumes during the two days either side of the beginning and end of each Month to reflect differences in the Monthly apportionments applicable to consecutive Months),

then:

- (c) unless otherwise agreed between the parties, the increased spills are to be accounted for as a borrow against the total volume of Snowy River Increased Flows to be made in the following Water Years up to the lesser of:
 - (i) the volume of the actual incremental spill; or
 - (ii) the balance of the Snowy River Increased Flows to be made in the current Water Year (for the avoidance of doubt, the volume borrowed is not to include the volume of any releases made by the Licensee during that Water Year prior to the relevant spill),

first, against the total volume of Snowy River Increased Flows to be made in the following Water Year and second, if agreed between the parties and the Licensee, against the total volume of Snowy River Increased Flows to be made in subsequent Water Years; and

- (d) the daily release volumes for the remainder of the current Water Year are to be the lesser of:
 - (i) the daily volumes specified in notices given by the Ministerial Corporation under **clause 12.1** of this **Annexure One**; or

-
- (ii) the estimated natural flow calculated as an average over the preceding seven days.
- (2) For the avoidance of doubt, the provisions of this **clause 15.1** do not apply where the Licensee is required to make equal Monthly releases from Jindabyne Dam.

15.2 Jindabyne Spills and Dry Inflow Sequences

Where New South Wales, through the Snowy Water Licence, procures that the Licensee holds the level of Lake Jindabyne higher to target releases from Jindabyne Dam in accordance with the provisions referred to in this **Part Three of Annexure One** than it would have held that level in the absence of those requirements, any additional spills caused by those requirements are to be taken into account under the dry inflow sequence provisions in clause 8 of Schedule Four to the Snowy Water Licence.

ANNEXURE TWO: SNOWY MONTANE RIVERS INCREASED FLOWS

PART ONE: SNOWY MONTANE RIVERS INCREASED FLOWS GENERALLY

1. SNOWY MONTANE RIVERS INCREASED FLOWS

1.1 Licensee to Target Snowy Montane Rivers Increased Flows

Subject to the other provisions of this **Annexure Two**, New South Wales must through the Snowy Water Licence procure that the Licensee operates the Works so as to make Snowy Montane Rivers Increased Flows along the rivers and in the volumes referred to in **Annexure Three** in addition to the Base Passing Flow.

2. ENVIRONMENTAL OBJECTIVES FOR SNOWY MONTANE RIVERS INCREASED FLOWS

2.1 Environmental Objectives of the Governments

The objectives of the parties in requiring New South Wales through the Snowy Water Licence to procure that the Licensee makes Snowy Montane Rivers Increased Flows are, in order of priority:

- (1) to protect endangered/ threatened species;
- (2) to maintain natural habitats; and
- (3) to maintain wilderness and national parks values.

2.2 Objectives of Increased Flows Along Each River

For each river along which Snowy Montane Rivers Increased Flows are to be made, the parties must:

- (1) determine a set of objectives for those Snowy Montane Rivers Increased Flows together with associated performance measures; and
- (2) prepare a riverine management strategy that includes provision for the management of:
 - (a) habitat;
 - (b) native plant and animal species;
 - (c) introduced plant and animal species; and
 - (d) river banks.

2.3 Timings for Preparation of Riverine Management Strategies

In the case of those rivers containing Works referred to in the initial combination of rivers referred to in **Annexure Three**, riverine management strategies must be prepared by the

parties under **subclause 2.2(2)** of this **Annexure Two** prior to the second anniversary of the Corporatisation Date.

3. MODIFICATION OF WORKS TO ALLOW INCREASED FLOWS

3.1 How Snowy Montane Rivers Increased Flows are to be Made

New South Wales must, through the Snowy Water Licence, procure that the Licensee modifies the Works to make Snowy Montane Rivers Increased Flows.

3.2 Modifications to be Agreed By Water Consultation and Liaison Committee

If New South Wales is required under this **Annexure Two** to procure the Licensee to modify a Work except Tantangara Dam, New South Wales must also through the Snowy Water Licence procure that the Licensee consults with and considers the advice of the Water Consultation and Liaison Committee prior to implementing that modification.

