

# **Bulk Water Supply Agreement**

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**Melbourne Water Corporation**

and

**Central Gippsland Region Water Authority**

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# Bulk Water Supply Agreement

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|                 |   |
|-----------------|---|
| <b>Date</b>     | 2000  |
| <b>Parties</b>  | <ol style="list-style-type: none"><li>1. <b>Melbourne Water Corporation</b> of 607 Bourke Street, Melbourne, Victoria (<i>Melbourne Water</i>).</li><li>2. <b>Central Gippsland Region Water Authority</b> of Hazelwood Road, Traralgon, Victoria (<i>Gippsland Water</i>).</li></ol>   |
| <b>Recitals</b> | <p>A Under the Melbourne and Metropolitan Board of Works Act 1958, Melbourne Water may, if it sees fit, and upon application by an Authority under the Water Act 1989 (<i>Water Act</i>) that has a water district under the Water Act which lies in the vicinity of the metropolis or has any aqueduct, water main or pipe of Melbourne Water passing through it, supply water to the Authority by measure and on such terms, conditions and charges as are agreed between the parties.</p> <p>B Gippsland Water is an Authority within the meaning of the Water Act and is empowered to carry out any function under the Water Act in relation to water supply within the area of its authority.</p> <p>C The parties have agreed to execute a Bulk Water Supply Agreement in the terms set out in this document, to detail Melbourne Water's supply of bulk water to Gippsland Water.</p> <p>D The parties wish to:</p> <ol style="list-style-type: none"><li>(a) clarify their respective rights and obligations in relation to each other;</li><li>(b) establish clear bulk water supply objectives from Melbourne Water and Gippsland Water in relation to the operations; and</li><li>(c) establish the basis for future cooperation in ensuring that appropriate and sufficient measures are taken to achieve these objectives.</li></ol> |

**It is agreed** as follows.

## 1. Definitions and Interpretation

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### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

# Bulk Water Supply Agreement

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**Affected Party** means, in the case of an Event of Force Majeure, the party affected by that event of Force Majeure.

**Annual Water Supply** means the amount of water taken by Gippsland Water from Melbourne Water's system in a calendar year.

**Business Day** means a day on which banks are open for business in Melbourne, Victoria, not being a Saturday, Sunday or a public holiday.

**CPI** means Consumer Price Index for Melbourne as published by the Australian Bureau of Statistics.

**Emergency** has the meaning given to it under sub-clause 9.2.

**Force Majeure** means an event or cause beyond the reasonable control of the party claiming force majeure including, without limitation:

- (a) act of God, lightning, storm, flood, fire, earthquake or any other natural disaster, explosion or epidemic;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
- (d) the effect of any change in applicable laws, orders, rules or regulations of any government or other competent authority;
- (e) inability to obtain or delay in obtaining any necessary approval, permit or other authority from any Parliament or Government or Governmental agency;
- (f) a default by a third party under an agreement with the Affected Party; and
- (g) Year 2000 Event.

**GST** has the meaning given in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999.

**Input Tax Credit(s)** has the meaning given in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999.

**Interface Meter** means the meter at the two Interface Points used to measure volumes supplied.

**Interface Point** means a point in the water supply system where asset ownership transfers from Melbourne Water to Gippsland Water.

**Interface Point 1** means the offtake at Tarago Reservoir to provide raw water for Neerim South township (see Schedule 1).

**Interface Point 2** means the offtake at the existing Rokeby site on the Tarago Westernport pipeline (see Schedule 2).

**Maximum Withdrawal Rate** means the maximum instantaneous flow at which Gippsland Water is permitted to extract water at the Interface Points.

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**Melbourne Water Supplied System** means those parts of Gippsland Water's water reticulation system connected to Melbourne Water's system through the Interface Points and capable of receiving water from Melbourne Water.

**Non-Financial Obligation** means any obligation that is not a financial obligation.

**Payable Amount** means the amount payable for any Taxable Supply made under or in relation to this Agreement.

**Raw Water** means untreated water of unguaranteed and unspecified water quality sourced from Tarago Reservoir.

**Taxable Supply** has the meaning given in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999.

**Tax Adjustment Amount** means the amount by which the liabilities incurred by Melbourne Water in making a supply is reduced or increased as a result of a Tax Adjustment Event occurring. The amount of any Input Tax Credits and diesel fuel rebate or grant to which Melbourne Water is entitled to will be taken into account in quantifying the liabilities incurred for the purposes of this clause.

**Tax Adjustment Event** means any change in the liability of the Melbourne Water to Taxes or entitlements to claim a rebate, refund or credit in respect of Taxes occurring as a result of Government taxation measures connected to the introduction of a GST.

**Taxes** means accommodation taxes, diesel fuel rebate, financial institutions duty, debits tax, sales taxes, excise duties, stamp duties and customs duties.

