

Lot 51, Wellington Road
(PO Box 99)
Langhorne Creek SA 5255
Telephone: (08) 8537 3266
Facsimile: (08) 8537 3061

The Creeks Pipeline Company Limited

**Deed of Assignment
(non-shared pipeline)**

DATE

Deed of Assignment (non-shared pipeline)

DATE

2010

PARTIES

1. The person(s) whose full name(s) and address(es) is (are) set out in **Item 1** of the Schedule (the **Assignor**)
2. The person(s) whose full name(s) and address(es) is (are) set out in **Item 2** of the Schedule (the **Assignee**)
3. **THE CREEKS PIPELINE COMPANY LIMITED** ABN 64 133 867 197 of Lot 51, Wellington Road, Langhorne Creek SA 5255 (**CPCL**)

BACKGROUND

- A. The Assignor has agreed to assign its rights and interests in the Water Delivery Contract and the Shares to the Assignee.
- B. The Assignee has agreed to assume the Assignor's obligations and liabilities under and in connection with the Water Delivery Contract.
- C. CPCL has consented to the assignment and assumption of obligations and liabilities referred to above.
- D. The parties wish to the record matters set out above on the terms and conditions contained in this Deed.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

- (a) expressions which are defined in the Water Delivery Contract have the same meaning in this Deed;
- (b) **Effective Date** means whichever last occurs of:
 - (i) the date of settlement in respect of the sale of the Land, as detailed in the Land Sale Contract (**Settlement Date**);
 - (ii) the date of settlement in respect of the Assignor's transfer of the Shares to the Assignee;
 - (iii) the date on which the Assignor pays to CPCL in cleared funds the full amount of CPCL's invoice or invoices for the Full Charge

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and/or the Reduced Charge issued on the date or dates (prior to the Settlement Date) specified in **Item 3** of the Schedule pursuant to clause 11 of the Water Delivery Contract;

- (iv) the date on which the Assignor pays to CPCL in cleared funds the sum specified in **Item 4** of the Schedule to enable the Assignor to settle the legal costs of and incidental to this Deed of Assignment as referred to in clause 9.1(e) of the Water Delivery Contract.

First Component of the Off Peak Period means the continuous portion of the Off Peak Period which includes the month of July.

Land means the land described in **Item 5** of the Schedule.

Land Sale Contract means the contract for the sale and purchase of the Land entered into between the Assignor and the Assignee and dated the date referred to in **Item 6** of the Schedule.

Second Component of the Off Peak Period means the continuous portion of the Off Peak period which includes the month of January.

Settlement means settlement of the Land Sale Contract.

Settlement Date has meaning as defined in paragraph (a) of the definition of “Effective Date” set out above.

Shares means the number of ordinary shares held by the Assignee in CPCL described in **Item 7** of the Schedule.

Water Delivery Contract means the Water Delivery Contract (Non-Shared Pipeline) entered into between the Assignor and CPCL on the date referred to in **Item 8(a)** of the Schedule in respect of the delivery of water to the Land described in **Item 8(b)** of the Schedule.

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) words denoting the singular number include the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) words denoting natural persons include bodies corporate and vice versa;
- (e) references to clauses are to clauses of this Deed;
- (f) headings are for convenience only and do not affect interpretation;
- (g) a reference to any party to this Deed or to any other document includes that party’s executors, administrators, successors and permitted assigns (as the case may be);

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- (h) where two or more persons are a party to this Deed, a reference to that party is a reference to those persons jointly and each of them severally;
- (i) references to any document include references to such document as amended, novated, supplemented, varied or replaced from time to time;
- (j) references to any legislation or to any provision of any legislation include any modification or re-enactment of that legislation or legislative provision or any legislation or legislative provision substituted for, and all regulations and instruments issued under, such legislation or provision;
- (k) reference to dollars and \$ are to amounts in Australian currency;
- (l) a reference to time means South Australian time;
- (m) a reference to a thing (including without limitation, an amount) is a reference to the whole or any part of it;
- (n) specifying anything in this Deed after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary;
- (o) where the day or the last day for doing an act is not a Business Day, the day or last day for doing that act will be the next following Business Day;
- (p) the annexures and/or schedules to this Deed form part of this Deed; and
- (q) the Background is correct and forms part of this Deed.