3.3 Modifications to Works

Despite any other provision in this **Annexure Two**:

- (1) where a provision in this **Annexure Two** may otherwise require all of the natural flow to pass a Work to achieve the relevant Snowy Montane Rivers Increased Flow, New South Wales must procure that the Snowy Water Licence does not require the Licensee to remove the relevant Work but rather to comply with that provision to the maximum extent possible without removal of the Work;
- (2) where:
 - (a) under this **Annexure Two** New South Wales is required to procure the Licensee to modify a Work; and
 - (b) under Law, that modification must include the construction of fish ladders on the modified Work,

New South Wales must procure that the Snowy Water Licence provides for the subtraction from the volume of Snowy Montane Rivers Increased Flows to be made in that subsequent period a volume that in terms of its GWh equivalent is the same as the cost to the Licensee of constructing, operating and maintaining those fish ladders; and

- (3) no provision in this **Annexure Two** obliges New South Wales to procure that the Snowy Water Licence requires the Licensee to carry out major structural changes to a Work or the installation of a new Work except with respect to Tantangara Dam.

4. LICENSEE TO CONSTRUCT OUTLET AT TANTANGARA DAM

4.1 Licensee to Construct Outlet at Tantangara Dam

Subject to **clause 9.3** of this Deed, New South Wales must, through the Snowy Water Licence, procure that by no later than the third anniversary of the Corporatisation Date, the Licensee constructs an outlet at Tantangara Dam that is capable of releasing water from above the thermocline.

4.2 Outlet Specifications

The outlet referred to in **clause 4.1** of this **Annexure Two** must be of sufficient size to enable a flow rate of at least 2 GL per day.

5. DATE OF COMMENCEMENT OF SNOWY MONTANE RIVERS INCREASED FLOWS

5.1 Date of Commencement

New South Wales must, through the Snowy Water Licence, procure that the Licensee operates the Works so as to make Snowy Montane Rivers Increased Flows:

- (1) **with respect to releases from Tantangara Dam:** from the date of commissioning of the outlet referred to in **clause 4** of this **Annexure Two**; and
- (2) **otherwise:** subject to **clause 9.3** of this Deed, from the first anniversary of the Corporatisation Date.

6. VOLUME OF INCREASED FLOWS

6.1 Maximum Volume of Increased Flows

New South Wales must, through the Snowy Water Licence, procure that during each Water Year the Licensee makes Snowy Montane Rivers Increased Flows up to the following maximum volumes:

- (1) **during the period from the first anniversary of the Corporatisation Date until the Water Year with respect to which the Snowy River Apportioned Entitlement first totals or exceeds 142 GL:** the volume of water equivalent to forgone electricity generation of 100 GWh per annum calculated by reference to the schedule set out in **Annexure Three** (with a pro-rata volume to apply during the period from the first anniversary of the Corporatisation Date until the end of the Water Year in which that first anniversary occurs); and
- (2) **from and including the Water Year with respect to which the Snowy River Apportioned Entitlement first totals or exceeds 142 GL:** the volume of water equivalent to forgone electricity generation of 150 GWh per annum calculated by reference to the schedule set out in **Annexure Three**.

6.2 Increased Flows to Be Made Proportionally with Snowy River Increased Flows

- (1) The parties acknowledge that the schedule in **Annexure Three** was developed by them prior to the date of this Deed and reflects their expectations as to the volumes each Water Year of the Snowy River Annual Allocation.
- (2) Subject to **clause 6.1** of this **Annexure Two** and despite **Annexure Three**, New South Wales must procure that the Snowy Water Licence provides that during each Water Year the Licensee must target that volume of Snowy Montane Rivers Increased Flow such that the volume of targeted flow as a proportion of the applicable volume stated in **clause 6.1** of this **Annexure Two** is the same or as close as practicable to the volume of targeted Snowy River Increased Flows during that Water Year as a proportion of the applicable maximum volume for those Increased Flows.