**Water Supply Service** means the obligation imposed on Melbourne Water in sub-clause 3.1.

**Year 2000 Event** means any failure of equipment or information technology (including computer software, computer hardware and embedded integrated circuits), whether of a party or of any person on whom a party is relying directly or indirectly (for example in relation to the provision of power, water, gas or other goods or services) to comply with its obligations under this Agreement, to provide full functionality and operate without adverse effect as a result of the problem commonly referred to as the 'Year 2000 problem' and includes, without limitation, any failure as a result of:

- (a) the equipment or information technology not complying with the Standards Australia Publication SAA/SNZ MP77: 1998: A Definition of Year 2000 Conformity Requirements (as revised from time to time); or
- (b) the way in which the data to be processed by that equipment or information technology represents the century in any date.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

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- (a) the singular includes the plural and conversely.
- (b) the gender includes all genders.
- (c) if a word or phrase is defined, its other grammatical forms have the corresponding meaning.
- (d) a reference to a person, corporation, trust, partnership an incorporated body or other entity includes any of them and any executor, administrator or successor in law of the person.
- (e) a reference to a clause or Schedule is a reference to a clause or a Schedule to this Agreement.
- (f) a reference to an agreement or document (including, without limitation), a reference to this Agreement is to the Agreement or document as amended, varied, supplemented, novated or replaced except to the extent prohibited by this Agreement or that other Agreement or document.
- (g) a reference to a party to this Agreement or another Agreement or document includes the party's successors and permitted substitutes or assigns and, where applicable, the party's legal personal representatives.
- (h) a reference to legislation or to a provision of legislation includes modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) a reference to **writing** includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (j) a party may give notice or report under this Agreement in written or electronic form.

## 1.3 Consents or Approval

If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a party or is within the discretion of the party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion.

## 2. Term of Agreement

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### 2.1 Commencement of Agreement

This Agreement commences from the earliest date after 1 March 2000 at which Gippsland Water is capable of receiving water from Melbourne Water. Gippsland Water must give at least 14 days written notice to Melbourne Water of that date. If notice has not been given by 1 July 2000 this Agreement is no longer open for acceptance by Gippsland Water.

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## 2.2 Initial Term

Subject to early termination in accordance with clause 19, this Agreement will continue for a period of three years.

## 2.3 Extensions

- (a) Gippsland Water may elect to extend the term of the Agreement for a further three years (provided Gippsland Water is not in breach of the Agreement) by giving written notice of such intention to Melbourne Water at least three months prior to the end of the initial term.
- (b) An extension made in accordance with paragraph (a) above will be on the same terms as this Agreement except:
  - (i) this sub-clause 2.3 is excluded; and
  - (ii) the Charges as at the commencement date of the further term will be indexed by CPI over the preceding three years.

## 3. Obligations of Melbourne Water

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### 3.1 To supply water

Melbourne Water must, in accordance with and subject to this Agreement, provide Gippsland Water with a supply of water:

- (a) at the quantity determined under clause 5;
- (b) at the pressure determined under clause 6; and
- (c) at the quality determined under clause 7.

### 3.2 To recover charges

Melbourne Water may recover from Gippsland Water, any charges or interest due to Melbourne Water under sub-clause 4.2.

### 3.3 To provide access

Melbourne Water shall provide Gippsland Water reasonable access to the Tarago Reservoir for maintenance of Gippsland Water's assets and for raw water sampling from time to time.

## 4. Obligations of Gippsland Water

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### 4.1 To receive water

Gippsland Water may, in accordance with and subject to this Agreement, receive water supplied by Melbourne Water.

### 4.2 To pay charges

Gippsland Water must pay to Melbourne Water, charges and interest determined, calculated and invoiced in accordance with clause 12.

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## 4.3 To provide an estimate of annual water use

Gippsland Water must advise Melbourne Water in writing of the expected annual and monthly volumes of water to be used at each interface point over the subsequent financial year by 1 February in each calendar year.

## 5. Quantity

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### 5.1 Annual Water Supply quantity

- (a) The source of water will be from Tarago Reservoir.
- (b) Melbourne Water must, in accordance with and subject to this Agreement, provide to Gippsland Water an Annual Water Supply of up to 400 megalitres to be utilised by the townships of Drouin and Warragul.
- (c) A further volume of up to 275 megalitres will be provided free of charge to be utilised by Neerim South township.

### 5.2 Maximum rate of withdrawal

The maximum rate of withdrawal of water by Gippsland Water at Interface Point 1 must not exceed 2 megalitres per day and Interface Point 2 must not exceed 14 megalitres per day.

### 5.3 Failure to comply with water quantity requirements

Where Melbourne Water fails to provide the Water Supply Service, Gippsland Water's compensation is limited to a refund of the fixed availability charge in accordance with clause 13.

## 6. Water pressure

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### 6.1 Water pressure for normal operation

Subject to sub-clause 6.2, the design minimum Hydraulic Grade Line (HGL) at Interface Points 1 and 2 will be approximately 144m AHD and 135m AHD respectively.

### 6.2 Water pressure may vary

The water pressure at the Interface Points may vary and is not guaranteed by Melbourne Water where an Emergency (as defined in sub-clause 9.2) occurs.

For the avoidance of doubt, a failure to meet pressure requirements due to either of the above is not a breach of this Agreement.