1.3 Construction

- (a) A provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Deed or the inclusion of the provision in this Deed.
- (b) If any provision of this Deed is found to be invalid or unenforceable in accordance with its terms, all other provisions which are self sustaining and capable of separate enforcement without regard to the invalid or unenforceable provisions will be and will continue to be valid and enforceable in accordance with their terms.

2. CAPACITY

- 2.1 This clause only applies if the Assignee is acting as trustee of a trust in relation to the Land Sale Contract and the Shares as indicated in **Item 9(a)** of the Schedule.
- 2.2 The Assignee enters into and executes this Deed in its own right and in its capacity as trustee of the trust the name of which is specified in **Item 9(b)** of the Schedule (**Trust**).
- 2.3 In respect of the Trust, the Assignee represents and warrants that:
 - (a) all the powers and discretions conferred by the relevant trust deed establishing the Trust are capable of being validly exercised by the Assignee as trustee and have not been varied or revoked and the Trust is a valid and subsisting trust;

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- (b) the Assignee is, and was validly appointed as, the sole trustee of the Trust and has full and unfettered power under the terms of the relevant trust deed to enter into and be bound by this Deed on behalf of the Trust;
- (c) this Deed is being executed and entered into as part of the due and proper administration of the Trust and for the benefit of the beneficiaries of the Trust;
- (d) no restriction on the Assignee's right of indemnity out of or lien over the Trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the Trust's assets; and
- (e) the Assignee is not in default of any provision of the relevant trust deed.

3. EFFECTIVE DATE

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

4. ASSIGNMENT

4.1 The Assignor absolutely assigns to the Assignee all the Assignor's legal and beneficial right, title, benefit and interest in the Water Delivery Contract and the Shares.

5. ASSUMPTION OF RIGHTS AND OBLIGATIONS

5.1 The Assignee will:

- (a) enjoy all the rights and benefits of the Assignor under the Water Delivery Contract and may hold and deal with the Shares without any interruption or disturbance from the Assignor;
- (b) assume the obligations and liabilities of the Assignor under the Water Delivery Contract which arise or accrue on and from the Effective Date and undertakes to discharge those obligations and liabilities as and when required under the Water Delivery Contract; and
- (c) fully indemnify the Assignor in respect of any loss or damage sustained or liability incurred by the Assignor resulting from a failure by the Assignee to perform or discharge its obligations or liabilities under the Water Delivery Contract on and from the Effective Date as contemplated by clause 5.1(b).

5.2 Despite anything to the contrary contained in this Deed, further to clause 9.3 of the Water Delivery Contract the Assignor:

- (a) shall not be released from the obligations and liabilities referred to in clause 5.1(b), and
- (b) will remain responsible to CPCL for the Assignee's acts and omissions in respect thereof.