6.3 Volume of Increased Flows

For the purposes of this Deed, the volume of Snowy Montane Rivers Increased Flows made by the Licensee each Water Year is calculated by reference to the annual volume in the Snowy Montane Rivers downstream of the relevant Works prior to the Corporatisation Date.

7. LICENSEE TO MONITOR AND RECORD FLOWS**7.1 Licensee to Monitor and Keep a Record of Snowy Montane Rivers Increased Flows**

- (1) New South Wales must, through the Snowy Water Licence, procure that the Licensee monitors and keeps a record of the volumes of water released by it and referred to in this **Annexure Two**.
- (2) Those volumes are to be reported on an annual basis with the exceedance probability of inflows applicable to the relevant Snowy Montane River during that Water Year.

8. AMENDMENTS TO ANNEXURE THREE**8.1 Amendments to Annexure Three**

Subject to **clauses 8.2, 8.3 and 8.4**, not more than once between every fifth anniversary of the operative date referred to in **clause 5.1** of this **Annexure Two** the parties may amend **Annexure Three**.

8.2 Limits on Amendments to Annexure Three

In amending **Annexure Three** under **clause 8.1** of this **Annexure Two**, the parties must:

- (1) have regard to the objectives of the Snowy Montane Rivers Increased Flows referred to in **clause 2.1** of this **Annexure Two**;
- (2) have regard to the objectives of Snowy Montane Rivers Increased Flows in each relevant river as determined by the parties under **clause 2.2** of this **Annexure Two**;
- (3) have regard to the inflow-diversion relationship for each relevant Work prepared by the Licensee;
- (4) have regard to the estimated total volume of Snowy Montane Rivers Increased Flows under **clause 6** of this **Annexure Two** for the following period of three Water Years;
- (5) aim to minimise the number of rivers and Works from which Snowy Montane Rivers Increased Flows are to be made;
- (6) base any changes on the benefits of the changes given the objectives of the Snowy Montane Rivers Increased Flows referred to in **clause 2.1** of this **Annexure Two**;
- (7) deduct from the volume of Snowy Montane Rivers Increased Flows to be made in that subsequent period a volume that in terms of its GWh equivalent is the same as the cost to the Licensee of varying the combination of rivers and Works;

- (8) **stranded assets:** with respect to the allocation of the total flows between individual Works, consider the economic efficiency of each proposed allocation having regard to the cost to the Licensee of maintaining a Work relative to the flow regulated by that Work after the Snowy Montane Rivers Increased Flows are targeted from that Work; and
- (9) have regard to the data generated by New South Wales from time to time under **clause 9** of this **Annexure Two**.

8.3 Amendments and Riverine Management Strategies

The parties cannot amend **Annexure Three** by inserting a reference to a particular river unless they have already prepared a riverine management strategy for that river.

8.4 Amendments Where There is Harm to Native Species

- (1) If there is scientific evidence that Snowy Montane Rivers Increased Flows along a particular river or combination of rivers harm native species, the parties may at any time amend **Annexure Three** by deleting a reference to that river or combination of rivers.
- (2) If the reference to a river or combination of rivers is deleted from **Annexure Three** under **subclause 8.4(1)** of this **Annexure Two**, the parties may at the same time amend the combination of rivers referred to in **Annexure Three** either by:
 - (a) increasing the volume of Snowy Montane Rivers Increased Flows to be made along another river or combination of rivers already referred to in **Annexure Three**; or
 - (b) inserting into **Annexure Three** a reference to a volume of Snowy Montane Rivers Increased Flows to be made along a river or combination of rivers not already referred to in **Annexure Three**,

in either case only up to the maximum volume equivalent to the then applicable GWh per annum limit of forgone electricity generation (taking into account **clause 6.2** of this **Annexure Two**).

