

**24 March 2016**

**Notice relating to the following document titled “Distribution Arrangement for the distribution of water under the distribution operations licence for the Pioneer River Water Supply Scheme” and dated 18 February 2016.**

On 24 March 2016, the Water Amendment Regulation (No. 1) 2016 (the WA Regulation) dissolved Pioneer Valley Water Board (PVWB) and converted the statutory body to alternative institutional structures – Pioneer Valley Water Co-operative Ltd (PVWater) and Pioneer Valley Water Mutual Co-operative Ltd (PVMutual).

Immediately before the dissolution, PVWB was the holder of a distribution operations licence (the DOL).

For the purposes of the Water Act, PVWB is the “old entity”.

In accordance with section 691A(2) of the Water Act, the WA Regulation identifies the “old entity document” held by the old entity and available for public access on the old entity’s website before the dissolution.

The old entity document is the document following this notice, and about which this notice relates, titled “Distribution Arrangement for the distribution of water under the distribution operations licence for the Pioneer River Water Supply Scheme”.

Under section 691(6) of the Water Act, after the dissolution of the old entity, the old entity document has effect as a contract known as the “distribution contract”.

The distribution contract relates to the distribution of water under the DOL between any entity that becomes the DOL holder (noting that PVWater currently holds the DOL) and the holder of each water allocation distributed under the DOL.

**PIONEER VALLEY WATER BOARD**

**DISTRIBUTION ARRANGEMENT  
FOR THE DISTRIBUTION OF WATER  
UNDER  
DISTRIBUTION OPERATIONS LICENCE  
FOR THE  
PIONEER RIVER WATER SUPPLY SCHEME**

***WATER ACT 2000***

## DISTRIBUTION ARRANGEMENT

**BETWEEN:**           **PIONEER VALLEY WATER BOARD**

of Mackay in the State of Queensland (“Pioneer Valley Water”)

**AND:**               **THE CUSTOMER** (“the Customer”)

## APPLICATION OF DISTRIBUTION ARRANGEMENT

This Distribution Arrangement applies to the holder of:

- a) an Allocation granted under the Resource Operations Plan and distributed under a Distribution Operations Licence for the Pioneer River Water Supply Scheme
- b) the Distribution Operations Licence under which the Allocation is distributed,

The parties agree as follows:

### OPERATIVE PROVISIONS

#### 1 INTERPRETATION

##### Definitions

In this Distribution Arrangement, unless the context otherwise requires:

**Act** means the *Water Act 2000*.

**Access Charge** means the amount determined by Pioneer Valley Water for a Water Year to be contributed by a Customer for the Allocation.

**Allocation** means a water allocation, granted under the Resource Operations Plan.

**Announced Allocation** means Announced Allocation as defined in the Resource Operations Plan.

**Annual Charges Determination** means the Charges for the Water Year set by Pioneer Valley Water

**Changes an Allocation** means a process as defined in Part 3 of the Resource Operations Plan.

**Charges** means the charges set out in Schedule 3.

**Customer** means the person or entity who is the holder of an Allocation to be distributed under the Distribution Operations Licence.

**Customer's Development Permit** means any development permit required to be held by the Customer for the works enabling the Customer to take water under the Customer's Allocation.

**Customer's Point of Take** means the point where water is to be taken from the Distribution Network by the Customer as nominated by Pioneer Valley Water from time to time.

**Distribution Losses** means Distribution Loss as defined in the Resource Operations Plan.

**Distribution Network** means the pumps, pipelines, natural formations and other works (including water meters) owned and/or managed by Pioneer Valley Water for the purpose of diverting and distributing water to Customers under the Resource Operations Plan.

**Distribution Operations Licence** means the licence granted under the Act and the Resource Operations Plan to Pioneer Valley Water.

**Event of Force Majeure** means any event or circumstance, or combination of events or circumstances which is beyond the reasonable control of the party concerned, including without limiting the generality of the foregoing:

- (a) drought, fire, lightning, explosion, flood, earthquake, storm, cyclone, action of the elements, act of God, natural disaster, radioactive contamination, toxic or dangerous contamination or force of nature;
- (b) riots, civil commotion, malicious damage, sabotage, vandalism, act of a public enemy, war (declared or undeclared), blockades, revolution, riot, insurrection or terrorism;
- (c) strikes, lockouts, industrial and/or labour disputes and/or difficulties, work bans or picketing;
- (d) order of any court or the order, act or omission or inaction of any government or governmental authority having jurisdiction (including any act or omission required or authorised to be done under any Compulsory Access Regime) or failure to obtain any necessary

governmental consent, permit, authorisation, licence, approval or acknowledgment;

- (e) breakdown or failure of any facilities, machinery or equipment (including but not limited to the failure in any equipment which forms part of any pump);
- (f) non-availability of essential equipment, goods, supplies or services (including but not limited to the failure of the supply of electricity to any pump);
- (g) existence of Native Title, or any claim for Native Title affecting any part of the land across, under or upon which either the Distribution Network or the Customer's Point of Take are constructed;
- (h) the prevention of access to repair damage to or malfunction of the Distribution Network or the Customer's Point of Take caused by any of the events set out above.

**Exit fee** means a fee or fees approved by Pioneer Valley Water based on the discounted present value of 10 years of future Charges payable in relation to the Allocation to be removed from being distributed under the Distribution Operations Licence based on the assumption the Customer takes the whole of the Customer's Allocation..

**Government** means the Queensland Government or the Commonwealth Government.

**GST** means GST as defined in the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* as amended or any replacement or other relevant legislation and regulations.

**GST Law** has the meaning given to it in the GST Act and includes any applicable legislative determinations and Australian Taxation Office public rulings in relation thereto.