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## 7. Water quality

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### 7.1 Water quality

Melbourne Water will supply raw water sourced from Tarago Reservoir at the agreed Interface Points. Melbourne Water does not guarantee nor specify the water quality (including, without limitation, microbiological, biological, physio-chemical, taste and odour) at the Interface Points to Gippsland Water, or warrant that the water is fit for consumption as supplied.

### 7.2 Water quality standards beyond Interface Point

- (a) Melbourne Water is not responsible for water quality beyond the Interface Points.
- (b) Gippsland Water must indemnify and at all times keep Melbourne Water fully indemnified against all and any claims, losses, liabilities and expenses which Melbourne Water may suffer or incur directly arising out of or related in any way to the use of water supplied by Melbourne Water under this Agreement, except to the extent that the loss, liability or expense was incurred as a result of the negligence of Melbourne Water.

### 7.3 Water quality management

Should the monitoring of raw water quality reveal any exceptional results,

- (a) Melbourne Water must notify Gippsland Water of this in writing within 24 hours of becoming aware of such a problem; and
- (b) both organisations must use their reasonable endeavours to work towards resolving the issues to minimise impact on customers of Gippsland Water.

## 8. Supply during metropolitan restrictions

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### 8.1 Notification of metropolitan restrictions

In the event of Melbourne Water becoming aware that the supply of water by Melbourne Water to Melbourne metropolitan customers is likely to be the subject of restrictions, Melbourne Water must notify Gippsland Water in writing within seven days of becoming aware of the event.

### 8.2 Condition of supply during metropolitan restrictions

If Melbourne metropolitan customers are subject to water restrictions, the quantity of water supplied under clause 5 is conditional on Gippsland Water within seven days of either restrictions being imposed on Melbourne metropolitan customers or Gippsland Water receiving notice from Melbourne Water under clause 8.1, whichever is later:

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- (a) implementing similar levels of restrictions for Gippsland Water customers on the Melbourne Water Supplied System similar to those faced by Melbourne metropolitan customers; or
- (b) restricting its daily withdrawals from Melbourne Water to 11 megalitres per day during that period.

## 8.3 Consequences of non-compliance with condition

If Gippsland Water does not comply with the condition in sub-clause 8.2 within seven days, Melbourne Water shall be entitled to restrict water supply to Gippsland Water to 11 megalitres per day.

## 9. Emergency supply

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### 9.1 Emergency supply

In the event of an Emergency supply being required:

- (a) Gippsland Water:
  - (i) may commence to take the water immediately, subject to sub-clauses 5.1 and 5.2; and
  - (ii) must inform Melbourne Water as soon as practical of Gippsland Water's intentions to enable Melbourne Water to make the necessary operational arrangements for Gippsland Water to take water.
- (b) Melbourne Water must make all reasonable efforts to ensure that the minimum pressure in the pipeline is reached as quickly as reasonably practical.

### 9.2 Definition of Emergency

For the purposes of this clause, an Emergency means

- (a) any event that is outside the normal operating arrangements of Gippsland Water and Melbourne Water; or
- (b) an event that could not be reasonably predicted.

## 10. Notification to take supply from Interface Point

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In relation to water supply drawn from Melbourne Water, Gippsland Water must give Melbourne Water seven working days notice of Gippsland Water's intention:

- (a) to start taking water from the two Interface Points; and
- (b) to cease taking water from the two Interface Points.

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## 11. Measurement

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### 11.1 Billing volume during withdrawals from Interface Point

- (a) During withdrawals from the Interface Points all measurement for compliance with the Agreement must be made at the designated Interface Points.
- (b) Gippsland Water must, at its expense, install, test and maintain an Interface Meter at each Interface Point in accordance with the meter manufacturer's specification.
- (c) Gippsland Water must conduct calibration tests on the Interface Meters annually.
- (d) Within two weeks of completing the calibration tests, Gippsland Water must provide Melbourne Water with results from the calibration tests.

### 11.2 Water Quality

- (a) Melbourne Water must collect, on average, bi-monthly water quality data at the Tarago Reservoir. The data will be made available to Gippsland Water within 2 weeks of its receipt by Melbourne Water.

### 11.3 Meter reading for billing during withdrawals from the Interface Point

- (a) After Gippsland Water has notified Melbourne Water of its intention to take supply of water from each Interface Point under this Agreement, and prior to commencement of the water supply, Melbourne Water and Gippsland Water must separately record the Interface Meter reading using the smallest unit increment on the gauge.
- (b) Melbourne Water must make all necessary arrangements to provide access to the site for Gippsland Water staff for this purpose.
- (c) Melbourne Water must read the Interface Meter at Interface Point 2 monthly for billing purposes.

## 12. Charges for Water Supply Services

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### 12.1 Charges

Raw water provided from Tarago Reservoir at Interface Point 1 is free of charge up to 275 megalitres annually.

Gippsland Water must pay Melbourne Water for water taken from Interface Point 2:

- (a) a fixed availability charge of \$16,000 per annum; and
- (b) a variable charge of \$37.50 per megalitre.