- (3) If the combination of rivers referred to in **Annexure Three** is varied under **subclause 8.4(2)** of this **Annexure Two**, New South Wales must through the Snowy Water Licence procure that the Licensee is not required to commence making the relevant Snowy Montane Rivers Increased Flows until a reasonable time after the effective date of the relevant notice referred to in **clause 8.5** of this **Annexure Two** to allow for modifications to the relevant Work or combination of Works.

8.5 New South Wales to Notify the Licensee

New South Wales must procure that the Snowy Water Licence requires the Licensee to make the Snowy Montane Rivers Increased Releases from the amended combination of rivers notified by New South Wales.

8.6 When Notice takes Effect

New South Wales must procure that the Snowy Water Licence provides that a notice given by New South Wales referred to in **clause 8.5** of this **Annexure Two** is effective:

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- (1) from the commencement of the Water Year occurring next after the date of the giving of the notice; or
 - (2) if the date of the giving of the notice is later than 1 November in the relevant year, from the commencement of the subsequent Water Year.

8.7 Licensee to Make Snowy Montane Rivers Increased Flows in Accordance with Notified Combination of Works

New South Wales must procure that the Snowy Water Licence requires that from the date that the notice given by New South Wales referred to in **clause 8.5** of this **Annexure Two** is effective, the Licensee must make the Snowy Montane Rivers Increased Releases along the amended combination of rivers in accordance with the amended combination of rivers set out in the notice.

9. MEASURING ENVIRONMENTAL BENEFITS OF SNOWY MONTANE RIVERS INCREASED FLOWS

9.1 State Agencies to Monitor Environmental Benefits

New South Wales must measure the environmental benefits of the Snowy Montane Rivers Increased Flows on an ongoing basis.

9.2 New South Wales to Provide Data to the Parties and the Water Consultation and Liaison Committee

New South Wales must as soon as practicable give to the parties and the Water Consultation and Liaison Committee a copy of the data generated by them from time to time.

**PART TWO: SNOWY MONTANE RIVERS INCREASED FLOWS TARGETED FROM
TANTANGARA DAM****10. LICENSEE TO TARGET SNOWY MONTANE RIVERS INCREASED FLOWS FROM
TANTANGARA DAM****10.1 Licensee to Target Snowy Montane Rivers Increased Flows from Tantangara Dam**

Subject to the other provisions of this **Annexure Two**, New South Wales must through the Snowy Water Licence procure that the Licensee operates the Works so as to target releases from Tantangara Dam in accordance with this **Part Two** of **Annexure Two**.

**11. OBLIGATIONS OF THE LICENSEE WITH RESPECT TO RELEASES FROM TANTANGARA
DAM****11.1 Obligations of the Licensee With Respect to Releases From Tantangara Dam**

New South Wales must, through the Snowy Water Licence, procure that each Water Year the Licensee:

- (1) **Annual Volumes:** targets releases of water from Tantangara Dam that in total are within 10 percent of the volume of the Snowy Montane Rivers Annual Allocation allocated to Tantangara Dam under **clause 6** of this **Annexure Two** for that Water Year; and
- (2) **Monthly volumes:** uses reasonable endeavours to target releases of water from Tantangara Dam in Monthly volumes that are within 20 percent of the Monthly volumes specified in the Annual Water Operating Plan for the Water Year.

11.2 Assessing Compliance by the Licensee

New South Wales must procure that the Snowy Water Licence provides that compliance by the Licensee with the obligations referred to in **clause 11.1** of this **Annexure Two** is determined:

- (1) **with respect to all of the obligations:** once within 45 days of the conclusion of each Water Year; and
- (2) **with respect to the obligations relating to Monthly releases:** having regard to all of the Monthly releases made by the Licensee from Tantangara Dam over the whole of the relevant Water Year.

11.3 Maximum of One Breach per Water Year

New South Wales must procure that the Snowy Water Licence includes a provision that for the avoidance of doubt, **clauses 11.1** and **11.2** of this **Annexure Two** are intended to operate together so that if the Licensee fails to comply with its obligations under those clauses, the Licensee breaches its obligations referred to in this **Part Two** of **Annexure Two** only once per Water Year.