**Guarantor** means the guarantor under the guarantee referred to in clause 24.

**Insolvent** means:

- (a) in relation to a natural person if the person becomes bankrupt or enters into any arrangement with his or her creditors; or
- (b) in relation to a Corporation if the Corporation has a liquidator, provisional liquidator, receiver or receiver and manager or a voluntary administration appointed.

**Licence** means the licence granted under the Act

**Landholding** means in respect of a Customer a parcel of land individually identified by a Customer's Point of Take connected to the Distribution Network.

**Megalitre** means one million litres

**Prohibited Substance** includes the substances set out in the Pioneer Valley Water Rules (if any).

**Pioneer Valley Water Rules** means the rules and guidelines made by Pioneer Valley Water and amended from time to time under Clause 9.

**Resource Operations Licence** means the Resource Operations Licence granted under the Act and the Resource Operations Plan

**Resource Operations Plan** means the Pioneer Valley Resource Operations Plan

**Seasonal Assignment** means a process as defined in Part 4 of the Resource Operations Plan

**Statutory Authority** means any statutory authority of the Queensland Government or Commonwealth Government and includes SunWater.

**Usage Charge** means the amount determined by Pioneer Valley Water for each Water Year to be paid by the Customer for each Megalitre or part thereof for water passing through the Customer's Point of Take.

**Water Year** means the period from 01 July in any calendar year to 30 June in the following calendar year.

**Works** has the same meaning given to that term in the Act and includes any dam, levee, bank, reservoir, weir, channel (whether an artificial channel, natural channel or natural channel artificially improved), cutting, drain, excavation, pipe, culvert, fence, pumping plant, machinery, bridges, bores, sewers and any appliance.

**Writing** includes printing, typing and any other mode of representing or reproducing words in permanently visible form (including facsimile and email) and "written" has a corresponding meaning.

## 2 CONSTRUCTION

2.1 Unless expressed to the contrary:

- (a) words importing:
  - (i) the singular include the plural and vice-versa; and
  - (ii) any gender includes the other gender;

- (b) if a word or phrase is defined, cognate words and phrases have corresponding definitions;
- (c) a reference to:
  - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes its legal personal representatives, successors and permitted assigns;
  - (iii) a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements or any of them;
  - (iv) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
  - (v) provisions or terms of this document or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;
  - (vi) this or any other Distribution Arrangement includes the Distribution Arrangement as varied or replaced and notwithstanding any change in the identity of the parties; and
  - (vii) a clause is a reference to a clause in this Distribution Arrangement;
- (d) any obligation by or in favour of two or more persons burdens and benefits them jointly and severally;
- (e) headings are for ease of reference and do not affect the interpretation of this Distribution Arrangement; and
- (f) any term not specifically defined in this Distribution Arrangement has the meaning (if any) provided for in the Act.

### **3 PRECONDITIONS TO SUPPLY OF WATER**

- 3.1 Pioneer Valley Water is under no obligation to supply water to the Customer unless and until all obligations of the Customer under this Distribution Arrangement have been met to the satisfaction of Pioneer Valley Water.

#### **4 OBLIGATIONS OF PIONEER VALLEY WATER**

- 4.1 Within 10 days of commencement of each Water Year Pioneer Valley Water will notify the Customer of the Charges for that Water Year.
- 4.2 Within 5 days of receipt of advice of the Announced Allocation from the Resource Operations Licence holder, Pioneer Valley Water will notify the Customer of the Announced Allocation for the Water Year and of increases in the Announced Allocation during the Water Year.
- 4.3 Water may be supplied to the Customer by Pioneer Valley Water unconditionally or subject to conditions as notified by Pioneer Valley Water to the Customer from time to time.
- 4.4 Provided the Customer complies in all respects with this Distribution Arrangement, Pioneer Valley Water will:
  - (a) make available to the Customer at the Customer's Point of Take the Customer's Announced Allocation:
    - (i) subject to this Distribution Arrangement;
    - (ii) at the times fixed between Pioneer Valley Water and the Customer;
    - (iii) in the quantities fixed between Pioneer Valley Water and the Customer; and
    - (iv) for the Charges payable by the Customer in accordance with clause 10; and
  - (b) use its reasonable endeavours to provide any other services to the Customer on the terms agreed with the Customer from time to time.
- 4.5 The Customer acknowledges and accepts that Pioneer Valley Water cannot be compelled to deliver water and will not be in breach of this Distribution Arrangement for reducing supply or failing to deliver water to the Customer:
  - (a) if the delivery would, in the reasonable opinion of Pioneer Valley Water, result in a breach of any of the Licences of Pioneer Valley Water, any statute or any legal right or entitlements of a third party;
  - (b) in the event of drought, accident or any other cause which Pioneer Valley Water reasonably considers renders it impractical to deliver water;
  - (c) if Pioneer Valley Water is satisfied that it is necessary or expedient to reduce or discontinue the supply of water to any area or person because of an actual or threatened shortage of water or any other sufficient cause. That determination may be made in relation to



all water, or to water used for any purpose or class of purposes, and may apply to and in respect of any particular area or person specified in the determination or to and in respect of any class of areas or persons so specified;

- (d) if, in the opinion of Pioneer Valley Water, the supply or continuance of supply is likely to cause damage to the Customer's landholding; or
- (e) if the Customer fails to comply with a provision of any condition attaching to a supply of water by Pioneer Valley Water;
- (f) if any event of Force Majeure occurs.

4.6 A refusal to supply or a discontinuation of supply of water:

- (a) does not relieve the Customer from liability for payment of any Charges; and
- (b) does not prevent Pioneer Valley Water from taking legal proceedings against the Customer.