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## 12.2 Invoicing of charges

Melbourne Water must invoice Gippsland Water:

- (a) in advance for the fixed availability charge on the first Business Day of each month; and
- (b) in arrears for the usage charge in accordance with the variable rate listed in sub-clause 12.1 on the first Business Day of each month.

## 12.3 What an invoice must contain

Each invoice for the usage charge must contain:

- (a) the measured volume delivered to Gippsland Water since the last invoice;
- (b) any volume of water estimated, rather than measured, by Melbourne Water using historical information and a process agreed by both parties; and
- (c) the amount payable by Gippsland Water.

## 12.4 When invoice must be paid and method of payment

- (a) Gippsland Water must pay any invoice within 14 days of the date of receipt of the invoice.
- (b) The payment referred to in paragraph (a) must be made by electronic transfer to such bank account as Melbourne Water may, from time to time, advise Gippsland Water in writing.

## 12.5 Interest payable

- (a) Gippsland Water must pay interest at the interest rate on any amount not paid in accordance with sub-clause 12.4, calculated daily on the amount outstanding from the date upon which the amount is due until the amount is paid in full.
- (b) For the purposes of paragraph (a), the interest rate is the Bank Bill Swap Reference Rate on the date upon which the amount is due.
- (c) Upon payment of the outstanding amount in full, Melbourne Water must invoice Gippsland Water separately for the interest outstanding. This payment must be made within seven days of receipt of the invoice.

## 12.6 Disputes about amounts payable

- (a) Gippsland Water must give Melbourne Water written notice if it disputes any invoice given under this clause.
- (b) If Gippsland Water so requests, Melbourne Water must promptly give Gippsland Water further information about the volume of water referred to in the invoice and how any estimate of volume was made.
- (c) Notwithstanding any dispute, Gippsland Water must, on the relevant due date, pay:

# Bulk Water Supply Agreement

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- (i) the fixed availability charge;
- (ii) the greater of:
  - (A) the amount of the usage charge not in dispute; and
  - (B) the average usage charge for the preceding three months.
- (d) Any dispute under this sub-clause must be determined in accordance with clause 18.
- (e) A party required to make a payment by a determination under paragraph (d) must do so within seven days of the date of the determination.

## 13. Refund of fixed availability charge

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In the event that Melbourne Water is unable to provide the Water Supply Service to Gippsland Water for more than 72 hours in any consecutive 90 day period, other than due to the failure of any asset of Gippsland Water or an Emergency (as define in sub-clause 9.2), Melbourne Water must pay compensation of \$44 to Gippsland Water for each additional 24 hours during that period when Melbourne Water is so unable to supply Gippsland Water.

## 14. Appointment and authority of Principal Representatives

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### 14.1 Appointment

- (a) Within one week of executing this Agreement, each party must appoint and must, for the duration of this Agreement, keep appointed, a Principal Representative to administer this Agreement on behalf of the party appointing the Principal Representative.
- (b) Each party must advise the other party in writing the name of the nominated Principal Representative.
- (c) Each party must give the other party notice of any change to the name, postal address, e-mail address, telephone number, facsimile number and after-hours contact details of its Principal Representative.

### 14.2 Authority

Each party must confer upon its Principal Representative, and warrants to the other party that it has so conferred, all necessary power to give or receive any notice, to give any approval, undertaking or assurance to enter any agreement, or to do any other thing which a party may do under this Agreement, on behalf of the party appointing that Principal Representative.

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## 15. Appointment and authority of Operating Representatives

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### 15.1 Appointment

- (a) Within one week of executing this Agreement, each party must appoint and must, for the duration of this Agreement, keep appointed, an Operating Representative to be responsible for the day to day operations of this Agreement on behalf of the party appointing that Operating Representative.
- (b) Each party must advise the other party in writing the name of the nominated Operating Representative.
- (c) Each party must give the other party notice of any change to the name, postal address, e-mail address, telephone number, facsimile number and after-hours contact details of its Operating Representative.

### 15.2 Authority

Each party must confer upon its Operating Representative, and warrants to the other party that it has so conferred, all necessary power to give or receive any notice, to give any approval, undertaking or assurance to enter any agreement, or to do any other thing which a party may do under this Agreement, on behalf of the party appointing that Operating Representative.

## 16. Force Majeure

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### 16.1 Event of Force Majeure

If the Affected Party is prevented in whole or in part from carrying out a Non Financial Obligation under this Agreement as a result of Force Majeure, it must promptly notify the other party accordingly. The notice must:

- (a) specify the obligations it cannot perform;
- (b) fully describe the event of Force Majeure;
- (c) estimate the time during which the Force Majeure will continue; and
- (d) specify the measures proposed to be adopted to remedy or abate the Force Majeure.

The Affected Party must keep the other party informed of the above at regular intervals or promptly upon request of the other party.

### 16.2 Suspension of Non Financial Obligations

Following this notice, the Non Financial Obligation which cannot be performed will be suspended as far as it is affected by the event of Force Majeure and while that event continues.

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## 16.3 Remedy of Force Majeure

The Affected Party must remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.