11.4 Override Provision

- (1) Despite any other provision in this **Annexure Two**, New South Wales must procure that the Snowy Water Licence provides that the Ministerial Corporation and the Licensee may agree to vary the volume of water targeted for release from Tantangara Dam.
- (2) New South Wales must procure that any variation agreed between the Ministerial Corporation and the Licensee referred to in **subclause 11.4(1)** of this **Annexure Two** is:
 - (a) consistent with the provisions of the applicable Annual Water Operating Plan; or
 - (b) as otherwise agreed between the Governments.

12. MONTHLY RELEASE VOLUMES TO BE TARGETED FROM TANTANGARA DAM

12.1 Ministerial Corporation to Provide Licensee With Monthly Release Volumes

New South Wales must procure that the Snowy Water Licence contains provisions enabling the Ministerial Corporation, by notice in writing to the Licensee given not later than 13 February each year, to require the Licensee to target for release from Tantangara Dam during each Month of the following Water Year the Monthly volumes specified in the notice.

12.2 Limits on Total Monthly Volumes

New South Wales must procure that the Snowy Water Licence contains provisions to the effect that the total of the Monthly volumes specified in any notice referred to in **clause 12.1** of this **Annexure Two** must not exceed the volume of the Snowy Montane Rivers Annual Allocation allocated to Tantangara Dam under **clause 6** of this **Annexure Two**.

12.3 Ministerial Corporation Must Consult With Water Consultation and Liaison Committee

New South Wales must procure that the Ministerial Corporation consults with the Water Consultation and Liaison Committee prior to giving any notice referred to in **clause 12.1** of this **Annexure Two**.

12.4 Default Monthly Release Volumes

New South Wales must, through the Snowy Water Licence, procure that if by 13 February in any year the Ministerial Corporation has not submitted to the Licensee the volumes of water that the Licensee must target for release from Tantangara Dam for each Month of the next Water Year, the Licensee must target for release from Tantangara Dam the Snowy Montane Rivers Annual Allocation allocated to Tantangara Dam under **clause 6** of this **Annexure Two** in equal Monthly volumes.

12.5 Draft Annual Water Operating Plan to Include Monthly Release Volumes

New South Wales must, through the Snowy Water Licence, procure that the Licensee incorporates into each draft Annual Water Operating Plan proposed by the Licensee, the volumes of the water releases that the Licensee must target for release from Tantangara Dam for each Month of the relevant Water Year being either:

-
- (1) the Monthly volumes notified by the Ministerial Corporation referred to in **clause 12.1** of this **Annexure Two**; or
 - (2) the Monthly volumes referred to in **clause 12.4** of this **Annexure Two**,
whichever is applicable.

13. WHEN THE LICENSEE IS RELIEVED FROM TARGETING SNOWY MONTANE RIVERS INCREASED FLOWS FROM TANTANGARA DAM

13.1 Application of this Clause

This **clause 13** applies despite any other clause in this **Part Two** of **Annexure Two**.

13.2 Ministerial Corporation to Notify Licensee of Strategy

New South Wales must procure that the Snowy Water Licence contains provisions requiring the Ministerial Corporation by notice in writing given to the Licensee not later than 13 February in the relevant year, to require the Licensee to include in its draft Annual Water Operating Plan a strategy for varying releases targeted from Tantangara Dam during periods of low inflow into Tantangara Dam.

13.3 Requirements With Respect to Varying the Strategy

New South Wales must, through the Snowy Water Licence, procure that any strategy for varying releases targeted from Tantangara Dam during periods of low inflow into Tantangara Dam set out in a notice referred to in **clause 13.2** of this **Annexure Two** specifies:

- (1) the conditions under which the volume of Monthly releases from Tantangara Dam are to be varied;
- (2) the mechanism by which the Licensee may calculate the varied Monthly volumes; and
- (3) a contingency release plan specifying the carry over objectives and mechanisms for the management by the Licensee of the water accumulated in Tantangara Reservoir if the Licensee is to carry over a volume of water into the next Water Year (that volume not to exceed the Snowy Montane Rivers Annual Allocation allocated to Tantangara Dam under **clause 6** of this **Annexure Two**).