4.7 Pioneer Valley Water's obligations under this clause 4 are subject to reasonable amendment, in accordance with Clause 17, which Pioneer Valley Water may deem to be necessary to accommodate any changes in the Licence conditions, or any other fact, matter or thing imposed on it by Government or statutory authority from time to time affecting, directly or indirectly, its ability to meet those obligations.

4.8 Pioneer Valley Water's obligations also include any matters set out in Schedule 1 to this Distribution Arrangement.

4.9 Pioneer Valley Water may notify the Customer from time to time in writing of its obligations.

## **5 OBLIGATIONS OF THE CUSTOMER**

5.1 The Customer agrees to:

- (a) take a supply of water pursuant to the Customer's Announced Allocation from Pioneer Valley Water under the terms of this Distribution Arrangement;
- (b) place an order with Pioneer Valley Water in the form prescribed by Pioneer Valley Water from time to time, for water which the Customer has agreed to receive;
- (c) satisfy all conditions imposed by Pioneer Valley Water for the supply of water to the Customer;

- (d) rectify, to Pioneer Valley Water's satisfaction, any arrears of Charges due from the Customer, and any other default or non-compliance notified by Pioneer Valley Water to the Customer;
- (e) ensure that backflow prevention devices at the Customer's Point of Take are, in the opinion of Pioneer Valley Water, in a good state of repair;
- (f) comply with the Pioneer Valley Water Rules and any variation of the Pioneer Valley Water Rules.
- (g) promptly advise Pioneer Valley Water of any changes to mailing address or other contact details
- (h) take water only at a flow rate sufficient to cause the meter associated with the Customer's Outlet to read accurately.
- (i) not do anything or omit to do anything that may cause a contravention of Pioneer Valley Water's licence.

5.2 The Customer's obligations also include any matters set out in Schedule 2 to this Distribution Arrangement;

5.3 The Customer bears the risk of destruction of or damage to the Customer's Point of Take from an Event of Force Majeure or resulting from Pioneer Valley Water's diverting water, under this or any other agreement or the Distribution Operations Licence;

5.4 The Customer must under this Distribution Arrangement procure and maintain in full force and effect and comply with the terms of:

- (a) the Customer's Allocation; and
- (b) the Customer's Development Permit.

## **6 DISTRIBUTION LOSSES FOR CHANGE IN NOMINATED POINT OF TAKE**

6.1 Where the Customer seeks to change the location of the Customer's Point of Take for an Allocation or part thereof whether seasonally or permanently into an area where Distribution Losses apply, the Customer must obtain the consent of Pioneer Valley Water and transfer to Pioneer Valley Water (seasonally or permanently as the case may be) that portion of the Allocation necessary to meet the Distribution Losses nominated by Pioneer Valley Water arising from the change.

## **7 RESTRICTIONS**

7.1 The Customer must not take water under the Customer's Allocation during a period where the supply of water to the Customer is subject to suspension under this Distribution Arrangement.

- 7.2 The Customer must not, without Pioneer Valley Water's prior written permission:
- (a) directly or indirectly discharge or allow or cause to be discharged any Prohibited Substance into the Distribution Network or to do any other act which might cause the water in the Distribution Network to become contaminated;
  - (b) divert or take water supplying or flowing into the Distribution Network or do any other act to cause the quantity of water in the Distribution Network to diminish;
  - (c) construct or use any private Works within the Customer's Landholding if such private Works is likely to have the effect of altering the rate of delivery of water to the Customer or elsewhere; or
  - (d) place, install or permit the placement or installation of a structure in or near a Works in such a manner as to wilfully or negligently interfere with the operations of the Works or destroy or damage the Works.
- 7.3 Where the Customer has breached Clause 7.1 or Clause 7.2, the Customer must pay to Pioneer Valley Water an amount equivalent to the cost and expense which Pioneer Valley Water reasonably determines that it has incurred, including any expenses associated with entry to and inspection of the Customer's landholding, investigation of the breach and all costs and expenses of notification of such breach.

## **8 ACCESS TO CUSTOMER'S LANDHOLDING**

- 8.1 Pioneer Valley Water may, after giving reasonable notice to the Customer, enter and occupy the Customer's Landholding in the manner and for the purposes described in the Water Act.
- 8.2 The Customer must give every reasonable assistance to Pioneer Valley Water, its officers, employees and agents, to enter and occupy the Customer's Landholding for all proper purposes.

## **9 PIONEER VALLEY WATER DISTRIBUTION RULES**

- 9.1 Pioneer Valley Water may make and amend rules and guidelines including rules providing an ordering system for water or access conditions for the taking of water (such as the time and rate of taking) concerning the Distribution Network, including:
- (a) implementing Pioneer Valley Water's rights and obligations regarding the operation of the Distribution Network;
  - (b) setting out, clarifying or amending the rights and obligations of Pioneer Valley Water and the Customer under this Distribution Arrangement;

- (c) guidelines for the exercise of Pioneer Valley Water's discretion under this Distribution Arrangement, provided that the Pioneer Valley Water Distribution Rules:
  - (i) are not inconsistent with any law applying to the operation of the Distribution Network;
  - (ii) have been the subject of consultation with the Customer or any group representing customers within the Distribution Network (if such group exists).

9.2 The Customer must comply with the Pioneer Valley Water Rules and any variation thereof as if they were a part of this Distribution Arrangement.

## **10 CHARGES**

10.1 The Customer will pay to Pioneer Valley Water all Charges for which the Customer is liable, pursuant to this Distribution Arrangement as notified by Pioneer Valley Water in accordance with this clause 10 including:

- (a) The Customer will pay all Access Charges in respect of the Customer's Allocation, whether or not the Customer orders or uses any water.
- (b) The Customer will pay all Usage Charges for water that passes through the Customer's Point of Take.

10.2 Pioneer Valley Water will issue to the Customer an Invoice, advising the Charges due from the Customer in respect of a quarterly period for each Year. The Customer must pay the Charges on or before the due date and in the manner specified by Pioneer Valley Water in the Invoice.

10.3 An Invoice must include details of:

- (a) the Customer's name and contact information;
- (b) the types of services provided and the types of Charges payable by the Customer for the period covered by the Invoice;
- (c) the amount of Charges as assessed by Pioneer Valley Water;
- (d) any variations in the Charges or bases of calculating Charges since the period covered by the last immediately preceding Invoice;
- (e) the date of the Invoice;
- (f) the due date for payment (being not less than 30 days after the date of the Invoice); and
- (g) the method or methods for payment.

- 10.4 Pioneer Valley Water may vary the Charges other than those set under Annual Charges Determinations between Annual Charges Determinations. Any proposed variation must be the subject of consultation with Customers or any group representing customers in accordance with Clause 17.2
- 10.5 Where payment is made by the Customer by cheque, and the cheque on presentation to a bank is not honoured for any reason, Pioneer Valley Water may require the Customer to pay, and the Customer must pay, the Charges owing and any additional fee as Pioneer Valley Water may reasonably determine from time to time associated with the dishonour of the cheque.
- 10.6 If the Customer fails to pay the Charges for a period of 30 days after written demand for the Charges has been made by Pioneer Valley Water, Pioneer Valley Water shall be entitled to suspend water supply to the Customer.
- 10.7 Pioneer Valley Water may charge interest on any Charges due from the Customer from the date on which those amounts respectively fell due for payment, until they are paid. Interest shall be calculated at a rate of 12% per annum or as determined by Pioneer Valley Water from time to time.
- 10.8 The Customer will indemnify Pioneer Valley Water for all and any costs and fees incurred by Pioneer Valley Water on a solicitor and own client basis in recovering or attempting to recover an unpaid amount due and payable by the Customer to Pioneer Valley Water.
- 10.9 The Customer will pay to Pioneer Valley Water the Exit Fee if it becomes payable in terms of this Distribution Arrangement.
- 10.10 Any payments made by the Customer for any overdue amounts will be applied first to the payment of accrued interest.

## **11 CONSTRUCTION, MAINTENANCE AND REPAIR OF WORKS**

- 11.1 The Customer agrees to:
  - (a) engage Pioneer Valley Water, or a contractor appropriately qualified and approved by Pioneer Valley Water, to carry out any work in relation to the Customer's connection to the Distribution Network. This work must be approved by Pioneer Valley Water before connection;
  - (b) pay a connection fee to Pioneer Valley Water in respect of connection to the Distribution Network. This fee will be an amount determined from time to time by Pioneer Valley Water and any provisions of any Licence or other legal instrument; and
  - (c) if required by notice from Pioneer Valley Water, construct, remove, alter, repair or improve (or procure the construction, alteration, removal, alteration, repair or improvement of) Works on the

Customer's Landholding deemed necessary or desirable by Pioneer Valley Water for the efficient management and conveyance of water supplied to the Customer.

- 11.2 Pioneer Valley Water will stipulate the location, design, form, dimensions and levels of any materials for any Works required to be constructed.
- 11.3 If the Customer does not construct the required Works, Pioneer Valley Water may construct them or complete their construction.
- 11.4 Where Pioneer Valley Water has constructed Works or completed their construction in accordance with clause 11.3 the expenses incurred in such construction or completion of construction, as the case may be, including costs of acquisition of land or easements deemed necessary for construction of Works will be a liquidated debt due and owing by the Customer to Pioneer Valley Water.
- 11.5 The Customer will not remove or cause to be removed any structure, building, fixture, fence or other improvement on the Customer's Landholding in respect of which any monies are owing to Pioneer Valley Water without the written consent of Pioneer Valley Water.
- 11.6 A Customer who causes damage to a pipe, valve, valve pit, air valve, marker or other Work forming part of the Distribution Network is liable to pay the cost of repairing such damage and any incidental or consequential costs arising from such damage.
- 11.7 Any Works constructed by Pioneer Valley Water remain the sole property of Pioneer Valley Water.

## **12 MEASUREMENT OF WATER USAGE FOR DETERMINING CHARGES**

- 12.1 Any certificate of an authorised officer of Pioneer Valley Water attesting to:
  - (a) the amount of any Charges or other amounts due to Pioneer Valley Water; or
  - (b) the volume of water supplied to the Customer under this Distribution Arrangement (whether or not the relevant measuring device or devices existed or were operable for any relevant period);

shall, in the absence of manifest error, be conclusive evidence of the matters certified.

- 12.2 Pioneer Valley Water may at any time and from time to time install or repair any measuring devices on the Customer's landholding. Pioneer Valley Water may also replace existing measuring devices on the Customer's landholding with other measuring devices which in the opinion of Pioneer Valley Water are superior for any reason.

12.3 Pioneer Valley Water may, where a meter is not installed or a meter is faulty, estimate the volume of water taken by a Customer during a period. The estimate will be done in consultation with the Customer and may consider such relevant information as water orders placed by the Customer, energy consumption by the pumping unit, water use history by the Customer and irrigated area.

### **13 DEFAULT**

13.1 The Customer will be in breach of this Distribution Arrangement if the Customer:

- (a) fails to comply at all times with the provisions of this Distribution Arrangement and any Pioneer Valley Water Rules;
- (b) deals with the Customer's Allocation in any manner contrary to this Distribution Arrangement;
- (c) causes any damage or alteration or improvement to any Works except with the prior written consent of Pioneer Valley Water;
- (d) does anything (or allows anything to be done) in relation to the Customer's landholding or the Customer's Allocation, the doing or omission of which may result in a breach by Pioneer Valley Water of its obligation not to breach any of the Licences, or render any of the Licences liable to suspension or cancellation;
- (e) fails to comply (or procure compliance) with all environmental protocols, best management practices and other catchment management policies from time to time implemented or adopted in respect of the Customer's landholding;
- (f) the Customer becomes Insolvent; or
- (g) the Customer transfers or seeks to transfer, surrender or seeks to surrender or relinquish the Customer's Allocation without the prior consent of Pioneer Valley Water.

13.2 Subject to clause 13.5, if a default by the Customer continues for 30 days after the issue of a written demand by Pioneer Valley Water requiring it to be remedied, Pioneer Valley Water is entitled to:

- (a) without having any obligation to do so, take any action necessary to remedy the default in the name of and on behalf of the Customer. All costs incurred by Pioneer Valley Water in remedying the default may be charged to the Customer (including an appropriate part of Pioneer Valley Water's overheads);
- (b) terminate this Distribution Arrangement by notice in writing to the Customer; or

- (c) Pioneer Valley Water may suspend all or part of the Customer's water supply, pending remedy of the default and without any obligation to make up any shortfall in supply to the Customer once the default is remedied.
- 13.3 Within 30 days of termination of this Distribution Arrangement the Customer must pay to Pioneer Valley Water the Exit fee.
- 13.4 Nothing in this clause 13 will prevent Pioneer Valley Water from immediately suspending the supply of water to the Customer where Pioneer Valley Water, upon becoming aware of a default by the Customer, reasonably determines that the default is so severe or its ramifications so serious or immediate (whether for Pioneer Valley Water or another person) that immediate suspension is necessary.
- 13.5 Pioneer Valley Water's rights under this clause 13 are in addition to any other rights Pioneer Valley Water may have at law or in equity.

#### **14 WARRANTY AND LIMITATION OF LIABILITY**

- 14.1 Nothing done or omitted to be done by Pioneer Valley Water or any person/s acting under the authority of Pioneer Valley Water will render Pioneer Valley Water or that person/s liable for any loss, damage, sum of money, costs, cause of action, liability, claim or demand of any type by the Customer. Without limitation, no matter or thing done by Pioneer Valley Water, or by any person acting under the authority of Pioneer Valley Water, shall, if that matter or thing was done bona fide pursuant to this Distribution Arrangement, subject Pioneer Valley Water or any such person to any action, liability, claim or demand whatsoever.
- 14.2 A person does not have any right or claim to relief of any kind whatever in any legal or other proceeding against Pioneer Valley Water or officer or employee of Pioneer Valley Water, in respect of any nuisance connected with or in any way arising out of:
- (a) the destruction or damage, or partial destruction or partial damage, by flood, storm, tempest or otherwise of a work owned or controlled by Pioneer Valley Water; or
  - (b) the exercise, in respect of a work owned or controlled by Pioneer Valley Water, by Pioneer Valley Water of any function conferred or imposed on Pioneer Valley Water under this Distribution Arrangement, or any law.
- 14.3 Pioneer Valley Water shall not incur any liability in respect of:
- (a) any advice furnished in good faith by Pioneer Valley Water relating to the likelihood of any land being flooded or the nature or extent of any such flooding;
  - (b) anything done or omitted to be done in good faith by Pioneer Valley Water in so far as it relates to the likelihood of land being



flooded or the nature or extent of any such flooding, including without limitation the carrying out of flood mitigation works; or

- (c) any other thing done or omitted to be done in the exercise of Pioneer Valley Water's functions.

14.4 To the extent permitted by law, any and all implied warranties or representations by Pioneer Valley Water are negated. In particular, and without limitation, Pioneer Valley Water gives no warranty as to the quality of, or suitability for any purpose of, any water delivered by it and gives no warranty that any particular volume of water will be available at any time or times unless expressly agreed by Pioneer Valley Water in a particular instance.

14.5 Notwithstanding any other provision of this Distribution Arrangement, Pioneer Valley Water will not be liable for any failure or delay in Pioneer Valley Water's performance of its obligations under this Distribution Arrangement if such failure or delay is caused or contributed to by any event or circumstance beyond the control of Pioneer Valley Water.

#### 14.6 Extent of Liability for Losses

To the extent permitted by law, Pioneer Valley Water shall not be liable to the Customer under or in connection with this Distribution Arrangement for any claims, actions, proceedings, judgments, cost, expense, loss, damage or liability incurred or suffered by the Customer or by anyone claiming through the Customer for:

- (a) any breach of this Distribution Arrangement by Pioneer Valley Water;
- (b) water not being available.

14.7 The Customer acknowledges that Pioneer Valley Water makes no representation and gives no warranty:

- (a) about the quality of water within the Distribution Network;
- (b) that any actions, measures or steps will be taken by Pioneer Valley Water to prevent any adverse effects on the quality of water in the Distribution Network; or
- (c) that water within the Distribution Network or available for diversion or taking by the Customer is potable or suitable for any purpose (whether or not it is a purpose to which Pioneer Valley Water knows the Customer may put the water).

#### 14.8 Customer has Remedies under the Act

Pioneer Valley Water and the Customer acknowledge and agree that clause 14.5 is not intended to limit or affect action which the Customer may take against Pioneer Valley Water under the Act or for wilfully negligent acts of Pioneer Valley Water.

#### 14.9 Releases by Customer

The Customer releases Pioneer Valley Water from all claims, actions demands, proceedings and liability which it may have or claim to have or but for this release might have had against Pioneer Valley Water connected with:

- (a) death or personal injury, damage to the Customer's Point of Take, other property, livestock, crops or assets as a consequence of any action by Pioneer Valley Water, including for example, channel overflows however caused, pipeline breaks where such action is necessary for Pioneer Valley Water to comply with any requirements binding on it;
- (b) death or personal injury, damage to the Customer's Point of Take, other property, livestock, crops or assets as a consequence of flooding or inundation caused by overflows from the Distribution Network or the Distribution Network acting as a barrier as a consequence of a circumstance referred to in paragraphs (a), (e), (f) and (h) of the definition of "Event of Force Majeure";
- (c) death or personal injury, damage to the Customer's Point of Take, other property, livestock, crops or assets as a consequence of actions of Pioneer Valley Water in remedying a breach of this Distribution Arrangement by the Customer or a breach of an agreement for the diversion of water which Pioneer Valley Water has with another customer in the Distribution Network for example, in the removal of unauthorised connections or outlets.;
- (d) alterations to the Distribution Network or conditions within the Distribution Network however caused including, for example; the movement of water weeds to clog pumps and the impact of sudden losses or fluctuations of flow or pressure surges within the Distribution Network;

14.10 The Customer must indemnify Pioneer Valley Water against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against Pioneer Valley Water:

- (a) in connection with the quality of water where an act or omission of the Customer (whether or not under this Distribution Arrangement) has affected the quality of such water;
- (b) by any person to whom the Customer has supplied water or who the Customer has allowed to take water.

14.11 The Customer releases Pioneer Valley Water from all claims, actions, demands, proceedings and liability which it may have or claim to have or but for this release might have had against Pioneer Valley Water connected with the quality of water within the Distribution Network or diverted or taken by or on behalf of the Customer.

## **15 DISPUTE RESOLUTION**

### **15.1 Appointment of representative**

If a dispute arises in relation to this Distribution Arrangement, the party who claims that a dispute has arisen will give written notice to the other party:

- (a) outlining the basis of the dispute and the facts giving rise to the dispute; and
- (b) nominating that party's representative.

15.2 Within five (5) business days of receipt of the notice referred to in clause 15.1, the recipient shall designate a representative by notice to the party who gave notice in terms of clause 15.1.

### **15.3 Discussions**

The representatives of the parties nominated by clauses 15.1 and 15.2 shall meet within 10 business days of the giving of the notice referred to in clause 15.2 to discuss the dispute, following whatever investigation each considers appropriate with a view to resolving the dispute.

### **15.4 Negotiation of procedures**

If the dispute is not resolved as a result of the discussions referred to in clause 15.3, either party may refer the dispute for determination by giving a notice to the other party ("First Dispute Notice") in which it:

- (a) states the name, address and occupation of the person it nominates to determine the dispute ("Nominated Referee") who would fall within the category of Referees referred to in the first part of clause 15.14; and
- (b) states the matter or matters which constitute the dispute it wishes to refer for determination.

15.5 Within ten (10) business days after receipt of the First Dispute Notice the other party may give the party who gave the First Dispute Notice a notice ("Second Dispute Notice") in which it states that it accepts or rejects the Nominated Referee in the First dispute Notice.

- 15.6 If no Second Dispute Notice is given within the time specified in clause 15.5, the Nominated Referee may determine the dispute under this clause.
- 15.7 If the Second Dispute Notice accepts the Nominated Referee, the Nominated Referee may determine the dispute under this clause.
- 15.8 If a Second Dispute Notice rejects the Nominated Referee, the nomination of the Referee may be referred by either party to the President of the organisation referred to in the second part of clause 15.14 to nominate the Referee.
- 15.9 When the dispute is referred to a Referee for determination under this clause, each of the parties must:
- (a) use its best endeavours to make available to the Referee all facts and circumstances which the Referee may need to know in order to determine the dispute; and
  - (b) ensure that its employees, agents and consultants are available to appear at any hearing or enquiry called for by the Referee; and
  - (c) give a copy of any written submission it makes to the Referee to the other party at the same time as it gives the submission to the Referee.
- 15.10 The Referee must decide the dispute and inform the parties of the result within ten (10) Business Days after the date of submission of the dispute for determination.
- 15.11 The Referee acts as an expert and not as an arbitrator. The Referee's decision is final and binding on the parties. The Referee must give a written statement of reasons for the decision to both parties.
- 15.12 The Referee may decide who must pay the costs and expenses arising out of the reference of the dispute to the Referee, including the Referee's reasonable costs and expenses. If the Referee does not make a decision about costs and expenses, the parties must each pay half of the Referee's costs and expenses and pay their own costs.
- 15.13 Each party must continue to perform its obligations under this Distribution Arrangement while the determination of the dispute under this clause is in progress.
- 15.14 The categories of Referees referred to in Clause 15.4 are as follows:
- (a) Lawyer appointed by the President or Acting President for the time being of the Queensland Law Society Inc: and

- (b) Engineer appointed by the President or Acting President for the time being of the Institution of Engineers, Australia, Queensland Division.

## **16 GST**

16.1 Unless otherwise expressly stated all amounts stated to be payable under this Distribution Arrangement are exclusive of GST.

16.2 Notwithstanding any other provision of this Distribution Arrangement:

- (a) if a GST applies to any supply made by either party under or in connection with this Distribution Arrangement; and
- (b) the party making the supply is or will be registered under GST Law at the time the supply is made by that party; and
- (c) a tax invoice (as that term is defined in the GST Law) in connection with the supply has been rendered by the supplier to the recipient of the supply,

the consideration payable or to be provided for that supply will be increased by an amount equal to the GST liability properly incurred by the party making the supply.

16.3 If the imposition of a GST or any subsequent change in the GST Law is accompanied by or undertaken in connection with the abolition of or reduction in any existing taxes, duties or statutory charges (in this clause 16,) the consideration payable by the recipient of the supply made under this document will be reduced by the actual costs of the party making the supply that are reduced directly or indirectly as a consequence of the abolition of or reduction in taxes.

16.4 The parties agree to meet prior to the imposition of a GST in order to determine in good faith the variation of any consideration in accordance with this clause 16. In determining the amount of any reductions to the consideration in accordance with this clause 16, the supplier must furnish the recipient of the supply with any relevant information reasonably requested by the supply recipient.

16.5 If this Distribution Arrangement requires a party to pay, reimburse or contribute to an amount for which the other party has received an invoice from a third party which includes GST, then the relevant amount for payment, contribution or reimbursement will be the GST Exclusive Value (calculated in accordance with the GST Law) of the supply to that other party.

## **17 REVIEW**

17.1 Pioneer Valley Water may review this Distribution Arrangement.

- 17.2 Prior to the first review of this Distribution Arrangement, Pioneer Valley Water will develop a Consultation Policy in consultation with customers or any group representing customers. The Consultation Policy will include the notification procedure for consultation and the means to assess acceptance of review proposals and will remain in force until such time as it is subsequently reviewed under this Clause 17.
- 17.3 Pioneer Valley Water after completing the review referred to in Clause 17.1, may by notice in writing to the Customer vary the terms of this Distribution Arrangement.
- 17.4 The Customer must promptly do all things necessary to give effect to a variation of this Distribution Arrangement under clause 17.3 including executing a deed of variation.
- 17.5 Appointment of attorney
- (a) The Customer irrevocably appoints each officer of Pioneer Valley Water as the Customer's attorney for the purpose of executing any document required by clause 17.4;
  - (b) The Customer must ratify anything done by the attorney under this clause;
  - (c) The power of attorney in clause 17.5 may only be exercised if:
    - (i) the Customer has failed to execute a document as required by clause 17.4;
    - (ii) Pioneer Valley Water has notified the Customer in writing of the failure referred to in clause 17.5(c)(i);
    - (iii) the Customer has not executed the document as required under this deed and returned it to Pioneer Valley Water within 14 days of receiving the Notice referred to in clause 17.5(c)(ii).

## **18 WAIVER**

- 18.1 An action of Pioneer Valley Water in respect of this Distribution Arrangement will only be binding against Pioneer Valley Water as a waiver if in writing and signed by an authorised officer of Pioneer Valley Water.
- 18.2 No custom or practice which evolves between the parties will constitute a waiver or lessen Pioneer Valley Water's right to insist upon the Customer's strict performance or observance of any provision of this Distribution Arrangement or to exercise any of Pioneer Valley Water's other rights.
- 18.3 Regardless of Pioneer Valley Water's knowledge at the time, a demand by Pioneer Valley Water for Charges or the subsequent acceptance of

Charges will not constitute a waiver of any earlier default by the Customer.

## **19 NOTICES**

19.1 Any notice given under this Distribution Arrangement:

- (a) must be in writing addressed to the intended recipient:
  - (i) for Pioneer Valley Water, at the address of its office published on its website;
  - (ii) for the Customer,
    - (a) at the address last known to Pioneer Valley Water; or
    - (b) at the address shown in the register that records the details of the Customer's Allocation.
- (b) must be signed by a person duly authorised by the sender;
- (c) for a notice given by the Customer will be taken to have been given when delivered, received or left at the above address;
- (d) in the case of a notice by Pioneer Valley Water forwarded by mail, will be taken to have been given 4 days after posting by Pioneer Valley Water;
- (e) if delivery or receipt occurs on a day when business is not generally carried on in the place to which the notice is sent, or is later than 4pm (local time), it will be taken to have been duly given at the commencement of business on the next day when business is generally carried on in that place.

## **20 ASSIGNMENT**

20.1 Pioneer Valley Water may assign its rights and obligations under this Distribution Arrangement to any person provided that the person to whom the assignment is made enters into an agreement to be bound by the terms of this Distribution Arrangement.

## **21 FORCE MAJEURE**

21.1 If Pioneer Valley Water or the Customer ("the Affected Party") is prevented from or delayed in performing any obligation (other than to pay money) by an Event of Force Majeure;

- (a) as soon as possible after the Event of Force Majeure occurs, the Affected Party notifies the other party of full particulars of:
  - (i) the Event of Force Majeure;

- (ii) the effect of the Event of Force Majeure on performance of obligations of the Affected Party;
    - (iii) the anticipated period of delay; and
    - (iv) the action, if any, the Affected Party intends to take to mitigate or remove the effect and delay.
  - (b) promptly and diligently acts to mitigate or remove the Event of Force Majeure and its effect; then
  - (c) the obligation is suspended during, but no longer than, the period the Event of Force Majeure continues and such further period as is reasonable in the circumstances.
- 21.2 The party which is not the Affected Party must use reasonable endeavours to remove or mitigate the Event of Force Majeure and its effects.
- 21.3 Nothing in clause 21 obliges either party to settle any strike, lockout, ban, limitation of work or other industrial disturbance.

## **22 COSTS**

- 22.1 The Customer must pay all of Pioneer Valley Water's costs (including legal fees) of and incidental to:
- (a) any consent or approval required under this Distribution Arrangement or the Act;
  - (b) any breach of this Distribution Arrangement by the Customer;
  - (c) any expense incurred by Pioneer Valley Water undertaking any work or activity required to be undertaken by the Customer under this Distribution Arrangement.

## **23 GUARANTEE**

- 23.1 If the Customer is a corporation or a trust, Pioneer Valley Water may require a personal guarantee from directors or persons associated with the corporation or the trust upon the terms set out below:

"IN CONSIDERATION of Pioneer Valley Water entering into this Distribution Arrangement with the Customer at the request of the Guarantor which request is testified by the execution by the Guarantor of the Distribution Arrangement as Guarantor, the Guarantor hereby covenants with Pioneer Valley Water as follows:

- (a) The Guarantor guarantees the payment of all moneys payable to Pioneer Valley Water in terms of the Distribution Arrangement including GST and the due and punctual performance by the Customer of the terms, covenants and obligations on the part of



the Customer contained or implied in the Distribution Arrangement including the obligation to indemnify Pioneer Valley Water in all cases where indemnities are granted by the Customer to Pioneer Valley Water.

- (b) As a separate and independent obligation and for the consideration aforesaid the Guarantor hereby covenants to indemnify and hold harmless Pioneer Valley Water from and against all losses, damages, claims, demands, actions, judgments, costs and expenses of whatsoever nature or kind suffered or incurred by Pioneer Valley Water by reason of the Customer's default in observing or performing the covenants and agreements on the Customer's part to be observed and performed under the Distribution Arrangement and the foregoing provisions of the Guarantee shall apply mutatis mutandis to the indemnity hereby given.
- (c) The Guarantor's liability under clauses 23(a) or (b) is not affected by:
  - (i) the granting of anytime, forbearance or other concession by Pioneer Valley Water to the Customer or any Guarantor;
  - (ii) an absolute or partial release of the Customer or any Guarantor or any compromise with the Customer or any Guarantor;
  - (iii) any variation whatsoever of or to the Distribution Arrangement;
  - (iv) non-execution by any one or more of the persons named as Guarantor or the unenforceability of the Guarantee and Indemnity against one or more of the Guarantors;
  - (v) the exercise or purported exercise by Pioneer Valley Water of its rights under the Distribution Arrangement.
- (d) The Guarantor's liability is not discharged by any payment to Pioneer Valley Water which is later avoided by law. If that happens, Pioneer Valley Water, the Customer and the Guarantor will be restored to their respective rights as if the payment had not been made."

## **24 GOVERNING LAW**

- 24.1 This Distribution Arrangement is governed by and construed according to the laws of and applicable in the State.
- 24.2 Pioneer Valley Water and the Customer submit to the jurisdiction of the courts of the State and courts having jurisdiction therein.

# **SCHEDULE 1**

## **ADDITIONAL OBLIGATIONS OF PIONEER VALLEY WATER UNDER CLAUSE 4.9**

### **SERVICE LEVELS**

The supply pressure in the pipeline network in the Septimus reticulation area shall be a minimum of 4 kilopascals at Customer outlets.

The supply pressure in the pipeline network in the Palm Tree Creek Pipeline reticulation area shall be a minimum of 600 kilopascals at Customer outlets.

### **METER READING SCHEDULE**

Unless otherwise notified to the Customer, Pioneer Valley Water will read Customer water meters on a quarterly basis each year normally at the following times.

- Last two weeks in June and first two weeks in July
  - Last two weeks in September and first two weeks in October
  - Last two weeks in December and first two weeks in January
  - Last two weeks in March and first two weeks in April
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## **SCHEDULE 2**

### **ADDITIONAL OBLIGATIONS OF THE CUSTOMER UNDER CLAUSE 5.2**

#### **WATER ORDERING**

Customers will order Announced Allocation through the Pioneer Valley Water STREAMLINE water ordering Distribution Network in accordance with notice periods and other requirements as set by Pioneer Valley Water.

Customers must immediately on becoming aware of their inability to take ordered Announced Allocation, advise the Pioneer Valley Water operator accordingly.

#### **OPERATION OF CUSTOMER WORKS**

Customers accessing their Allocation directly from supplemented streams are responsible for any in-stream Works required to maintain that access.

Customers must at all times operate their connection to the Works in such matter as to not cause any pressure surges into the Works. This requirement includes the steady opening and closure of Customer valves in the Septimus and Palm Tree Creek Pipeline reticulation areas.

#### **DESIGN FLOW**

Customers in the Septimus and Palm Tree Creek - Pipeline reticulation areas must not take water at a rate in excess of the designed flow rate for the Customer's Outlet.

#### **ACCESS TO CUSTOMER LANDHOLDING**

Customers with specific requirements for entry by Pioneer Valley Water, its officers, employees and agents to their landholding must advise Pioneer Valley Water in writing of their requirements. Pioneer Valley Water will endeavour to meet the Customers' requirements but reserves the right to enter in accordance with Clause 8.

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## **SCHEDULE 3**

### **2018/2019 WATER CHARGES**

<b>AREA</b>	<b>Access Charge \$/ML p.a.</b>	<b>Usage Charge \$/ML</b>
Palm Tree Creek - Cattle Creek	41.88	4.18
Palm Tree Creek - Pipeline	62.62	7.35
Palmyra	52.01	33.46
Riparian	37.84	3.04
Septimus	60.22	54.55
Silver McGregor - Creeks	49.70	43.29
Silver McGregor - Pipeline	53.00	43.29

### **2018/19 ADMINISTRATION CHARGES**

<b>Service</b>	<b>Administration Charge</b>
Issue of Disclosure Statement (section 155 of the <i>Water Act 2000</i> )	Not applicable
Seasonal Water Assignment	\$110.00 per application
Meter Installation Certification (non-PVMutual)	\$105.00 per hour / per attempt
Non routine meter reading	\$108.00 per hour
All other services	Hourly rates available on application

(Discounts of Administration Charges may apply in some instances)

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