## 16.4 Mitigation

The Affected Party must take all action reasonably practicable to mitigate any loss suffered by the other party or a third party as a result of its failure to carry out its obligations under this Agreement.

## 16.5 No requirement to settle labour dispute

The Affected Party is not required, under sub-clause 16.3 or 16.4, to settle any labour dispute against the reasonable wishes of the Affected Party.

## 17. Confidentiality

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### 17.1 Confidentiality

Except as provided in sub-clauses 17.2 and 17.6, a party must:

- (a) not disclose any confidential information of the other party, without the prior written approval of the other party; and
- (b) not require, assist or permit any person to have access to, or use, disclose or reproduce any confidential information of the other party; and
- (c) take reasonable steps to enforce obligations imposed under this clause.

### 17.2 Permitted disclosures

Despite sub-clause 17.1, a party may disclose confidential information of the other party:

- (a) to any employee, contractor or consultant of the party who reasonably needs to know the confidential information for that party to exercise its rights or perform its obligations under this Agreement; and
- (b) if it is:
  - (i) required by any Act; or
  - (ii) compelled by law or a court order, to disclose it; or
  - (iii) demanded by the Relevant Minister.
- (c) In this sub-clause **Relevant Minister** means a Minister responsible for administering an Act which confers functions or powers or imposes duties upon a party that are necessary for that party to enter into and perform this Agreement.

# Bulk Water Supply Agreement

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## **17.3 Permitted disclosure to an employee, contractor or consultant**

A party may only disclose confidential information under paragraph 17.2(a) if it imposes upon the person to whom the confidential information is disclosed, an obligation:

- (a) only to use the confidential information; and
- (b) not to disclose that confidential information to any other person, except,

for the sole purpose for which the confidential information is disclosed.

## **17.4 Permitted disclosure required by law or Relevant Minister**

If a party is required or compelled to disclose confidential information of the other party under paragraph 17.2(b), it must:

- (a) immediately give written notice of that fact to the other party; and
- (b) use its best efforts only to disclose that confidential information of the other party on terms which preserve the strictest confidentiality.

## **17.5 Breach of Confidentiality**

The parties agree and acknowledge that:

- (a) a party may bring proceedings to restrain any breach or threatened breach by the other party of this clause; and
- (b) the unauthorised use, disclosure or divulgence of, or dealing with, the confidential information of a party by the other party will cause irreparable harm to that party, for which damages will not be an adequate remedy.

## **17.6 Disclosure to Melbourne's retail water companies**

The parties do not intend this clause to prevent Melbourne Water disclosing to any Melbourne retail water company information about Melbourne Water's operation and management of, and plans for improving, Melbourne Water's water supply system, for the purposes of any bulk water supply agreement between Melbourne Water and any Melbourne retail water company.

## **17.7 Survival**

This clause survives the termination of this Agreement.

## **17.8 Definition of confidential information**

For the purposes of this clause, "confidential information" means:

- (a) any knowledge, information or know-how relating to a party's business, systems, customers, property, assets or affairs which has been or is disclosed, communicated or delivered to the other party under or in connection with this Agreement; and

# Bulk Water Supply Agreement

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- (b) has come or comes to the knowledge, or into the possession, of the other party under or in connection with this Agreement, but does not include the provisions of this Agreement.

## 18. Dispute resolution

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### 18.1 When a dispute arises

- (a) If any difference or dispute arises between the parties under or in relation to this Agreement or its subject matter, they agree to seek, in good faith, to resolve the matter by negotiations between the Principal Representatives.
- (b) A difference or dispute arises at the time when one party notifies the other party in writing that there is a difference or dispute about a matter specified in the notice.
- (c) If the Principal Representatives do not resolve the dispute within 7 days of it arising, either party may give written notice to the other party, requiring the matter to be:
  - (i) resolved by the panel under sub-clause 18.2; or
  - (ii) referred to mediation under sub-clause 18.3; or
  - (iii) referred to an expert referee under sub-clause 18.4.
- (d) A party may only commence legal proceedings in respect of a difference or dispute referred to in paragraph (a) after an expert referee referred to in sub-clause 18.4 has had a reasonable opportunity to decide or to make a determination in respect of the difference or dispute.
- (e) If a difference or dispute is referred for resolution under any or all of sub-clauses 18.2, 18.3 and 18.4, neither party may oppose an application for a stay of legal proceedings in respect of the dispute, pending the conclusion of proceedings or the making of a decision or determination, as the case requires, under any or all of those sub-clauses.

### 18.2 Reference to the panel

- (a) The panel consists of:
  - (i) the Managing Director of Melbourne Water; and
  - (ii) the Chief Executive Officer of Gippsland Water.
- (b) The panel must meet to consider any difference or dispute within 7 days of it being referred to the panel.
- (c) A decision of the panel may only be made by the unanimous agreement of the members of the panel.

# Bulk Water Supply Agreement

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- (d) If the panel is unable to reach an agreement on a decision within 14 days of the meeting referred to in paragraph (b), the parties must either refer the matter to:
  - (i) mediation under sub-clause 18.3; or
  - (ii) an expert referee under sub-clause 18.4.