13.4 Ministerial Corporation Must Consult With Water Consultation and Liaison Committee

New South Wales must procure that the Ministerial Corporation consults with the Water Consultation and Liaison Committee prior to giving any notice referred to in **clause 13.2** of this **Annexure Two**.

14. FORCE MAJEURE

14.1 Suspension of Licensee's Obligations

New South Wales must procure that the Snowy Water Licence contains provisions to the effect that if the Licensee:

-
- (1) is prevented from or delayed in performing an obligation referred to in this **Part Two of Annexure Two** by a Prescribed Event;
 - (2) as soon as possible after the Prescribed Event occurs, notifies the Ministerial Corporation of full particulars of:
 - (a) the Prescribed Event;
 - (b) the effect of the Prescribed Event on performance of the Licensee's obligations;
 - (c) the anticipated period of delays;
 - (d) the action (if any) the Licensee intends to take to mitigate or remove the effect and delay; and
 - (3) promptly and diligently acts to mitigate or remove the Prescribed Event and its effect,

then the obligation is suspended during, but for no longer than, the period the Prescribed Event and its effects continue to prevent the Licensee from meeting such obligation.

14.2 Mitigation of Prescribed Event

New South Wales must, through the Snowy Water Licence, procure that the Ministerial Corporation uses reasonable endeavours to remove or mitigate a Prescribed Event and its effects.

ANNEXURE THREE: GWH CONVERSION OF GLS FORGONE ON SNOWY MONTANE RIVERS

Years (being consecutive complete Water Years after the Corporatisation Date)	GWHr Conversion	1		2		3		4		5		6		7		Totals		8		9		10		Increased Flow in Reach			
		GL	GWHr	GL	GWHr	GL	GWHr	GL	GWHr	GL	GWHr	GL	GWHr	GL	GWHr	GL	GWHr	GL	GWHr	GL	GWHr	GL	GWHr	GL	GWHr	ANF	
Murrumbidgee River	1.94	14.2	7	14.2	7	14.2	7	9.7	5	38.8	20	38.8	20	52.4	27	52.4	27	52.4	27	52.4	27	52.4	27	52.4	27	27	30%
Goodradigbee River	1.94	14.2	7	14.2	7	14.2	7	14.2	7	19.4	10	19.4	10	23.3	12	23.3	12	23.3	12	23.3	12	23.3	12	23.3	12	12	78%
Geehi River	1.85													4.3	6	4.3	6	9.25	5	22.2	12	36.6	20	36.6	20	19.8	19%
Snowy River Gungahlin	0.71																	17.8	25	17.8	25	20.6	23	20.6	23	29	13%
Snowy River Perisher/ Rams Flat	0.57	14.2	7	14.2	7	14.2	7	23.9	12	72.5	55	72.5	55	94.2	70	94.2	70	14.3	25	14.3	25	14.3	25	17.1	30	30	20%
		14.2	7	14.2	7	14.2	7	23.9	12	72.5	55	72.5	55	94.2	70	94.2	70	119.9	99	132.8	106	150.0	118	150.0	118		

EXECUTED as a deed.

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

[SIGNATURE OF GARY NAIRN]

Signature of Witness

[SIGNATURE OF IAN MACFARLANE]

GARY NAIRN

Name of Witness
(BLOCK LETTERS)

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

[SIGNATURE OF JAMES MAHER]

Signature of Witness

[SIGNATURE OF MICHAEL EGAN]

JAMES MAHER

Name of Witness
(BLOCK LETTERS)

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

[SIGNATURE OF CANDY BROAD]

Signature of Witness

[SIGNATURE OF JOHN BRUMBY]

CANDY BROAD

Name of Witness
(BLOCK LETTERS)