

THE CREEKS PIPELINE COMPANY LIMITED

ACN 133 867 197

**Water Delivery Contract
(Non-Shared Pipeline)**

Water Delivery Contract (Non-Shared Pipeline)

For CPC internal office use only

- Peak Delivery Entitlement (MG):
- Off Peak Delivery Entitlement (MG):.....
- Flow Rate (litres per second at
CPC Connection Point):
- Pressure (metres of head at
CPC Connection Point):

AGREEMENT made

2010

PARTIES

1. **THE CREEKS PIPELINE COMPANY LIMITED** ACN 133 867 197 (CPC)
2. **THE PERSON(S) WHOSE FULL NAME(S) AND ADDRESS(ES) IS (ARE) SET OUT IN SCHEDULE 1 OF THIS AGREEMENT (Customer)**

BACKGROUND

- A. CPC has constructed the CPC Pipeline from Jervois on the River Murray in order to convey water to the Langhorne Creek region, the Currency Creek region and adjoining areas.
- B. The Customer holds a water licence or other legal entitlement to draw River Murray Water and wishes to use CPC's services to convey River Murray Water in the CPC Pipeline to the Customer.
- C. The Customer has applied to become a shareholder of CPC and for Delivery Entitlements.
- D. CPC and the Customer agree to the provisions set out in this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Agreement means this Agreement as amended, supplemented or replaced from time to time;

Application Fee means a non-refundable fee determined by CPC from time to time to assess the suitability of a proposed New Customer;

Application Form means the form prescribed by CPC from time to time by which a person applies for Delivery Entitlements and/or Shares in CPC;

assign means a transfer, sale, conveyance or licence of the Customer's rights and obligations under this Agreement to another person and includes a change in Control of the Customer, and **assignment** has a corresponding meaning but the reference to "change in Control" does not apply if and for so long as the Customer is a public company with more than 50 holders of voting shares in the capital of that company;

Business Day means any day that is not a Saturday or Sunday or public holiday pursuant to the South Australian *Holidays Act, 1910*;

Contract Year means the period commencing on the Start Date and ending on the following 30 June and thereafter each successive period of 12 months commencing on 1 July until the End Date;

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Control means:

- (a) in relation to a body corporate, the power (whether legally enforceable or not) to control, whether directly or indirectly:
 - (i) the composition of at least a majority of the board of directors of the body corporate;
 - (ii) the voting rights of the majority of the voting shares of the body corporate; or
 - (iii) the management of the affairs of the body corporate; and
- (b) in relation to the trustee of a trust, the power (whether legally enforceable or not) to control, whether directly or indirectly:
 - (i) the appointment of any new or additional trustee of the trust;
 - (ii) the removal of a trustee of the trust;
 - (iii) the determination of the vesting date under the provisions of the trust deed; or
 - (iv) the variation of the terms of the trust deed.

CPC Connection Infrastructure means the following:

- (a) a lockable isolating valve;
- (b) an airvalve;
- (c) a pressure reducing valve set to 550kPa on its downstream side;
- (d) a flowmeter; and
- (e) a flow control valve,

or such other components determined by CPC in its absolute discretion from time to time, each of a brand of manufacture nominated by CPC in its absolute discretion from time to time;

CPC Connection Point means the point determined by CPC under clause 6.1(a) to be the point at which the CPC Connection Infrastructure of the CPC Pipeline will connect to the Customer's pipeline infrastructure;

CPC Connection Infrastructure Cost means the cost to be incurred by CPC in respect of the provision and installation of the CPC Connection Infrastructure;

CPC Pipeline means the pipeline and all associated infrastructure (including all Pump Stations and all CPC Connection Infrastructure) constructed at the location specified on the map contained in Annexure A for the purpose of conveying water to (among others) the Customer at the Primary Meter;

Currency Creek Customer means a Customer whose pipeline infrastructure connects (directly or via a Shared Pipeline) to the CPC Pipeline after Pump Station 3 depicted on the map in Annexure A;

Customer means the person to whom CPC agrees to deliver water under this Agreement on the basis that such person must be the holder of 1,000 Shares in relation to each megalitre of Peak Delivery Entitlement and such person must be the holder of at least 5,000 Shares; where the context requires, **Customer** includes other such customers of CPC;

Delivery Entitlements means any one or more of the following delivery entitlements of the Customer under this Agreement:

- (a) the Peak Delivery Entitlement; and
- (b) the Off Peak Delivery Entitlement;

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Disconnection Fee means a non-refundable fee determined by CPC from time to time to disconnect delivery of water via the CPC Pipeline in respect of a Customer whose entitlement to have water delivered has been suspended;

DWLBC means the South Australian Department of Water, Land and Biodiversity Conservation;

Excess Water means water taken by the Customer in excess of the Customer's Delivery Entitlements;

End Date means 30 June 2019;

Extension Line means the parts of the CPC Pipeline which are depicted by a broken black line on the map in Annexure A;

Force Majeure Event means any event or circumstance which the affected party did not cause and is unable to prevent, control or influence by taking reasonable steps and includes without limitation, a change of law or Government policy, natural disasters and war;

Full Charge means the charges specified in Schedule 2 payable in respect of the quantity of water drawn by the Customer in respect of each Contract Year's Peak Delivery Entitlement or Off Peak Delivery Entitlement;

Government Agency means any government or any governmental, semi-governmental, administrative, fiscal, judicial body, department, commission, authority, tribunal, agency or entity;

GST means the goods and services tax imposed in Australia under the GST Act and includes any replacement or subsequent similar tax;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Insolvent means any one or more of the following:

- (a) unable to pay one's debts as and when they become due;
- (b) in relation to a natural person, committing an act of bankruptcy or becoming bankrupt;
- (c) in relation to a body corporate, becoming an externally-administered body corporate as defined in section 9 the Corporations Act or having a provisional liquidator appointed;
- (d) any other similar event or process;

Langhorne Creek Customer means a Customer whose pipeline infrastructure connects (directly or via a Shared Pipeline) to the CPC Pipeline after Pump Station 1 and before Pump Station 3 depicted on the map in Annexure A;

Manager means the manager for the time being of a Shared Pipeline or, in the absence of there being a manager, all of the Participants for the time being;

Main Line means the parts of the CPC Pipeline which are depicted by a continuous black line on the map in Annexure A;

MG means megalitre;

New Customer means a Customer who is admitted under clause 8;

Off Peak Delivery Entitlement means the annual quantity of water that CPC agrees to deliver to the Customer during the Off Peak Period in each Contract Year;

Off Peak Period means a period of a maximum of 200 days during a Contract Year as determined by CPC in its absolute discretion from Contract Year to Contract Year, but such period not including any part of the Peak Period of that Contract Year;

Participant means a joint venturer, partner, shareholder or other equity participant (as the case may be) in a Shared Pipeline Entity;

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Peak Delivery Entitlement means the annual quantity of water that the Customer is entitled to have delivered to it during the Peak Period in each Contract Year in accordance with the Customer's shareholding in CPC, namely, 1 megalitre of water per 1,000 Shares;

Peak Period means the 150 day period during a Contract Year from 1 November, or such other 150 day period during the Contract Year as may be determined by CPC's board of directors and notified to the Customer not less than 14 days before the start of the relevant Contract Year;

Primary Meter means the flow meter referred to in the definition of **CPC Connection Infrastructure** for measuring and recording the quantity of water delivered by CPC to the Customer, to be installed by or on behalf of CPC at the CPC Connection Point adjacent to the CPC Pipeline;

Property means the land owned or occupied by the Customer in relation to which water is delivered by CPC under this Agreement;

Reduced Charge means the charges specified in Schedule 2 payable in respect of the quantity of water not drawn by the Customer in respect of each Contract Year's Peak Delivery Entitlement or Off Peak Delivery Entitlement;

Relevant Period has the meaning given to that expression in clause 10.3(b);

Resumption Fee means a non-refundable fee determined by CPC from time to time to re-commence delivery of water via the CPC Pipeline in respect of a Customer whose entitlement to have water delivered has been suspended;

River Murray Water means water drawn from the River Murray Prescribed Watercourse referred to in the Water Allocation Plan adopted by the Minister for Environment and Conservation on 1 July 2002 as amended from time to time pursuant to the South Australian *Natural Resources Management Act 2004*;

Share means a fully paid ordinary share in the capital of CPC;

Shared Pipeline means a pipeline and associated infrastructure of a Shared Pipeline Entity which was formerly used to convey water drawn from Lake Alexandrina or Goolwa Channel or a tributary of either of them (**Original Source**) to the Water Outlet on or near each Participant's primary production property, but which has since been connected to the CPC Pipeline (in lieu of the Original Source);

Shared Pipeline Entity means an unincorporated joint venture, partnership, company or other entity (as the case may be) which owns a Shared Pipeline;

Special Resolution has the same meaning as **special resolution** in section 9 of the *Corporations Act, 2001* (Cth);

Start Date means the date specified in Schedule 3;

water licence has the meaning given in the South Australian *Natural Resources Management Act, 2004*;

Water Outlet means the outlet by which a Participant has access to water from the Shared Pipeline;

water (taking) allocation has the meaning given in the South Australian *Natural Resources Management Act 2004*.

1.2 **Interpretation**

In this Agreement, 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;

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- (e) references to clauses, annexures and schedules are to clauses, annexures and schedules of this Agreement;
- (f) headings are for convenience only and do not affect interpretation;
- (g) a reference to any party to this Agreement or to any other document includes that party's executors, administrators, successors and permitted assigns (as the case may be);
- (h) where two or more persons are a party to this Agreement, 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) a reference to a matter being determined, nominated, specified or similar by CPC means in accordance with an ordinary resolution passed by the board of directors of CPC;
- (k) 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;
- (l) where a reference is made to any person, body or authority, that reference, if the person, body or authority has ceased to exist, will be to the person, body or authority as then serves substantially the same objects as that person, body or authority;
- (m) any reference to the President of any person, body or authority, in the absence of a President, will be read as a reference to the senior officer for the time being of the person, body or authority or any other person fulfilling the duties of President;
- (n) reference to dollars and \$ are to amounts in Australian currency;
- (o) a reference to time means South Australian time;
- (p) a reference to a thing (including without limitation, an amount) is a reference to the whole or any part of it;
- (q) specifying anything in this Agreement 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;
- (r) 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;
- (s) the Background is correct and forms part of this Agreement; and
- (t) the annexures and schedules to this Agreement form part of this Agreement.

1.3 Construction

- (a) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.
- (b) If any provision of this Agreement 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. TERM

2.1 Term

This Agreement commences on the date on which it is executed by CPC and expires on the End Date.

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3. DELIVERY ENTITLEMENTS

3.1 Customer's Acknowledgement

- (a) The Customer acknowledges and agrees that CPC's obligation to deliver water under this Agreement is subject to the Customer being registered as the holder of at least 5,000 Shares.
- (b) The Customer further acknowledges that the Customer will need to hold a water licence or other legal entitlement with sufficient water (taking) allocation or equivalent to draw River Murray Water via the CPC Pipeline.

3.2 Peak Delivery Entitlement

Subject to clause 5, during the Peak Period in each Contract Year CPC will deliver to the CPC Connection Point a sufficient quantity of water to enable the Customer to draw its Peak Delivery Entitlement.

3.3 Off Peak Delivery Entitlement

Subject to clause 5, during the Off Peak Period in each Contract Year, CPC will deliver to the CPC Connection Point a sufficient quantity of water to enable the Customer to draw its Off Peak Delivery Entitlement.

3.4 First Contract Year

The Customer acknowledges that CPC may not be able to deliver to the CPC Connection Point a sufficient quantity of water during the first Contract Year for the Customer to draw its total Delivery Entitlements.

3.5 Flow Rates and Pressure

- (a) Subject to the occurrence of an event referred to in clause 5.1, throughout the Peak Period in each Contract Year CPC will use its reasonable endeavours to deliver a sufficient quantity of water to the Customer's CPC Connection Point so that the Customer may draw a daily quantity equivalent to a fraction (that is to say, 1 divided by 150) of the Customer's Peak Delivery Entitlement at a minimum pressure of :
 - (i) if the CPC Connection Point is on the Main Line – 50 metres of head at the CPC Connection Point;
 - (ii) if the CPC Connection Point is on the Extension Line – 20 metres of head at the CPC Connection Point.
- (b) Subject to the occurrence of an event referred to in clause 5.1, throughout the Off Peak Period in each Contract Year CPC will use its reasonable endeavours to deliver a sufficient quantity of water to the CPC Connection Point so that the Customer may draw a daily quantity equivalent to a fraction (that is to say, 1 divided by 200) of the Customer's Off Peak Delivery Entitlement at a minimum pressure of:
 - (i) if the CPC Connection Point is on the Main Line – 50 metres of head at the CPC Connection Point;
 - (ii) if the CPC Connection Point is on the Extension Line – 20 metres of head at the CPC Connection Point.
- (c) Nothing in this clause 3.5 requires CPC to deliver or entitles the Customer to draw more water than its Delivery Entitlements permit.

3.6 Excess Water

The Customer must not draw any water from the CPC Pipeline in excess of its Delivery Entitlements.

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4. QUALITY AND USE OF WATER

4.1 No Obligation to Monitor

The Customer acknowledges and agrees that CPC will not have any obligation to monitor the quality (including, without limitation, salinity) of the water which CPC delivers to the Customer.

4.2 No Obligation to Notify of Adverse Effect

(a) The Customer acknowledges and agrees that CPC will not have any obligation to notify the Customer if CPC becomes aware that the water is likely to have a material adverse effect on any of the following:

- (i) the growth, development and production of vines, grapes, cereal, vegetable, fruit or other crops;
- (ii) humans;
- (iii) animals;
- (iv) the Property; or
- (v) the environment.

(b) If by reason of any of the matters referred to in clause 4.2(a) the Customer chooses not to take delivery of such water, that will not affect the Customer's obligations to CPC under this Agreement which will continue with full effect.

4.3 No Domestic Use

The Customer will not use the water delivered by CPC for drinking, food preparation or any other domestic use.

4.4 Legal Compliance

The Customer will not draw, store or use the water supplied by CPC:

- (a) unless the Customer holds a water licence or other legal entitlement with sufficient water (taking) allocation or equivalent to draw River Murray Water via the CPC Pipeline;
- (b) unless the Customer has all other all necessary permits, licences and approvals; and
- (c) other than in accordance with all applicable laws.

4.5 Customer's Responsibility

The Customer is responsible for making its own enquiries and investigations in relation to the water delivered by CPC including, without limitation:

- (a) its suitability for the irrigation of grape vines or any other crops;
- (b) its suitability for any other purpose or use;
- (c) its effect on the growth or yield of grape vines or any other crops;
- (d) its effect on the productivity, fertility and general condition of the Property.

4.6 No Warranty

The Customer acknowledges and agrees that CPC gives no warranty to the Customer in relation to any of the matters referred to in clause 4.5.

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5. DELIVERY INTERRUPTIONS

- 5.1 If any of the following events occurs, CPC may stop or reduce the quantity of water, the daily quantities and/or the pressure rates at which water is delivered to the Customer:
- (a) if the CPC Pipeline's design or construction are such that, despite CPC's reasonable endeavours, the minimum flow rates and minimum pressures described in clause 3.5 cannot be achieved at the CPC Connection Point;
 - (b) if the available flow at the CPC Connection Point is reduced as a consequence of the customer demand profile from time to time;
 - (c) if the pressure at the CPC Connection Point is reduced as a consequence of:
 - (i) the customer demand profile from time to time;
 - (ii) pressure loss due to the operation of the CPC Connection Infrastructure; or
 - (iii) other hydraulic factors;
 - (d) the temporary impact on flow rates and pressure during pump station "ramp-up" periods;
 - (e) during routine inspection, cleaning, maintenance, repairs and other works in relation to the CPC Pipeline (in respect of which CPC will give to the Customer not less than 14 days prior notice);
 - (f) any situation or event which is dangerous or potentially dangerous to humans, animals, property or the environment;
 - (g) any situation referred to in clause 4.2(a);
 - (h) if CPC is unable to deliver water due to a Force Majeure Event; or
 - (i) if CPC does not have the necessary licences, permits and approvals or renewals thereof in order to take River Murray Water and transport and deliver that water to the Customer as contemplated in this Agreement.

6. PIPELINE EQUIPMENT AND INFRASTRUCTURE

6.1 CPC Connection Infrastructure

- (a) The CPC Connection Point will be at the location determined by CPC in its discretion.
- (b) CPC will, provide and install or cause to be installed the CPC Connection Infrastructure at the CPC Connection Point.
- (c) If at the request of the Customer, CPC agrees in its discretion to relocate the CPC Connection Infrastructure, CPC will do so at the cost and expense in all things of the Customer which the Customer must pay to CPC in cleared funds before CPC relocates or causes to be relocated the CPC Connection Infrastructure.
- (d) The Customer is responsible for connecting the Customer's infrastructure referred to in clause 6.3(a) to the CPC Connection Infrastructure in accordance with CPC's written instructions.
- (e) If all or part of the CPC Connection Infrastructure needs to be repaired or replaced as a result of fair wear and tear or the wrongful act or omission of CPC, it will be repaired or replaced by CPC at the cost and expense in all things of CPC; otherwise it will be repaired or replaced by CPC at the cost and expense in all things of the Customer.
- (f) CPC shall be and remain the legal and beneficial owner of the CPC Connection Infrastructure and any repair or replacement of all or part thereof.

6.2 Maintenance

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Subject to clause 6.1(e), CPC will at its cost and expense regularly inspect, clean and maintain the CPC Pipeline and make any repairs and replace any parts necessary to ensure that the CPC Pipeline functions effectively and efficiently.

6.3 Customer’s Infrastructure

- (a) The Customer is responsible for constructing, installing, maintaining, repairing and replacing its own pipes, connections, irrigation equipment and storage facilities to receive, store and use the water delivered by CPC.
- (b) The Customer must not use any in-line toxic chemicals or do anything which may result in any solid, liquid or gaseous material being introduced into the water in the CPC Pipeline without first installing the necessary air gap protection and other devices prescribed by CPC.
- (c) The Customer must not directly or indirectly connect any powered pump and motor set or other infrastructure to any of its infrastructure referred to in clause 6.3(a) if same would or would be likely to, adversely affect the effective and efficient delivery of water to any of CPC’s other Customers.
- (d) The Customer must notify CPC immediately it becomes aware of or any likelihood of, any damage, malfunction or other impairment to the Customer’s pipeline and associated off-take infrastructure.

6.4 Problems with CPC Pipeline

- (a) The Customer must notify CPC immediately it becomes aware of or any likelihood of, any of the following:
 - (i) damage, malfunction or any other impairment to the CPC Pipeline;
 - (ii) any matter, event or thing which may result in damage, malfunction or any other impairment to the CPC Pipeline;
 - (iii) any matter, event or thing which may contaminate or affect the quality, constitution or composition of the water in the CPC Pipeline;
 - (iv) any adverse effect of the nature referred to in clause 4.2(a); or
 - (v) any situation or event of the nature referred to in clause 5.1(f).

6.5 Further Customer Obligations

- (a) The Customer must not handle, manipulate, tamper with, attempt to repair or connect anything to the CPC Pipeline.
- (b) During the Peak Period, the Customer must not draw water in excess of the flow rate (measured in litres per second at the Primary Meter) calculated in accordance with the following formula:

(A x B) litres per second

where: “A” = 0.07716
 “B” = the Peak Delivery Entitlement.

- (c) During the Off Peak Period, the Customer must not draw water in excess of the flow rate (measured in litres per second at the Primary Meter) calculated in accordance with the following formula:

(A x C) litres per second

where: “A” = 0.07716
 “C” = the Off Peak Delivery Entitlement.

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7. PIPELINE MANAGEMENT

- 7.1 CPC must manage and operate the CPC Pipeline and the delivery of water to Customers with the objective of facilitating the delivery of water to Customers at the lowest sustainable prices.
- 7.2 Without limiting clause 7.1, CPC may plan, consider and implement:
- (a) strategies to enhance and prolong the efficiency, effectiveness and longevity of the CPC Pipeline; and
 - (b) financial strategies and goals to enhance the viability and longevity of CPC's ability to continue supplying water to Customers.

8. ADMISSION OF NEW CUSTOMERS

- 8.1 CPC may from time to time admit any person who applies to be a Customer if:
- (a) the applicant pays to CPC the non-refundable Application Fee at the time of making the application;
 - (b) CPC receives from the applicant a completed Application Form which contains the required information;
 - (c) CPC is satisfied that the delivery of water to the applicant is practicable and is not likely to adversely affect the effective and efficient delivery of water to any of CPC's other Customers;
 - (d) the applicant satisfies CPC that it is likely to be able to comply with all the financial and other obligations of a Customer of CPC;
 - (e) the applicant satisfies CPC that it is likely to use a sufficient amount of water so that it will be cost effective for CPC to supply the applicant;
 - (f) the applicant pays to CPC the CPC Connection Infrastructure Cost;
 - (g) the applicant executes all agreements required by CPC;
 - (h) the applicant pays all the legal, accounting, engineering and other costs of and incidental to CPC assessing the feasibility and desirability of supplying water to the applicant;
 - (i) the applicant pays all construction, engineering and other costs of and incidental to CPC determining the applicant's CPC Connection Point;
 - (j) the applicant was not previously a Customer whose delivery of water had been disconnected under clause 14.4 in the 12 months preceding the application.
- 8.2 Subject to clause 8.1, CPC may specify other requirements for the admission of New Customers.
- 8.3 A person who applies to become a Customer under this clause 8 does not become a Customer until the later of the following:
- (a) CPC advises the applicant that it is admitted as a Customer;
 - (b) the applicant does all things referred to in clause 8.1; and
 - (c) the applicant becomes a holder of 1,000 Shares for every one (1) megalitre of Peak Delivery Entitlement applied for provided that the applicant must hold not less than 5,000 Shares.

9. ASSIGNMENT

9.1 Transfer of Property

- (a) A Customer who transfers its Property or its right to occupy the Property may assign all of its rights under this Agreement to the transferee of the Property or the rights to occupy the Property subject to compliance with this clause 9.1.

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- (b) The Customer must not be in default under this Agreement.
- (c) The Customer must notify CPC of the details of the transferee and the date of settlement of the transfer of the Property or occupation right as soon as those details are available.
- (d) The Customer must transfer the Customer's Shares to the transferee and ensure that the transferee signs all agreements and does all things reasonably required by CPC so that the transferee is bound by all of the Customer's obligations under this Agreement from the date of settlement referred to in clause 9.1(c).
- (e) The Customer must pay all the legal and other costs of and incidental to CPC's involvement in assessing and (if applicable) implementing the assignment.
- (f) An assignment under this clause 9.1 is not effective until the later of the following events:
 - (i) all of the requirements in this clause 9.1 have been complied with; and
 - (ii) the proposed transferee becomes a holder of 1,000 Shares for every megalitre of Peak Delivery Entitlement assigned.
- (g) For the purposes of this clause 9.1, a reference to the Customer includes any person (including a receiver and receiver and manager) exercising a power of sale in respect of the Property or the rights to occupy the Property (whether or not the person is in possession of the Property).

9.2 Other Assignments

Subject to clause 9.1, the Customer (**assignor**) may only assign all or part of its rights under this Agreement to another person (**assignee**) on such terms and conditions as CPC may determine in its absolute discretion including, without limitation:

- (a) the assignor and the assignee must provide all documents and information required by CPC to assess the proposed assignment;
- (b) the assignor and the assignee must execute all agreements and do all things required by CPC to ensure that the assignee is bound by the obligations of the assignor under this Agreement.
- (c) the assignor must pay all the legal and other costs of and incidental to CPC's involvement in assessing and (if applicable) implementing the assignment; and
- (d) CPC must be satisfied that the delivery of water to the assignee is practicable and not likely to adversely affect the effective and efficient delivery of water to any other Customer of CPC.

9.3 No Release of Customer

To the extent that in relation to the assignment by the Customer of all or part of its rights under this Agreement, an assignee executes an agreement pursuant to which it becomes bound by any of the obligations of the Customer:

- (a) the Customer shall not be released from those obligations, and
- (b) the Customer will remain responsible for the assignee's acts and omissions in respect thereof.

9.4 Assignment by CPC

CPC may assign its rights and obligations under this Agreement only if the shareholders of CPC approve the proposed assignment by a Special Resolution passed in accordance with CPC's constitution.

10. CHARGES

10.1 Delivery Charges

- (a) The Customer must pay the Full Charge specified in Items 1(a) and 2(a) of Schedule 2 as amended from time to time in respect of the quantity of water drawn by the Customer in each Contract Year out of its Peak Delivery Entitlement and Off Peak Delivery Entitlement.

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- (b) Except as determined by CPC from time to time in its absolute discretion (for example, in the event of a complete or partial stoppage of the operation of the CPC Pipeline through no fault of the Customer), the Customer must pay the Reduced Charge specified in Items 1(b) and 2(b) of Schedule 2 as amended from time to time in respect of the quantity of water not drawn by the Customer in each Contract Year out of its Peak Delivery Entitlement and Off Peak Delivery Entitlement.

10.2 Variation To Charges

- (a) The charges specified in Items 1 and 2 of Schedule 2 may be varied at any time and from time to time by a resolution passed by the board of directors of CPC.
- (b) CPC will give to the Customer written notice of any variation before the variation takes effect.

10.3 Primary Meter Reading

- (a) CPC will monitor the Primary Meter on a continuous basis.
- (b) For invoicing purposes, during the continuance of this Agreement CPC will read the Primary Meter on the last Business Day of each month and record the volume of water which has passed through the Primary Meter during the period (**Relevant Period**) since the last reading of the Primary Meter (or, in the case of the first reading of the Primary Meter, since the commencement of this Agreement).
- (c) The quantity of water drawn, dates and times and other information obtained from the Primary Meter readings will be deemed to be accurate and correct unless proved otherwise by the Customer.
- (d) CPC will on request by the Customer test the Primary Meter at the cost and expense of the Customer. If the testing reveals that the Primary Meter is inaccurate by more than 2%, CPC will pay for the cost and expense of the testing and also the cost and expense of repairing or replacing the Primary Meter.

10.4 Adjustments

- (a) CPC will access the DWLBC's meter at Pump Station 1 depicted on the map in Annexure A for the purpose of ascertaining the volume of water which has passed through that meter during each Relevant Period referred to in clause 10.3(b) (**Total Volume**).
- (b) If the Total Volume in respect of a Relevant Period exceeds the aggregate of the volume of water which during that Relevant Period is recorded as having passed through:
 - (i) the Primary Meter,
 - (ii) the primary meter (if any) of each other Customer of CPC;
 - (iii) the primary meter (if any) of each Shared Pipeline; and
 - (iv) the primary meter (if any) of each other person to which CPC has delivered water via the CPC Pipeline (as contemplated by clause 28),

(Aggregate Volume), then portion (if a fraction, rounded up to the next whole kilolitre) of the difference between the Total Volume and the Aggregate Volume will be allocated and debited to the Customer (as an addition to the volume of water which during the Relevant Period is recorded as having passed through the Primary Meter) such portion being the proportion which the volume of water attributable to the Customer pursuant to clause 10.3(b) bears to the Aggregate Volume.

- (c) If the Total Volume referred to in clause 10.4(a) is less than the Aggregate Volume referred to in clause 10.4(b), then portion (if a fraction, rounded up to the next whole kilolitre) of the difference between the Aggregate Volume and the Total Volume will be allocated and credited to the Customer (in reduction of the volume of water which during the Relevant Period is recorded as having passed through the Primary Meter) such portion being the proportion which the volume of water attributable to the Customer pursuant to clause 10.3(b) bears to the Aggregate Volume.

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11. INVOICES

- 11.1 As soon as possible after each Primary Meter reading referred to in clause 10.3(b), CPC will issue an invoice to the Customer.
- 11.2 The invoice for each Relevant Period during the Peak Period will contain the following information:
- (a) the meter readings;
 - (b) full details of any adjustments required pursuant to clause 10.4;
 - (c) the quantity of water in the Peak Delivery Entitlement drawn by the Customer during the Relevant Period (taking into account the information referred to in clause 11.2(b)) and the Full Charge payable in respect of that water;
 - (d) the quantity of Peak Delivery Entitlement remaining available to the Customer;
 - (e) only in the invoice for last Relevant Period of the Peak Period – the quantity of water in the Peak Delivery Entitlement not drawn by the Customer during the whole of the Peak Period and the Reduced Charge payable in respect of that water;
 - (f) the total amount payable by the Customer.
- 11.3 The invoice for each Relevant Period during the Off Peak Period will contain the following information:
- (a) the meter readings;
 - (b) full details of any adjustments required pursuant to clause 10.4;
 - (c) the quantity of water in the Off Peak Delivery Entitlement drawn by the Customer during the Relevant Period (taking into account the information referred to in clause 11.3(b)) and the Full Charge payable in respect of that water;
 - (d) the quantity of Off Peak Delivery Entitlement remaining available to the Customer;
 - (e) only in the invoice for last Relevant Period of the Off Peak Period – the quantity of water in the Off Peak Delivery Entitlement not drawn by the Customer during the whole of the Off Peak Period and the Reduced Charge payable in respect of that water;
 - (f) the total amount payable by the Customer.
- 11.4 All invoices must be paid in full within 30 days of the date of invoice.

12. DEFAULT INTEREST

Any invoice which remains outstanding whether in full or partially will incur interest at the rate being 2 percentage points above the prime lending rate charged by the National Australia Bank on overdrafts of \$100,000 or more which interest will accrue from day to day on the amount outstanding from the due date until that amount is paid.

13. DISPUTE RESOLUTION

- 13.1 Any dispute or difference arising out of or relating to this Agreement (**Dispute**) will be resolved in accordance with this clause 13.
- 13.2 If the Dispute is not resolved by the parties to the Dispute within 14 days of the Dispute arising, then any party to the Dispute may request the President for the time being of the Law Society of South Australia (or his or her nominee) to nominate an independent person who is appropriately qualified having regard to the nature of the Dispute (**Independent Expert**) to resolve the Dispute.
- 13.3 The Independent Expert will:
- (a) act as an expert and not as an arbitrator;
 - (b) proceed in any manner he or she thinks fit;

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- (c) conduct any investigation which he or she considers necessary to resolve the Dispute;
- (d) examine such documents, and interview such persons, as he or she may reasonably require; and
- (e) make such directions for the conduct of the determination as he or she considers necessary.

13.4 Each party:

- (a) must provide the Independent Expert full access to its books and records and any information required by the Independent Expert to complete any determination under this Agreement; and
- (b) is entitled to make submissions to the Independent Expert in respect of any proposed determination under this Agreement.

13.5 The Independent Expert must:

- (a) disclose to the parties any interest he or she has in the outcome of the determination; and
- (b) not communicate with one party to the determination without the knowledge of the other.

13.6 Unless otherwise agreed between the parties to the Dispute, the Independent Expert must use his or her reasonable endeavours to notify them of his or her determination within 21 days from the acceptance by the Independent Expert of his or her appointment.

13.7 The determination of the Independent Expert:

- (a) must be in writing; and
- (b) will be final and binding on the parties to the Dispute without appeal so far as the law allows except in the case of manifest error.

13.8 Despite the existence of a Dispute between any of the parties, each party must continue to carry out its obligations under this Agreement to the extent that it is able.

13.9 Each party to the Dispute will bear its own costs and expenses (including legal costs and disbursements) of and incidental to the resolution of the Dispute, and subject thereto the parties will bear all other costs and expenses of and incidental to the resolution of the Dispute (including those of the Independent Expert) in such proportions as the Independent Expert shall direct.

13.10 This clause will not preclude any party from obtaining interim relief on an urgent basis from a Court of competent jurisdiction pending the decision of the Independent Expert.

14. DEFAULT AND TERMINATION

14.1 Default of Customer

The Customer commits an event of default if:

- (a) it fails to comply with any obligation on its part contained in this Agreement and the failure, if capable of remedy, is not remedied to the satisfaction of CPC within 7 days after the Customer is given notice by CPC specifying the default in reasonable detail and requiring its remedy;
- (b) it repeats a default in respect of which clause 14.1(a) has previously been invoked; or
- (c) it becomes Insolvent.

14.2 Suspension

- (a) (i) If the Customer commits an event of default referred to in clause 14.1, CPC may suspend the delivery of water to the Customer for a period of 90 days or until the default is rectified, whichever period is shorter.
- (ii) The Customer must pay the Disconnection Fee to CPC.

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- (iii) In addition to rectifying the default, the Customer must pay the Resumption Fee (in addition to the Disconnection Fee) before CPC is obliged to re-commence the delivery of water to the Customer.
- (b)
 - (i) If a Government Agency requires CPC to suspend the delivery of water to the Customer for any specified period, CPC shall be entitled to suspend delivery for that period;
 - (ii) The Customer must pay the Disconnection Fee to CPC.
 - (iii) CPC will not incur any liability to the Customer in respect of such suspension and that will not effect the Customer's obligations to CPC under this Agreement which will continue with full effect.
 - (iv) The Customer must pay the Resumption Fee (in addition to the Disconnection Fee) before CPC re-commences the delivery of water to the Customer.

14.3 Termination by CPC

- (a) If the delivery of water to the Customer has been suspended for 90 days pursuant to clause 14.2, CPC may thereafter terminate the Customer's rights under this Agreement by written notice to the Customer.
- (b) The Customer's rights under this Agreement cease immediately upon receipt of the notice from CPC under clause 14.3(a).

14.4 Consequences of Termination on Customer

- (a) CPC may at any time after the termination of the Customer's rights under this Agreement enter the Customer's Property (if necessary) to disconnect and remove all or part of the CPC Pipeline (including the CPC Connection Infrastructure) from the Customer's pipeline and associated off-take infrastructure and carry out all works necessary to stop the delivery of water to the Customer.
- (b) The Customer warrants to CPC that CPC will have free and unrestricted access for the purpose of giving effect to clause 14.4(a), and the Customer agrees to indemnify CPC in respect of any loss or damage suffered by CPC in the event that such warranty is not correct.
- (c) Notwithstanding the termination, the Customer remains liable for:
 - (i) all the costs of and incidental to CPC's works under clause 14.4(a); and
 - (ii) all fees, charges and other obligations under this Agreement up to the date of termination.

14.5 Default of CPC

- (a) If CPC fails to comply with clause 3.5(a) for more than 30 days in any Peak Period and as a result thereof, the Customer is unable to draw in full its Peak Delivery Entitlement, the Customer will not be liable to pay the Reduced Charge specified in Item 1(b) of Schedule 2 in respect of that water not drawn.
- (b) If CPC fails to comply with clause 3.5(b) for more than 40 days in any Off Peak Period and as a result thereof, the Customer is unable to draw in full its Off Peak Delivery Entitlement, the Customer will not be liable to pay the Reduced Charge specified in Item 2(b) of Schedule 2 in respect of that water not drawn.
- (c) If the Customer has paid to CPC charges which it is not liable for under clause 14.5(a) or (b), CPC may either refund the monies or credit that amount against any other charges for which the Customer is liable.

14.6 Termination by Customer

- (a) The Customer may terminate this Agreement by written notice to CPC in any one or more of the following events:

Water Delivery Contract (Non-Shared Pipeline)

- (i) CPC fails to deliver to the Customer any water for 2 consecutive Contract Years; or
 - (ii) CPC is liquidated under the provisions of the Corporations Act.
- (b) The termination is effective from the date of CPC's receipt of the notice from the Customer.
- (c) CPC may at any time after the termination of this Agreement by the Customer enter the Customer's Property (if necessary) to disconnect and remove all or part of the CPC Pipeline (including the CPC Connection Infrastructure) from the Customer's pipeline and associated off-take infrastructure and carry out all works necessary to stop the delivery of water to the Customer.
- (d) The Customer warrants to CPC that CPC will have free and unrestricted access for the purpose of giving effect to clause 14.6(c), and the Customer agrees to indemnify CPC in respect of any loss or damage suffered by CPC in the event that such warranty is not correct.
- (e) Notwithstanding the termination, the Customer remains liable for all fees, charges and other obligations under this Agreement up to the date of termination.

15. CPC'S LIABILITY

15.1 Water Quality

- (a) Further to clauses 4.5 and 4.6, the Customer releases CPC to the full extent permitted by law from any liability for any loss or damage suffered by the Customer arising directly or indirectly out of the quality, composition or constituency of the water delivered by CPC or the presence of any chemicals, particles, minerals or other substances in that water.
- (b) Further to clauses 4.5 and 4.6 the Customer indemnifies CPC to the fullest extent permitted by law against any liability for any loss or damage suffered by any third person arising directly or indirectly out of the quality, composition or constituency of the water delivered by CPC or the presence of any chemicals, particles, minerals or other substances in that water.

15.2 Failure to Deliver Water

- (a) CPC will not be liable to the Customer for any loss or damage arising out of:
- (i) CPC's failure to deliver water if the failure is due to an event referred to in clause 5.1; or
 - (ii) CPC's failure to deliver water if the failure is due to any damage, malfunction or impairment to the Customer's pipeline infrastructure or its connection to the CPC Pipeline.
- (b) If CPC's failure is due to any other reason CPC's liability (if any) will be determined in accordance with clause 15.3.

15.3 Breach of Contract or Negligence

If CPC causes any loss to the Customer due to:

- (a) any breach of this Agreement including a fundamental breach; or
- (b) any tortious conduct,

CPC's liability (if any) for such loss will be limited to a maximum of the aggregate of all amounts paid by the Customer to CPC under this Agreement during the 12 months immediately preceding the breach or tortious conduct (as the case may be).

16. GOOD FAITH

CPC and the Customer agree to conduct themselves and deal with each other in good faith in order to give effect to the terms of this Agreement.

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17. FORCE MAJEURE

17.1 Where a party is unable, wholly or in part, by reason of a Force Majeure Event to carry out any obligation under this Agreement and

- (a) gives the other party immediate notice of the Force Majeure Event; and
- (b) uses all reasonable diligence to remove the Force Majeure Event as quickly as possible, that obligation is suspended so far as it is affected by the Force Majeure Event during its continuance (and during that time, shall not constitute a default by the Party which is unable to carry out the obligation) provided that:
 - (c) an obligation to pay money is never excused by a Force Majeure Event, and
 - (d) the requirement of clause 17.1(b) does not apply to the settlement of strikes, lockouts or other labour disputes or claims or demands by any government on terms contrary to the wishes of the party affected.

18. AMENDMENT

18.1 CPC may amend the terms of this Agreement at any time provided that such amendment:

- (a) applies to all Customers; and
- (b) is approved by a Special Resolution of the shareholders of CPC who are Customers, in accordance with CPC's Constitution.

19. GOODS AND SERVICES TAX

19.1 The terms used in this clause have the same meanings as those terms in the GST Act.

19.2 All fees, charges and other amounts payable by the Customer under or in accordance with this Agreement are exclusive of GST, and shall be increased by the rate of GST, if any, imposed by the GST Act.

19.3 CPC must give to the Customer a tax invoice in relation to each such payment.

20. NOTICES

Any notice required to be given under this Agreement by either party to the other must be:

20.1 in writing in the English language addressed to the address of the intended recipient shown in this Agreement 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 CPC:

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

Facsimile: (08) 85 373 061
Attention: General Manager
- (b) in the case of the Customer, as set out in Schedule 1:

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

20.3 deemed to have been given and served:

- (a) where delivered by hand, at the time of delivery;
- (b) where dispatched by facsimile, 24 hours after the time recorded on the transmitting machine unless:

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- (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; and
- (c) where dispatched 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.

21. ENTIRE AGREEMENT

This Agreement records the entire agreement between the parties as to its subject matter. Any prior negotiations, agreements, arrangements, representations and understandings related to the subject matter of this Agreement are superseded by this Agreement.

22. GOVERNING LAW

This Agreement will be governed by and interpreted in accordance with the laws for the time being in force in South Australia and each party submits to the non-exclusive jurisdiction of the Courts of or exercising jurisdiction of that State and waives any right it might have to claim that those Courts are an inconvenient forum.

23. WAIVER

23.1 A waiver by a party of a provision of this Agreement is binding on the party granting the waiver only if it is given in writing and is signed by the party or an authorised officer of the party granting the waiver.

23.2 Further, a waiver is effective only in the specific instance and for the specific purpose for which it is given.

23.3 The failure of a party to enforce at any time any of the provisions of this Agreement or the granting of any time or other indulgence will not be construed as a waiver of that provision or of the right of that party to subsequently enforce that or any other provision.

24. COSTS

24.1 Each party must bear its own legal and other costs arising out of the negotiation, preparation, execution and completion of this Agreement.

24.2 The Customer must pay all stamp duty, registration fees and any other fees charged by any government body in respect of this Agreement and on any document contemplated by this Agreement.

25. SURVIVAL OF AGREEMENT

The provisions of this Agreement which are capable of having effect after the expiry or termination of this Agreement shall remain in full force and effect following the expiry or termination of this Agreement.

26. APPROVALS AND CONSENT

If the doing of any act, matter or thing under this Agreement is dependent on the approval or consent of a party, that party may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion, unless this Agreement expressly provides otherwise.

27. COUNTERPARTS

This Agreement may be executed in separate counterparts which, when executed and exchanged (including exchange by facsimile transmission), will together be deemed to constitute the one and the same instrument.

Water Delivery Contract (Non-Shared Pipeline)

28. OTHER AGREEMENTS

Nothing in this Agreement prevents CPC from agreeing to deliver water to any person who is not a holder of Shares on such terms and conditions as CPC deems fit in its discretion.

EXECUTED as an agreement

EXECUTED by **THE CREEKS PIPELINE COMPANY**)
LIMITED without affixing a common seal pursuant to section)
127 of the *Corporations Act 2001* (Cth))
)

.....
Signature of Director

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

.....
Name of Director

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

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

EXECUTION BY CUSTOMER

If a company:

EXECUTED by the **CUSTOMER** *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)

If an individual:

SIGNED by the **Customer**)
in the presence of:)

.....
Signature of Customer

.....
Signature of Witness

.....
Print Full Name of Customer

.....
Print Full Name of Witness

.....
Residential address of Witness

Water Delivery Contract (Non-Shared Pipeline)

SIGNED by the **Customer**)
in the presence of:)

.....
Signature of Customer

.....
Signature of Witness

.....
Print Full Name of Customer

.....
Print Full Name of Witness

.....

.....

.....
Residential address of Witness

SIGNED by the **Customer**)
in the presence of:)

.....
Signature of Customer

.....
Signature of Witness

.....
Print Full Name of Customer

.....
Print Full Name of Witness

.....

.....

.....
Residential address of Witness

Water Delivery Contract (Non-Shared Pipeline)

SCHEDULE 1

CUSTOMER DETAILS

1. Full name:
(include ACN if a company)

Address:
.....

Full name:
(include ACN if a company)

Address:
.....

Full name:
(include ACN if a company)

Address:
.....

2. Contact name: Contact telephone no.:

3. Certificate of Title references for the Customer’s Property to be serviced by the CPC Pipeline:

.....
.....
.....

4. Notices details (see clause 20):

Address:
.....

Facsimile no.:

Water Delivery Contract (Non-Shared Pipeline)

SCHEDULE 2

Item		Langhorne Creek Customer	Currency Creek Customer
1.	Peak Delivery Entitlement		
	(a) Full Charge – cents per kilolitre of water drawn (plus GST)	24.0 cents	38.0 cents
	(b) Reduced Charge - cents per kilolitre of water not drawn (plus GST)	10.0 cents	10.0 cents
2.	Off Peak Delivery Entitlement		
	(a) Full Charge – cents per kilolitre of water drawn (plus GST)	9.0 cents	11.0 cents
	(b) Reduced Charge - cents per kilolitre of water not drawn (plus GST)	3.0 cents	3.0 cents

SCHEDULE 3

Start Date: the day of 2010

ANNEXURE A

Map showing:

- **location of CPC Pipeline**
- **Pump Stations 1, 2 and 3**
- **Main Line and Extension Line**