6. PAYMENTS BY THE ASSIGNORS

6.1 The Assignor undertakes to CPCL and the Assignee that:

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- (a) on the Settlement Date the Assignor will make the payments to CPCL referred to in paragraphs (c) and (d) of the definition of “Effective Date” in clause 1.1;
- (b) it will pay a proportion of the invoice for the Full Charge to be issued to the Assignee by CPCL in the month next following the month (**Settlement Month**) in which Settlement takes place, pursuant to clause 11 of the Water Delivery Contract in respect of water delivery during the Settlement Month; the Assignor will pay such proportion as soon as reasonably practicable following receipt of a copy of such invoice from CPCL on the basis that the failure to pay the Assignor’s proportion of such invoice when due and payable will be taken to be a default by the Assignee under the Water Delivery Contract; the proportion to be paid by the Assignor is that which the number of days in the Settlement Month prior to the Settlement Date bears to the total number of days in the Settlement Month; and
- (c) it will pay a proportion of the invoice for the Reduced Charge to be issued pursuant to clause 11 of the Water Delivery Contract to the Assignee by CPCL after Settlement in respect of the First Component of the Off Peak Period or the Second Component of the Off Peak Period (as the case may be) during which Settlement takes place; the Assignor will pay such proportion as soon as reasonably practicable following receipt of a copy of such invoice from CPCL on the basis that the failure to pay the Assignor’s proportion of such invoice when due and payable will be taken to be a default by the Assignee under the Water Delivery Contract; the proportion to be paid by the Assignor is that which the number of days in the First Component of the Off Peak Period or the Second Component of the Off Peak Period (as the case may be) prior to the Settlement Date bears to the total number of days in the First Component of the Off Peak Period or the Second Component of the Off peak Period (as the case may be).

6.2 The Assignee agrees with CPCL that:

- (a) the failure by the Assignor to pay its proportion of the invoice referred to in clause 6.1(b) or the invoice referred to in clause 6.1(c) when due and payable will be taken to be a default by the Assignee under the Water Delivery Contract; and
- (b) the failure by the Assignee to pay to CPCL the balance of either of such invoices when due and payable will be a default by the Assignee under the Water Delivery Contract.

6.3 The Assignor will indemnify the Assignee for any loss or damage sustained by the Assignee resulting from a failure by the Assignor to comply with the undertaking set out in each of clause 6.1(b) and clause 6.1(c).

7. CPCL CONSENT

7.1 CPCL:

- (a) consents to the assignment set out in clause 4; and
- (b) accepts the Assignee’s assumption of obligations and liabilities set out in clause 5.1(b).

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7.2 The Assignor and the Assignee acknowledge that:

- (a) CPCL is a party to this Deed only for the purposes of providing the consent set out in clause 7.1(a) and assuming the benefit of the Assignee's obligations and liabilities set out in clause 5.1(b) and assuming the benefit of the obligations and liabilities of each of the Assignor and the Assignee in clause 6; and
- (b) CPCL has relied on each of the representations and warranties made by the Assignor and the Assignee in this Deed in providing the consent set out in clause 7.1(a).

8. STAMP DUTY AND COSTS

8.1 Subject to clause 6.1(a), each party must bear its own costs arising out of the negotiation, preparation and execution of this Deed.

8.2 All stamp duty (including fines, penalties and interest) which may be payable on or in connection with this Deed and any instrument executed under or any transaction evidenced by this Deed must be borne by the Assignee.

8.3 The Assignee must attend to such stamping with all due expedition.

9. FURTHER ASSURANCES

Each party must do anything reasonably necessary (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

10. GOVERNING LAW AND JURISDICTION

This Deed is governed by the laws of the State of South Australia. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Deed, and waives any right to claim that those courts are an inconvenient forum.

11. ENTIRE AGREEMENT

This Deed contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

12. ASSIGNMENT OF DEED

No party to this Deed may assign its right, title and interest in this Deed to any person.

13. AMENDMENT

This Deed may not be amended except by a further deed duly executed by the parties to this Deed.

14. NOTICES

Any notice required to be given under this Deed by any party to another must be:

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14.1 in writing addressed to the address of the intended recipient shown in this Deed below or to such other address as has been most recently notified by the intended recipient to the party giving the notice:

- (a) in the case of the Assignor, as detailed in **Item 10** of the Schedule;
- (b) in the case of the Assignee, as detailed in **Item 11** of the Schedule;
- (c) in the case of CPCL:

Address: Lot 51, Wellington Road
(PO Box 99)
Langhorne Creek SA 5255

Facsimile: (08) 8537 3061
Email: info@creekspipelineco.com.au
Attention: General Manager;

14.2 signed by a person duly authorised by the sender; and

14.3 deemed to have been given and served:

- (a) where delivered by hand, at the time of delivery;
- (b) where sent by facsimile, 24 hours after the time recorded on the transmitting machine unless:
 - (i) within those 24 hours the intended recipient has informed the sender that the transmission was received in an incomplete or unintelligible form; or
 - (ii) the transmission result report of the sender indicates a faulty or incomplete transmission;
- (c) where sent by email, at the time shown in the delivery confirmation report generated by the sender's email system; and
- (d) where sent by security post, on acknowledgment of receipt by or on behalf of the recipient,

but if such delivery or receipt is on a day on which commercial premises are not generally open for business in the place of receipt or is later than 4.00 pm (local time) on any day, the notice will be deemed to have been given and served on the next day on which commercial premises are generally open for business in the place of receipt.

15. COUNTERPARTS

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument. Counterparts may be exchanged by facsimile.

Executed as a deed

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Execution by Assignor

[insert appropriate execution clauses using the formats set out below depending on whether the Assignor is a company and/or an individual/natural person]

EXECUTED by [insert name] **PTY LIMITED**)
*without affixing a common seal / *by affixing its)
common seal pursuant to section 127 of the)
Corporations Act 2001 (Cth))

.....
Signature of *Director / *Sole Director and Sole Company Secretary

.....
Signature of *Director / *Secretary

.....
Name of *Director / *Sole Director and Sole Company Secretary

.....
Name of *Director / *Secretary

(*Please delete the inapplicable and affix the common seal if the company has a seal)

SIGNED SEALED AND DELIVERED by)
[insert name] in the presence of:)

.....
Witness

.....
Name of Witness

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Execution by Assignee

[insert appropriate execution clauses using the formats set out below depending on whether the Assignee is a company and/or an individual/natural person]

EXECUTED by [insert name] **PTY LIMITED**)
*without affixing a common seal / *by affixing its)
common seal pursuant to section 127 of the)
Corporations Act 2001 (Cth))

..... Signature of *Director / *Sole Director and Sole Company Secretary Signature of *Director / *Secretary

..... Name of *Director / *Sole Director and Sole Company Secretary Name of *Director / *Secretary

(*Please delete the inapplicable and affix the common seal if the company has a seal)

SIGNED SEALED AND DELIVERED by)
[insert name] in the presence of:)

.....
Witness

.....
Name of Witness

Execution by CPCL

Executed by The Creeks Pipeline Company Limited without affixing a common seal in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

.....
Signature of Director

.....
Signature of *Director/*Secretary

.....
Name of Director

.....
Name of *Director/*Secretary

(*Please delete the inapplicable)

Schedule

Item

1. Name(s) and address(es) of Assignor

.....
of
.....
of
.....
of
[include ACN or ABN of any company]

2. Name(s) and address(es) of Assignee

.....
of
.....
of
.....
of
[include ACN or ABN of any company]

3. Invoices to be paid by Assignor to CPCL

The invoices issued (prior to the Settlement Date) by CPCL dated:

- theday of20...
- theday of20...

4. Amount to be paid by Assignor to CPCL in respect of CPCL’s legal costs

\$ (inclusive of GST)

5. The Land which is the subject of the Land Sale Contract

The whole of the land comprised in the following South Australian Certificates of Title:

Volume Folio
Volume Folio
Volume Folio

being *all/*part of the land described in item 3 of Schedule 1 to the Water Delivery Contract.
[*delete whichever is not applicable]

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6. Date of Land Sale Contract

Theday of 2010

7. Number of Shares to be transferred

..... Shares (being share nos. to))

8. Water Delivery Contract

(a) Dated theday of 20..

(b) Peak Delivery Entitlement of megalitres, and
Off Peak Delivery Entitlement of megalitres.

9. Is Assignee a trust?

(a) Is the Assignee acting as the trustee of a trust? Yes/No

(b) If Yes, the name of the trust is

10. Notices – Assignor

Address:
.....

Facsimile:

Email:

Attention:

11. Notices – Assignee

Address:
.....

Facsimile:

Email:

Attention: