

**Second Water Delivery Contract (Shared Pipeline)
2019 - 2029**

THE CREEKS PIPELINE COMPANY LIMITED
ACN 133 867 197

CUSTOMER NAME(S):

1. []

2. []

3. []

CUSTOMER NUMBER: []

NAME OF SHARED PIPELINE: []

Level 2, 99 Frome Street
Adelaide SA 5000

Telephone: +61 8 8111 4000
email: admin@oloughlins.com.au



AGREEMENT made

2011

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)**
3. **THE PERSON(S) WHOSE FULL NAME(S) AND ADDRESS(ES) IS(ARE) SET OUT IN SCHEDULE 2 OF THIS AGREEMENT (Manager)**

BACKGROUND

The parties to this Agreement wish to renew the Relevant Water Delivery Contract (Shared Pipeline) on the terms and conditions contained 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*;

Connection Fee means a non-refundable fee determined by CPC from time to time for the right to have water delivered to a New Customer (whether via a shared pipeline or otherwise);

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;

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

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- (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 Shared Pipeline;

CPC Connection Point 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 Shared Pipeline at the Primary Meter;

Currency Creek Customer means a Customer whose pipeline infrastructure connects (via a shared pipeline or directly) 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;

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;

Eligible Person means an Eligible Person for the purposes of paragraphs (a), (b), (c) and (d) of the definition of the expression 'Eligible Person' in clause 6.1 of the constitution of CPC;

End Date means 30 June 2029;

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

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 4 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 (via a shared pipeline or directly) 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 the Shared Pipeline or, in the absence of there being a manager, all of the Participants for the time being; at the date of this Agreement the initial Manager is described in Schedule 2;

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;

Minister means the Minister for Agriculture Food and Fisheries;

New Customer means a Customer who is admitted under clause 9;

Off Peak Delivery Entitlement means the annual quantity of water that CPC agrees in writing 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 the Shared Pipeline Entity;

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 as agreed in writing between CPC and the Customer provided that the Customer must hold 1,000 Shares in CPC in respect of each megalitre of water which comprises the Peak Delivery Entitlement;

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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 Shared Pipeline, 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 via the Shared Pipeline under this Agreement;

Reduced Charge means the charges specified in Schedule 4 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 11.3(b);

Relevant Water Delivery Contract (Shared Pipeline) means the Water Delivery Contract (Shared Pipeline) made on the date specified in Schedule 5 of this Agreement and the parties to which (the Customer being either an original party or a party by way of assignment) are the parties to this Agreement;

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*;

Second Water Delivery Contract (Non-Shared Pipeline) means an agreement which is substantially in the form of this Agreement except that there is no manager which is a party to such agreement;

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

Shared Pipeline means the pipeline and associated infrastructure of the Shared Pipeline Entity which is known by the name specified in Schedule 2 and 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 is to be connected to the CPC Pipeline (in lieu of the Original Source);

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

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

Start Date means 1 July 2019;

Water Delivery Contract has the meaning given to that expression in clause 1.1 of the constitution of CPC;

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

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

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

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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;
- (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 agreed, 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.

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- (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 Start Date and expires on the End Date.

2A. CONDITIONS

2A.1 This Agreement is subject to satisfaction of the following conditions as at 11.59pm on 30 June 2019:

- (a) the Customer is an Eligible Person;
- (b) the Manager is not in breach of or default under the Relevant Water Delivery Contract (Shared Pipeline);
- (c) CPC has received duly executed Water Delivery Contracts each for a term commencing on 1 July 2019 and expiring on 30 June 2029 and such Water Delivery Contracts being in the form or substantially the form of this Agreement or of a Second Water Delivery Contract (Non-Shared Pipeline) (as the case may be) and which make provision for CPC to deliver Peak Delivery Entitlement (as that expression is defined in the Water Delivery Contracts) per annum which, together with the Peak Delivery Entitlement to be delivered per annum by CPC under this Agreement, totals an aggregate of not less than such volume of water which in the absolute and unfettered discretion of a majority of the directors of CPC is sufficient to enable CPC to satisfactorily conduct its operations;
- (d) each customer who is a party to a Water Delivery Contract referred to in subparagraph (c) above is an Eligible Person;
- (e) each manager who is a party to a Water Delivery Contract referred to in subparagraph (c) above is not in breach of or default under the relevant Water Delivery Contract to which it is a party; and
- (f) the shareholders of CPC have passed a special resolution to amend the constitution of CPC as follows:

‘That:

- (a) the definition of ‘Water Delivery Contract’ in Clause 1.1 of the Constitution of the Company be amended in the manner marked up in Part 1 of Annexure A to this Notice of Annual General Meeting;
- (b) the reference in Clause 6.1(a) of the Constitution of the Company to ‘, having entered into’ be deleted and replaced with ‘pursuant to’;
- (c) Clauses 6.2, 8.1, 8.4(i), 8.5(c)(i), 8.5(e), 14.3 and 16.2(d) of the Constitution of the Company be amended in the manner marked up in Part 2 of Annexure A to this Notice of Annual General Meeting;
- (d) Clause 7 of the Constitution of the Company be amended in the manner marked up in Part 3 of Annexure A to this Notice of Annual General Meeting;
- (e) the reference in Clause 19.4 of the Constitution of the Company to ‘Clause 12’ be deleted and replaced with ‘Clause 16’; and
- (f) a new clause 8A be inserted in the Constitution of the Company immediately after Clause 8 thereof, as set out in Part 4 of Annexure A to this Notice of Annual General Meeting.’

on the basis that the contents of the Annexure A referred to therein are the same as set out in Annexure B to this Agreement.

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- 2A.2 Each of the conditions in clause 2A.1 has been inserted for the benefit of CPC and can only be waived by CPC.
- 2A.3 If a condition in clause 2A.1 is not satisfied as at 11.59pm on 30 June 2019 or waived by CPC prior to 11.59pm on 30 June 2019, CPC may terminate this Agreement by giving written notice to the Customer and the Manager prior to 8 July 2019.

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.
- (c) At the Start Date:
- (i) the Customer's Peak Delivery Entitlement will be as stated in Schedule 3 provided that the Customer:
- (A) is the holder of at least 5,000 Shares, and
- (B) is the holder of 1,000 Shares in relation to each megalitre of such Peak Delivery Entitlement, and
- (ii) the Customer's Off Peak Delivery Entitlement will be as stated in Schedule 3.

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 (in addition to enabling other Customers who are Participants to draw their Peak Delivery Entitlements).

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 (in addition to enabling other Customers who are Participants to draw their Off Peak Delivery Entitlements).

3.4 Variation of Delivery Entitlements

Either or both of the Customer's Peak Delivery Entitlement and Off Peak Delivery Entitlement may be varied at any time or from time to time by written agreement between CPC and the Customer provided that the Customer:

- (a) is the holder of at least 5,000 Shares, and
- (b) is the holder of 1,000 Shares in relation to each megalitre of any varied Peak Delivery Entitlement.

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 CPC Connection Point to the Shared Pipeline so that at the CPC Connection Point a daily quantity of water may be drawn equivalent to a fraction (that is to say, 1 divided by 150) of the aggregate Peak Delivery Entitlement of the Customer and all other Customers who are Participants 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;

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- (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 to the Shared Pipeline so that at the CPC Connection Point a daily quantity of water may be drawn equivalent to a fraction (that is to say, 1 divided by 200) of the aggregate Off Peak Delivery Entitlement of the Customer and all other Customers who are Participants 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 via the Shared Pipeline in excess of its Delivery Entitlements.

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 in the CPC Pipeline.

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

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- (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.

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 under this Agreement:

- (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 prior to 1 July 2019 in its discretion.
- (b) If not previously provided and installed, CPC will provide and install or cause to be installed the CPC Connection Infrastructure at the CPC Connection Point.

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- (c) If at the request of the Manager, 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 Manager which the Manager must pay to CPC in cleared funds before CPC relocates or causes to be relocated the CPC Connection Infrastructure.
- (d) The Manager is responsible for connecting the Shared Pipeline 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 Manager.
- (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

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 Non-CPC Infrastructure

- (a) CPC is not responsible for constructing, installing, maintaining, repairing and replacing the Customer's own pipes, connections, irrigation equipment and storage facilities to receive, store and use the water delivered to the Customer via the Shared Pipeline.
- (b) CPC is not responsible for constructing, installing, maintaining, repairing and replacing the Shared Pipeline and its connection to the CPC Pipeline.
- (c) The Customer must not use and the Manager must not permit to be used 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.
- (d) Except to the extent otherwise approved in writing by CPC in its absolute discretion, the Manager must not suffer or permit to be directly or indirectly connected any powered pump and motor set or other infrastructure to any of the infrastructure referred to in clause 6.3(a) or to like infrastructure of any other Participant or to the infrastructure referred to in clause 6.3(b) if same would or would be likely to, adversely affect the effective and efficient delivery of water to any of CPC's other Customers.
- (e) Each of the Customer and the Manager 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 or to the Shared Pipeline or its connection to the CPC Pipeline.

6.4 Problems with CPC Pipeline

- (a) Each of the Customer and the Manager 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 Obligations

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- (a) Neither the Customer nor the Manager may handle, manipulate, tamper with, attempt to repair or connect anything to the CPC Pipeline.
- (b) During the Peak Period the Manager must not suffer or permit to be drawn from the CPC Pipeline into the Shared Pipeline 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 aggregate of the Peak Delivery Entitlements of all Participants who are Customers of CPC.

- (c) During the Off Peak Period the Manager must not suffer or permit to be drawn from the CPC Pipeline into the Shared Pipeline 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 aggregate of the Off Peak Delivery Entitlements of all Participants who are Customers of CPC.

7. PIPELINE MANAGEMENT

- 7.1 CPC must manage and operate the CPC Pipeline and the delivery of water to the Shared Pipeline with the objective of facilitating the delivery of water 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. MANAGER

- 8.1 Each of the Customer and the Manager agrees that there must be no change in the Manager unless the new replacement or additional Manager has first executed a covenant under seal in favour of CPC and the Customer in such form as CPC may require pursuant to which it agrees to be bound by the provisions on the part of the Manager contained in this Agreement.

9. ADMISSION OF NEW CUSTOMERS

- 9.1 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 (whether via a shared pipeline or otherwise) 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 (whether via a shared pipeline or otherwise);

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- (f) CPC has received payment by the Manager of the CPC Connection Infrastructure Cost;
- (g) CPC receives payment of the Connection Fee;
- (h) the applicant and the Manager execute all agreements required by CPC;
- (i) 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;
- (j) CPC receives payment of all construction, engineering and other costs of and incidental to CPC determining the relevant Connection Point to the CPC Pipeline;
- (k) the applicant was not previously a Customer in respect of whom delivery of water had been disconnected under clause 14.4 in the 12 months preceding the application.

9.2 Subject to clause 9.1, CPC may specify other requirements for the admission of New Customers.

9.3 A person who applies to become a Customer under this clause 9 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 9.1; 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.

10. ASSIGNMENT

10.1 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 10.1.
- (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 10.1(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 10.1 is not effective until the later of the following events:
 - (i) all of the requirements in this clause 10.1 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 10.1, 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).

10.2 Other Assignments

Subject to clause 10.1, 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:

Second Water Delivery Contract (Shared Pipeline)

- (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.

10.3 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.

10.4 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.

11. CHARGES

11.1 Delivery Charges

- (a) The Customer must pay the Full Charge specified in Items 1(a) and 2(a) of Schedule 4 (as varied 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.
- (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 Manager or any other Participant,), the Customer must pay the Reduced Charge specified in Items 1(b) and 2(b) of Schedule 4 (as varied 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.

11.2 Variation To Charges

- (a) The charges specified in Items 1 and 2 of Schedule 4 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.

11.3 Primary Meter Reading

- (a) CPC will monitor the Primary Meter on a continuous basis.
- (b) For invoicing purposes:
 - (i) 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);
 - (ii) CPC will give notice to the Manager of such volume;
 - (iii) within the next 7 days, the Manager must give notice to CPC advising how such volume is to be apportioned among the Participants who are Customers of CPC

Second Water Delivery Contract (Shared Pipeline)

(Directed Apportionment). In default of such advice, such volume will be apportioned among those Customers in the proportions in which the number of Shares held by each of those Customers bears to the total number of Shares held by all of those Customers **(Default Apportionment)**.

- (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.

11.4 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 (**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 other shared pipeline which is connected to the CPC 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 29),

(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, being the proportion which the volume of water attributable to the Shared Pipeline pursuant to clause 11.3(b)(i) bears to the Aggregate Volume, will be allocated to the Shared Pipeline; portion of the volume of water so allocated to the Shared Pipeline will in turn be allocated and debited to the Customer (as an addition to the volume attributable to that Customer pursuant to clause 11.3(b)(iii)) in the proportion which is separately directed by the Manager in the notice referred to in clause 11.3(b)(iii) and in default of such direction, then in accordance with the Default Apportionment referred to in clause 11.3(b)(iii).

- (c) If the Total Volume is less than the Aggregate Volume, then portion (if a fraction, rounded up to the next whole kilolitre) of the difference between the Aggregate Volume and the Total Volume, being the proportion which the volume of water attributable to the Shared Pipeline pursuant to clause 11.3(b)(i) bears to the Aggregate Volume, will be allocated to the Shared Pipeline; portion of the volume of water so allocated to the Shared Pipeline will in turn be allocated and credited to the Customer (in reduction of the volume attributable to that Customer pursuant to clause 11.3(b)(iii)) in the proportion which is separately directed by the Manager in the notice referred to in clause 11.3(b)(iii) and in default of such direction, then in accordance with the Default Apportionment referred to in clause 11.3(b)(iii).

12. INVOICES

- 12.1 As soon as possible after each Primary Meter reading referred to in clause 11.3(b) and having regard to the requirements of clauses 11.3 and 11.4, CPC will issue an invoice to the Customer.
- 12.2 The invoice for each Relevant Period during the Peak Period will contain the following information:
 - (a) the meter readings;
 - (b) full details of the application of clause 11.3(b)(iii) and of any adjustments required pursuant to clause 11.4;

Second Water Delivery Contract (Shared Pipeline)

- (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.

12.3 The invoice for each Relevant Period during the Off Peak Period will contain the following information:

- (a) the meter readings;
- (b) full details of the application of clause 11.3(b)(iii) and of any adjustments required pursuant to clause 11.4;
- (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.

12.4 All invoices must be paid in full within 30 days of the date of invoice.

13. 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.

14. DISPUTE RESOLUTION

14.1 Any dispute or difference arising out of or relating to this Agreement (**Dispute**) will be resolved in accordance with this clause 14.

14.2 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.

14.3 The Independent Expert will:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner he or she thinks fit;
- (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.

14.4 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

Second Water Delivery Contract (Shared Pipeline)

- (b) is entitled to make submissions to the Independent Expert in respect of any proposed determination under this Agreement.
- 14.5 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.
- 14.6 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.
- 14.7 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.
- 14.8 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.
- 14.9 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.
- 14.10 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.

15. DEFAULT AND TERMINATION

15.1 Default of Customer

The Customer commits an event of default if:

- (a) the Customer 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) the Customer repeats a default in respect of which clause 15.1(a) has previously been invoked;
- (c) the Customer becomes Insolvent;
- (d) the Manager 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 Manager is given notice by CPC specifying the default in reasonable detail and requiring its remedy; or
- (e) the Manager repeats a default in respect of which clause 15.1(d) has previously been invoked.

15.2 Suspension

- (a)
 - (i) If the Customer commits an event of default referred to in clause 15.1, 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. The Manager must at its cost and expense fully assist and co-operate with CPC in this regard and in default of the Manager so doing, CPC may suspend the delivery of water to the Shared Pipeline for that shorter period.
 - (ii) The Customer must pay any Disconnection Fee to CPC.

Second Water Delivery Contract (Shared Pipeline)

- (iii) In addition to rectifying the default, the Customer must pay any Resumption Fee (in addition to the Disconnection Fee) before CPC is obliged to re-commence the delivery of water.
- (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. The Manager must at its cost and expense fully assist and co-operate with CPC in this regard and in default of the Manager so doing, CPC may suspend the delivery of water to the Shared Pipeline for that period.
 - (ii) The Customer must pay any Disconnection Fee to CPC.
 - (iii) CPC will not incur any liability to the Customer in respect of such suspension and that will not affect the Customer's obligations to CPC under this Agreement which will continue with full effect.
 - (iv) The Customer must pay any Resumption Fee (in addition to the Disconnection Fee) before CPC re-commences the delivery of water.

15.3 Termination by CPC

- (a) If the delivery of water has been suspended for 90 days pursuant to clause 15.2, 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 15.3(a).

15.4 Consequences of Termination on Customer and Manager

- (a) Within 2 Business Days after termination of the Customer's rights under this Agreement, the Manager shall permanently disconnect the Customer from the Shared Pipeline.
- (b) If the Manager fails to comply with clause 15.4(a), CPC may at any time thereafter enter the land upon which any part of the CPC Pipeline is located to disconnect and remove all or part of the CPC Pipeline (including the CPC Connection Infrastructure) from the Shared Pipeline and carry out all works necessary to stop the delivery of water to the Shared Pipeline.
- (c) Each of the Customer and the Manager warrants to CPC that CPC will have free and unrestricted access to such land for the purpose of giving effect to clause 15.4(b), and agrees to indemnify CPC in respect of any loss or damage suffered by CPC in the event that such warranty is not correct.
- (d) Notwithstanding the termination, the Customer remains liable for:
 - (i) all the costs of and incidental to CPC's works under clause 15.4(b); and
 - (ii) all fees, charges and other obligations of the Customer under this Agreement up to the date of termination.
- (e) Notwithstanding the termination, the Manager remains liable for all fees, charges and other obligations of the Manager under this Agreement up to the date of termination.
- (f) The termination will not prejudice or derogate from any other rights or remedies which CPC may have against the Customer or the Manager in respect of antecedent breach or otherwise.

15.5 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 4 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

Second Water Delivery Contract (Shared Pipeline)

Customer will not be liable to pay the Reduced Charge specified in Item 2(b) of Schedule 4 in respect of that water not drawn.

- (c) If the Customer has paid to CPC charges which it is not liable for under clause 15.5(a) or (b), CPC may either refund the monies or credit that amount against any other charges for which the Customer is liable.

15.6 Termination by Customer

- (a) The Customer may terminate this Agreement by written notice to CPC in any one or more of the following events:
 - (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) The provisions of clause 15.4 shall apply in relation to such termination.

16. CPC'S LIABILITY

16.1 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.

16.2 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;
 - (ii) CPC's failure to deliver water if the failure is due to any damage, malfunction or impairment to the Shared Pipeline or its connection to the CPC Pipeline; or
 - (iii) CPC's failure to deliver water in circumstances where the delivery of water from the CPC Pipeline to the Shared Pipeline is suspended or permanently disconnected by CPC in furtherance of its right to do so contained in any other "Water Delivery Contract – Shared Pipeline" made between CPC and another Participant.
- (b) If CPC's failure is due to any other reason CPC's liability (if any) will be determined in accordance with clause 16.3.

16.3 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).

17. GOOD FAITH

Second Water Delivery Contract (Shared Pipeline)

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.

18. FORCE MAJEURE

18.1 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 18.1(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.

19. AMENDMENT

19.1 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.

20. GOODS AND SERVICES TAX

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

20.2 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.

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

21. NOTICES

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

21.1 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: 1507 Langhorne Creek Road
(PO Box 99)
Langhorne Creek SA 5255
 - Facsimile: (08) 8537 3061
 - Email: admin@creekspipelineco.com.au
 - Attention: General Manager
- (b) in the case of the Customer, as set out in Schedule 1;
- (c) in the case of the Manager, as set out in Schedule 2;

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

21.3 deemed to have been given and served:

Second Water Delivery Contract (Shared Pipeline)

- (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:
 - (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 dispatched by email, at the time shown in the delivery confirmation report generated by the sender's email system; and
- (d) 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.

22. 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.

23. 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.

24. 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.

25. COSTS

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

25.2 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.

26. 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.

27. 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.

Second Water Delivery Contract (Shared Pipeline)

28. **COUNTERPARTS**

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

29. **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.

30. **CONSIDERATION TO MANAGER**

CPC undertakes to pay to the Manager on demand the sum of \$10.00 in consideration of the agreements and undertakings by the Manager in this Agreement, and the Manager declares that the said consideration is adequate and satisfactory.

Second Water Delivery Contract (Shared Pipeline)

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

Second Water Delivery Contract (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

EXECUTION BY MANAGER

If there is an actual Manager:

EXECUTED by the **MANAGER** *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 there is no actual Manager execution is required below by each Participant in the Shared Pipeline Entity in the form of the company or individual execution set out on pages 23 and 24:

Second Water Delivery Contract (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 21):

Address:
.....

Facsimile no.:

Email:

5. Company information:

(a) Customer number:

(b) Connection location:

Second Water Delivery Contract (Shared Pipeline)

SCHEDULE 2

MANAGER DETAILS

1. If there is an actual Manager:

Full name of Manager:
(include ACN if a company)
Address:
.....
Contact name:
Contact telephone no.:
Contact email address:

2. If there is not an actual Manager, insert the following for **every Participant**:

Full name:
(include ACN if a company)

Address:
.....

Full name:
(include ACN if a company)

Address:
.....

Full name:
(include ACN if a company)

Address:
.....

Full name:
(include ACN if a company)

Address:
.....

Full name:
(include ACN if a company)

Address:
.....

3. The Shared Pipeline is known by the name of

4. Notice details (see clause 21):

Address:
.....

Facsimile no:

Email:

Second Water Delivery Contract (Shared Pipeline)

SCHEDULE 3

1. Peak Delivery Entitlement

[] megalitres

2. Off Peak Delivery Entitlement

[] megalitres

SCHEDULE 4

Item		Langhorne Creek Customer	Currency Creek Customer
1.	Peak Delivery Entitlement		
	(a) Full Charge – cents per kilolitre of water drawn (plus GST)	22.5 cents	25.5 cents
	(b) Reduced Charge - cents per kilolitre of water not drawn (plus GST)	12.8 cents	12.8 cents
2.	Off Peak Delivery Entitlement		
	(a) Full Charge – cents per kilolitre of water drawn (plus GST)	15.0 cents	16.5 cents
	(b) Reduced Charge - cents per kilolitre of water not drawn (plus GST)	1.0 cents	1.0 cents

SCHEDULE 5

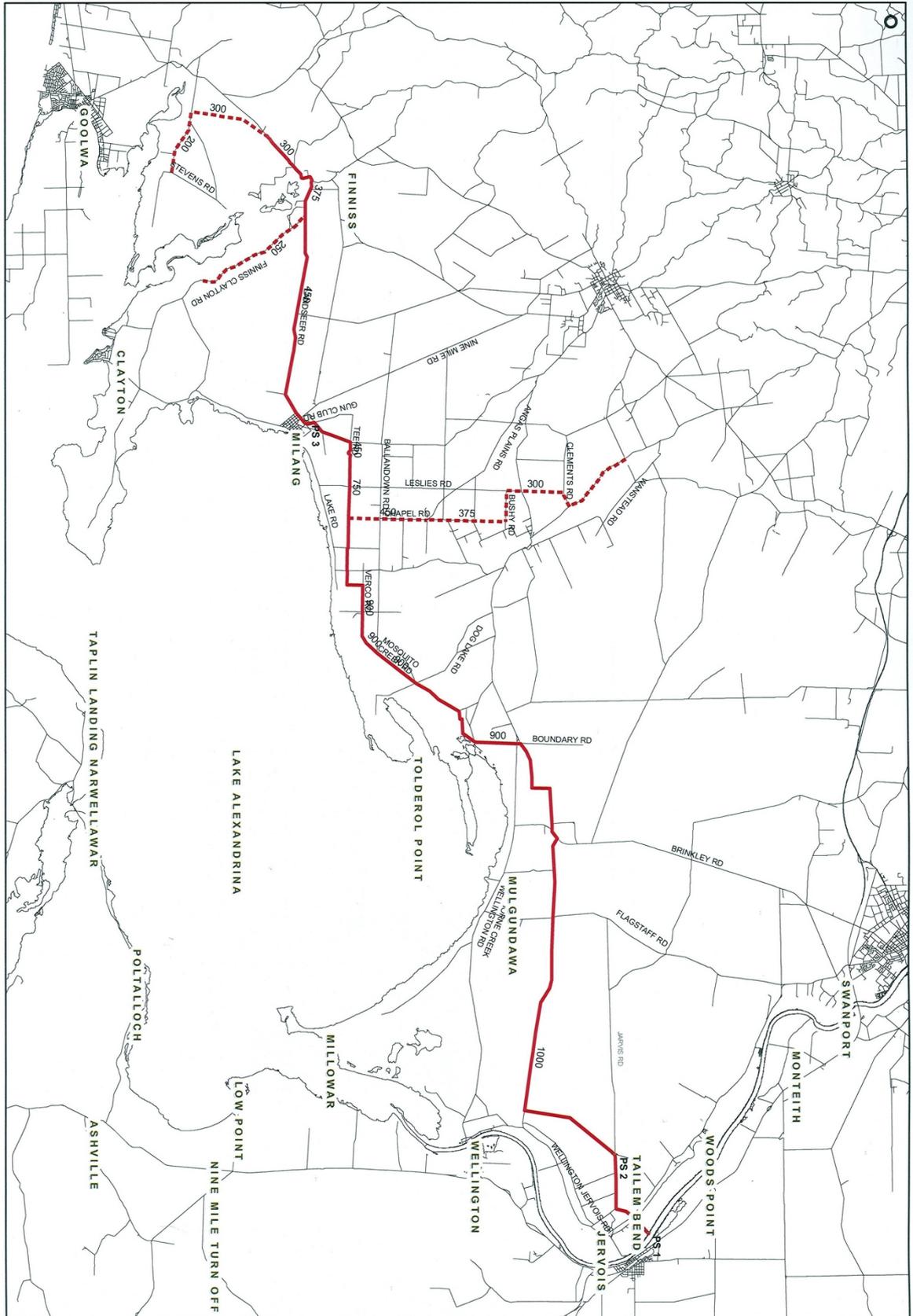
Date of Relevant Water Delivery Contract (Shared Pipeline) – refer to definition of that expression in clause 1.1 hereof.

The [] day of [month and year]

ANNEXURE A

map showing:

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



ANNEXURE B

Amendments to Constitution of CPC

Part 1

Water Delivery Contract means a contract or agreement between the Company and a person (whether that person is an original party to such contract or agreement or a party by way of assignment) relating to the obligation of the Company for a term which expires on 30 June 2019 or on 30 June 2029 (as the case may be), to deliver water of 5 megalitres or more per annum (for use by that person) to that person's pipeline or to a shared pipeline in which that person is a participant, via the Company's pipeline which extends from near Jervois on the River Murray to (among others) the Langhorne Creek and Currency Creek regions.

Part 2

6.2 Evidence

The Board may require such evidence as it may from time to time direct to determine whether or not a person is an Eligible Person for the purpose of an issue or transfer of Ordinary Shares to that person or the application of Clause 8 to that person.

8.1 Sale Price

In this Clause 8, the expression **Sale Price** means, in respect of an Ordinary Share, the sum of \$0.01.

8.4 (i) Notwithstanding any other provision of this Constitution the voting rights attaching to Ordinary Shares in respect of which an Intent Notice is given to an Ordinary Shareholder in terms of Clause 8.3(b)(i) shall be and remain suspended from the date on which the Intent Notice was given to the Ordinary Shareholder until:

- (i) if the Company sells all of the relevant Ordinary Shares within the said 60 day period – registration of the transfer thereof to the transferee,
- (ii) (subject to clause 8.4(i)(iii)) if the Company does not sell all of the relevant Ordinary Shares within the said 60 day period – the expiry of the 14 day period referred to in clause 8.4(h), and
- (iii) if pursuant to Clause 8.4(h), the Company is taken to give an Intent Notice for the purpose of Clause 8.5 – the first to occur of:
 - (A) the day referred to in Clause 8.5(d)(iii),
 - (B) the day referred to in Clause 8.5(d)(iv), and
 - (C) the day on which the by-back agreement is deemed to have been entered into pursuant to Clause 8.5(b) (following which section 257H(1) of the Act will apply).

8.5 (c) The Proposing Transferor:

- (i) irrevocably appoints the Company and each Director of the Company from time to time severally as its attorney to complete and execute (under hand or under seal) such documents for and on its behalf as the attorney thinks necessary or desirable to give effect to Clause 8.5(b);

8.5 (e) Notwithstanding any other provision of this Constitution the voting rights attaching to Ordinary Shares in respect of which an Intent Notice is given to an Ordinary Shareholder in terms of Clause 8.3(b)(ii) shall be and remain suspended from the date on which the Intent Notice was given to the Ordinary Shareholder until:

- (i) (subject to Clause 8.5(e)(ii)) the first to occur of:

- (A) the day referred to in Clause 8.5(d)(iii),
 - (B) the day referred to in Clause 8.5(d)(iv), and
 - (C) the day on which the buy-back agreement is deemed to have been entered into pursuant to Clause 8.5(b) (following which section 257H(1) of the Act will apply), or
- (ii) if pursuant to Clause 8.5(d), the Company is taken to give an Intent Notice for the purpose of Clause 8.4:
- (A) if the Company sells all of the relevant Ordinary Shares within the 60 day period referred to in Clause 8.4(a) – registration of the transfer thereof to the transferee, or
 - (B) if the Company does not sell all of the relevant Ordinary Shares within the said 60 day period – the expiry of that 60 day period.

14.3 Buy-back authorisation

Subject to the Act and to Clause 8, the Company may buy shares and other securities in itself on such terms and at such times as determined by the Directors.

- 16.2 (d) The Board must not register the transmission of any Ordinary Shares if it forms the opinion that any such transfer would result in a person breaching Clauses 8.2 or 15.1. The Board is not required to give any reasons for any such opinion.

Part 3

7. COMPANY'S OPERATIONS AFTER 30 JUNE 2019 AND AFTER 30 JUNE 2029

- (a) Prior to 30 June 2018 the Board will advise the shareholders of its intentions in respect of the operations of the Company after 30 June 2019.
- (b) If the Board determines that the operations of the Company will continue for a period of 10 years from 1 July 2019 then, prior to 30 June 2028, the Board will advise the shareholders of its intentions in respect of the operations of the Company after 30 June 2029.

Part 4

8A. REDUCTION OF PEAK DELIVERY ENTITLEMENT

8A.1 Reduction

If an Eligible Person agrees with the Company that the Eligible Person's 'Peak Delivery Entitlement' pursuant to that Eligible Person's Water Delivery Contract is to be reduced (the date on which such reduction takes effect being hereafter referred to as the **Trigger Date**), then this clause will apply to that portion of the Eligible Person's Ordinary Shares (**Relevant Shares**) which is calculated as follows:

$$\text{Relevant Shares} = A \times B$$

where:

'A' = the total number of megalitres of water by which such 'Peak Delivery Entitlement' is reduced, and

'B' = 1,000

8A.2 Sale Price

In this clause 8A, the expression **Sale Price** means, in respect of a Relevant Share, the sum of \$0.01.

8A.3 Disposal of Relevant Shares

- (a) The Eligible Person must dispose of all of the Relevant Shares within 90 days from the Trigger Date.
- (b) If the Eligible Person fails to do so within such 90 day period, within the next 14 days the Company must give written notice (**Intent Notice**) to the Eligible Person in which the Company advises the Eligible Person that the Company:
 - (i) wishes to sell all of the Relevant Shares within 60 days from the date of the Company's Intent Notice; or
 - (ii) wishes to buy-back all of the Relevant Shares.

8A.4 Sale

If the Company gives an Intent Notice referred to in clause 8A.3(b)(i), the provisions of clause 8.4 will apply in respect of the Relevant Shares as if:

- (a) each reference therein to 'an Intent Notice referred to in clause 8.3(b)(i)' or similar, was a reference to the Intent Notice referred to in clause 8A.3(b)(i);
 - (b) each reference therein to 'Ordinary Shares' or similar, was a reference to the Relevant Shares;
 - (c) each reference therein to 'relevant Ordinary Shareholder' or 'former Ordinary Shareholder' or similar, was a reference to the Eligible Person;
 - (d) each reference therein to 'Sale Price' was a reference to the Sale Price referred to in clause 8A.2,
- and with such other modifications as may reasonably be required in the circumstances.

8A.5 Buy-Back

If the Company gives an Intent Notice referred to in clause 8A.3(b)(ii), the provisions of clause 8.5 will apply in respect of the Relevant Shares as if:

- (a) each reference therein to 'an Intent Notice referred to in clause 8.3(b)(ii)' or similar, was a reference to the Intent Notice referred to in clause 8A.3(b)(ii);
 - (b) each reference therein to 'Ordinary Shares' or similar, was a reference to the Relevant Shares;
 - (c) each reference therein to 'relevant Ordinary Shareholder' or similar, was a reference to the Eligible Person;
 - (d) each reference therein to 'Sale Price' was a reference to the Sale Price referred to in clause 8A.2,
- and with such other modifications as may reasonably be required in the circumstances.