## 18.3 Mediation

- (a) The mediator is a person:
  - (i) nominated jointly by the party; or
  - (ii) if the parties cannot agree,
    - (A) nominated by the chair of Lawyers Engaged in Alternative Dispute Resolution (or that person's nominee); or
    - (B) determined by some other process agreed between the parties at the time.
- (b) Mediation must occur within 30 days of the appointment of a mediator.
- (c) The parties must meet the mediator's costs in equal shares.
- (d) Mediation must occur in accordance with the Law Institute of Victoria Code of Practice for Mediation, or an equivalent code agreed to by the parties.
- (e) If the parties fail to resolve the difference or dispute within 14 days after mediation has concluded, the difference or dispute must be determined by an expert referee under sub-clause 18.4.

## 18.4 Reference to expert referee

- (a) The expert referee is a person or persons:
  - (i) nominated jointly by the parties; or
  - (ii) if the parties cannot agree:
    - (A) nominated by the President of the Institution of Engineers Australia (Victorian Division) (or that person's nominee); or
    - (B) determined by some other process agreed between the parties at the time,

who must decide the matter within 30 days of the expert referee's appointment.
- (b) If the expert referee is more than one person, any decision must either be unanimous or made by a majority.
- (c) The expert referee is not an arbitrator.
- (d) An expert referee must give written reasons for a determination, if either party so requests.

# Bulk Water Supply Agreement

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- (e) Unless the expert referee otherwise determines, each party must:
  - (i) bear its own costs of proceedings before the expert referee; and
  - (ii) meet the costs of the expert referee in equal shares.

## 18.5 Dispute deposit

- (a) Within 7 days of the appointment of an expert referee, each party must lodge with the expert referee a dispute deposit of \$10,000 as security against costs and the expert referee's determination.
- (b) Failure by a party to lodge a dispute deposit does not invalidate the appointment of an expert referee or prevent the referee from making a determination.
- (c) An expert referee, as part of its determination, must make an award for some or all of the dispute deposit lodged by a party either to be applied to:
  - (i) the costs of the other party; or
  - (ii) to any amount awarded to the other party as part of the determination,or to be returned to that party.

## 18.6 Consequences of a dispute

- (a) Any decision of the panel or the expert referee is binding on the parties for all purposes, providing that the panel or expert referee has not made a manifest error of fact or law, or failed to observe natural justice.
- (b) Subject to paragraph (a), this clause does not prejudice or affect any right of a party to take any other action under this Agreement.

## 19. Termination

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This Agreement will terminate if:

- (a) the parties so agree in writing; or
- (b) Melbourne Water ceases to have the statutory power to provide Water Supply Services to Gippsland Water.

## 20. Notices

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Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender;

# Bulk Water Supply Agreement

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- (b) must be delivered to the intended recipient by prepaid post or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:

**Melbourne Water Corporation**

68 Ricketts Road  
MT WAVERLEY VIC 3149

Principal Representative: Mr Grant Wilson  
General Manager – Water  
Telephone No: (03) 9565 1900  
Fax No: (03) 9565 1742  
E-mail address: [grant.wilson@melbwater.com.au](mailto:grant.wilson@melbwater.com.au)

**Central Gippsland Region Water Authority**

Hazelwood Road  
P.O. Box 348  
TRARALGON VIC 3844

Principal Representative: Mr David Evans  
General Manager Technical Services  
Telephone No: (03) 5177 4600  
Fax No: (03) 5174 1044  
E-mail address: [evansd@gippswater.com.au](mailto:evansd@gippswater.com.au)

- (c) will be taken to be duly given or made:
- (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, two Business Days after the date of posting; and
  - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4.00 pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.

# Bulk Water Supply Agreement

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## 21. GST

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- (a) The parties acknowledge that this Agreement (including all pricing and compensation terms, whether by way of reimbursement, indemnity or otherwise) has been drafted without taking into account the effect, if any, of GST. The following principles apply when determining any Payable Amount:
- (i) If GST is payable in relation to the Taxable Supply the Payable Amount will be the consideration specified in this Agreement plus GST (if any).
  - (ii) If the Payable Amount is determined by reference to any liability incurred by a party (**Payee**), the relevant amount is the actual amount incurred by the Payee less the amount of any Input Tax Credit the Payee is entitled to claim in respect of that liability.
  - (iii) If the Payable Amount is a reimbursement or indemnification of a loss determined by reference to revenue earned and liabilities incurred, the revenue will be the revenue earned net of GST and the liabilities will be determined in accordance with paragraph (ii).
- (b) Melbourne Water must:
- (i) calculate and notify Gippsland Water in writing of any Tax Adjustment Amount in respect of the charges listed in sub-clause 12.1 at least 14 days before any payment of the charges are due; and
  - (ii) adjust the charges by the Tax Adjustment Amount. The adjusted charges will apply until any further adjustment is made.

## 22. Governing law and jurisdiction

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This Agreement is governed by the laws of Victoria. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Agreement.

## 23. Amendments

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No amendment or variation of this Agreement is valid or binding on a party unless made in writing executed by the Principal Representatives or the Directors of both parties.

## 24. Liability for expenses

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Each party must pay its own expenses incurred in negotiating and executing this Agreement.

# Bulk Water Supply Agreement

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## 25. Giving effect to this Agreement

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Each party must do anything (including execute any document) and must ensure that its employees and agents do anything (including execute any document) that the other party may reasonably require to give full effect to this Agreement.

## 26. Waiver of rights

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A right may only be waived in writing, signed by the party giving the waiver (through its Principal Representative) and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right; and
- (b) a waiver of a right on one or more occasion does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

## 27. Operation of Agreement

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- (a) This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty related to that subject matter is replaced by this Agreement and has no further effect.
- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.

## 28. Consents

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Where this document contemplates that a party may agree, consider or consent to something (however it is described) the party may:

- (c) agree, consider or consent, or not agree, consider or consent; and
- (d) agree, consider or consent, subject to conditions,

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

## 29. Publicity

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A party must not make any public statement relating to this Agreement unless:

# Bulk Water Supply Agreement

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- (a) the other party has previously agreed to the form and content of the statement; or
- (b) the statement is required to be made by law or a stock exchange.

## **30. Relationship between parties**

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Nothing in this Agreement creates a relationship of partnership, principal and agent or trustee and beneficiary between Melbourne Water and Gippsland Water.

## **31. Operation of Indemnities**

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- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes any payment in respect of which the indemnity is given.

## **32. Survival**

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The termination of this Agreement does not release a party from any obligation relating to this Agreement that, by its nature, survives completion of the Agreement, including any obligation of indemnity or confidentiality.

## **33. Counterparts**

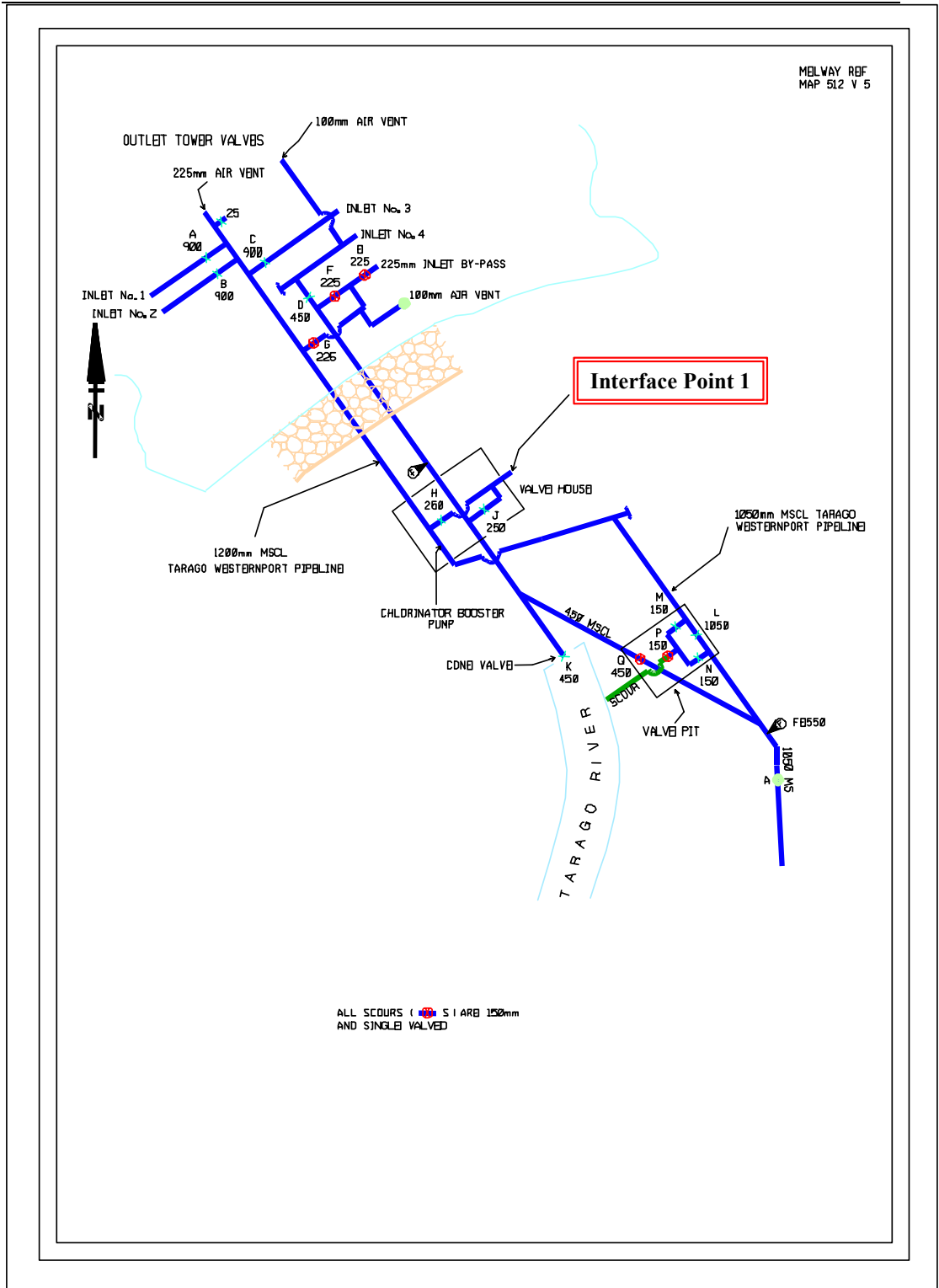
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This document may be executed in counterparts.

# Bulk Water Supply Agreement

## Schedule 1

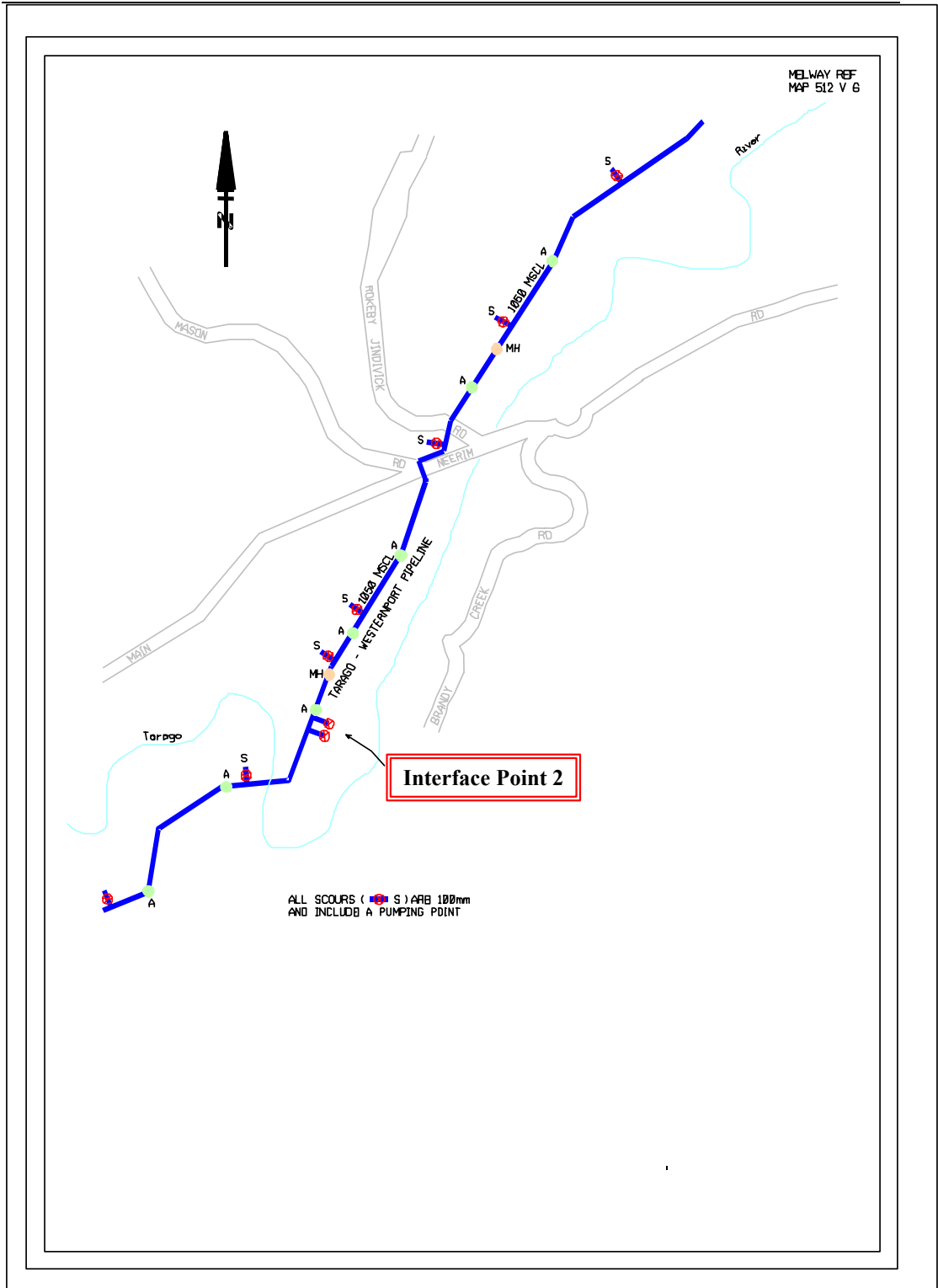
### Site plan of location of Interface Point 1



# Bulk Water Supply Agreement

## Schedule 2

### Site plan of location of Interface Point 2



# Bulk Water Supply Agreement

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**Executed** in Melbourne.

## Melbourne Water Corporation

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**The Official Seal** of **Melbourne Water Corporation** was duly affixed in the presence of:

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**Director/Secretary**

( )

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**Director**

( )

## Gippsland Water

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**The Common Seal** of the **Central Gippsland Region Water Authority** was hereunto affixed in the presence of:

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**Chairman**  
**(D Macarthur)**

**Secretary**  
**(G Hocking)**

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**Member**

( )