

TERMS AND CONDITIONS (NSW)

RECITALS:-

- A. We are in the business of providing sub-metering and billing services for water utility consumption by bodies corporate.
- B. You wish to engage us for our services and we agree to provide you with our services, on the terms set out herein.

THE PARTIES AGREE:-

1. Definitions

In this Agreement, unless the context otherwise required:

- a) **Act** means the *Strata Schemes Management Act 2015* (NSW);
- b) **Beginning Date** has the meaning given in clause 4.a);
- c) **Billing Cycle** means the three (3) month period between invoices;
- d) **End Date** means the expiry date of this Agreement as set out in clause 4.b);
- e) **Fees** means those fees set out in Schedule A;
- f) **GST** means the goods and services tax as imposed by the GST Law;
- g) **GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act;
- h) **Lot** means a lot in your Scheme;
- i) **Lot Owner(s)** means an owner(s) of a Lot in your Scheme;
- j) **Master Meter** means your master water meter for the Scheme as a whole;
- k) **Nominee** means the person nominated by your committee to be the contact person with us on your behalf during the term of this Agreement;
- l) **Scheme** means your strata scheme;
- m) **Sub-Meters** means the sub-metering device for your water utility;
- n) **Water** means the water supplied by the Water Service Supplier provided to you and used by you as a utility;
- o) **Water Consumption Charges** means the calculation of charges incurred as a result of Water usage (as determined by a reading of the Sub-Meter) and using the Water Service Supplier's applicable Water consumption charges published at the time;
- p) **Water Service Supplier** means the utility service provider who supplied water to you;

2. Interpretation

In the interpretation of this Agreement, unless the context otherwise requires:

- a) clause and subclause headings are for reference purposes only.
- b) the singular includes the plural and vice versa.
- c) words denoting any gender include all genders.
- d) reference to a person includes any other entity recognised by law and vice versa.
- e) where a word or phrase is defined its other grammatical forms have a corresponding meaning.
- f) any reference to a party includes its successors and permitted assigns.
- g) any reference to any agreement or document includes that agreement or document as amended at any time.
- h) any reference to \$, AUD or dollars is a reference to the currency of the Australia.
- i) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document.
- j) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done and the money paid on the immediately preceding Business Day.

3. Engagement

You hereby engage us as an independent contractor to supply services to you in accordance with the terms of this agreement.

4. Term

- a) This Agreement commences on the earlier of:
 - i) the date the preconditions set out below are satisfied:
 - 1. The commencement of the first billing period, being once the sub-meters have been installed;
 - 2. We have been provided with adequate identification and contact details of all Lot Owners; and
 - 3. The passing of a by-law substantially in accordance with the sample found in Schedule 2, to our reasonable satisfaction;
 - and
 - ii) 12 months after the resolution is passed by you approving this engagement.

- b) This Agreement ends on the earlier of:
 - i) Three (3) years from the Beginning Date; and
 - ii) The date this Agreement is validly terminated under clause 13.

5. Our Obligations

- a) Under this Agreement we agree to measure the sub-meters and the Master Meter and arrange to bill Lot Owners for their Water Consumption Charges and any other water related charges imposed by the Water Service Supplier from time to time.
- b) We agree to provide quarterly reports to you in respect of common property Water usage.
- c) We agree to assist you in recovering costs from Lot Owners in respect to the supply and/or installation of the sub-meters and the fees for our services (as applicable).
- d) We are not responsible for any Water service charges to any third-party entity.
- e) Some obligations placed on us under this agreement may be carried out by another person. If an obligation is placed on us to do something under this agreement, then:
 - i) we are taken to have complied with the obligation if another person does it on our behalf; and
 - ii) if the obligation is not complied with, we are still liable to you for the failure to comply with this agreement.

6. Your Obligations

- a) Under this Agreement you agree to purchase the Water direct from the Water Service Supplier and remain responsible for payment of the main account to the Water Service Supplier.
- b) You must give us any information we reasonably require, including copies of documents, for the purposes of this Agreement. The information must be true, accurate and complete, and you must not mislead or deceive us in relation to any information provided to us.
- c) You will remain liable for any current and/or future debt with:
 - i) Water Service Supplier for your Scheme;
 - ii) The supplier and/or installer of the sub-meters; and
 - iii) Us, in relation to our services to you.
- d) You authorise us to refer any unpaid Lot Owner accounts to a debtor management expert for payment recovery.
- e) You will be responsible for the costs of installation of all sub-meters used in

performance of this Agreement and you agree that we may recover from you the costs of any repairs or compensation for damage to or replacement of a sub-meter used in the performance of this Agreement.

- f) You will be responsible for the maintenance and repair of the sub-meter equipment in accordance with your obligations under the Act. We will not be liable to perform our services on any sub-meters that are not in good working condition.
 - g) You must tell us promptly if:
 - i) information you have provided to us changes, including if your, or any Lot Owner's, billing address changes or if your use of Water changes (for example, if a Lot Owner or Occupant starts running a business at the premises, or if additional Lots are added to the Scheme); or
 - ii) you are aware of any change that materially affects access to a sub-meter or to other equipment involved in providing our services under this Agreement;
 - iii) you are aware of any damage or default with any sub-meter that may impact the provision of our services; or
 - iv) if a Lot Owner executes a contract of sale of a Lot you must notify us and advise the Lot Owner's solicitor at least 14 days prior to settlement so that amounts outstanding to us by the Lot Owner can be adjusted at settlement; or
 - v) if you engage new a Strata Schemes Manager then you must provide us with their contact details.
 - h) You must pay the amounts billed by us to you for our sub-meter reading and billing services under this Agreement; and
- You agree to meet your obligations under this agreement and comply with all relevant laws.

7. Lot Owners Vacating

- a) If a Lot Owner is selling their Lot, you must provide us with a notice advising of same and provide us with forwarding address for their final bill to be issued.
- b) When we receive the notice, we must use our best endeavours to arrange for the reading of the Lot Owner's sub-meter on the date specified in your notice (or as soon as possible after that date if you do not provide access to the sub-meter on that date) and send a final bill to the Lot Owner at the forwarding address stated in your notice.
- c) The Lot Owner will continue to be responsible for charges for the Lot up until and including

settlement, unless otherwise agreed between the Lot Owner and the purchaser of their Lot.

- d) You shall be responsible for procuring that incoming owners execute necessary documentation (including contracts associated herewith) to provide for the continuation of our services.

8. Lot Owner Invoices

- a) As soon as reasonably practicable after the end of each Billing Cycle, we will issue each Lot Owner with an invoice for:
 - i) their Water Consumption Charges;
 - ii) costs for supply and/or installation of the sub-meter (as applicable);
 - iii) costs for our services to you (apportioned appropriate and as applicable); and
 - iv) any other fees that may apply between us and the Lot Owner.
- b) Payment methods for our fees will be detailed on each invoice.
- c) Estimation of Water Consumption Charges
 - i) Where we are unable to obtain the relevant Sub-Meter data in any given Billing Cycle for any Lot, we may calculate an estimate Water Consumption Charge for that Lot.
 - ii) In such event, we will:
 1. Clearly state on the Lot Owner's invoice that the Water Consumption Charge is an estimation;
 2. Where the relevant Sub-Meter is later able to be measured, we will issue a further invoice with an adjustment made in consideration of the difference in the estimate Water Consumption Charge and the actual Water Consumption Charge for that Lot;
 3. If the actual Water Consumption Charge measurement shows an undercharge, we will allow the relevant Lot Owner to pay the undercharged amount to us in equal instalments, over the same period of time during which the sub-meter was not read (if less than 12 months), or otherwise over 12 months from the date of the invoice;
 4. If the sub-meter has not been measured due to the actions of the Lot Owner or your actions, and you request us to replace the estimated Water Consumption Charge invoice with an actual Water Consumption Charge invoice, we will comply with your request but may charge you any cost we incur in doing so.

9. Paying Your Invoices

- a) Your Invoices
 - i) As soon as reasonably practicable after the end of each Billing Cycle, we will issue you with our invoice for our fees incurred by you during the preceding Billing Cycle.
 - ii) Our invoice will be issued to the Nominee or as otherwise directed by you.
 - iii) Payment methods for our fees will be detailed on each invoice.
- b) What you have to pay
You must pay us the invoices amount in accordance with the payment terms set out on each invoice.
- c) Failure to pay
 - i) If you have not paid our invoice in accordance with the payment terms we will send you a first reminder notice requiring payment to be made in not less than six (6) business days.
 - ii) We may charge a late payment fee for any late payments.
 - iii) If after we have issued you with a reminder notice you still fail to pay our invoice within the required timeframe, we reserve our rights to refer you to a debt recovery expert and charge you the debt recovery fee as well.
- d) Debt Recovery
 - i) Any amounts referred by us to a debt recovery expert will remain active with such expert until that expert no longer trades as a debt recovery expert, the file is deemed uneconomical, we come to an agreed settlement with you, or it we request its closure.

10. Sub-Meters

- a) Subject to compliance with the Act, you agree and acknowledge to allow us and our authorised representatives safe and unhindered access to the Scheme and any relevant Lots for the purposes of (where relevant), and to promptly procure such access to sub-meters that are located on the Scheme or those relevant Lots to allow:
 - i) reading, testing, maintaining, inspecting or altering any metering installation; and
 - ii) calculating or measuring Water supplied; and
 - iii) checking the accuracy of metered consumption at the Scheme/Lot; and
 - iv) replacing sub-meters.
- b) We will use our best endeavours to ensure that a sub-meter reading is carried out monthly.

- c) If we or our representatives seek access to the Scheme under paragraph (a), we will:
 - i) comply with all necessary requirements notified by your committee; and
 - ii) carry or wear official identification; and
 - iii) show such identification, if requested.

11. Wrongful and illegal use of water

You must not, and must take reasonable steps to ensure others do not:

- a) illegally use Water supplied to Scheme; or
- b) interfere or allow interference with any metering equipment that is at the Scheme except as may be permitted by law; or
- c) use the Water supplied to the Scheme or any metering equipment in a manner that:
 - i) unreasonably interferes with the connection or supply of Water to another customer; or
 - ii) causes damage or interference to any third party; or
- d) allow Water purchased from the Water Service Supplier to be used otherwise than in accordance with this agreement or
- e) tamper with, or permit tampering with, any sub-meters or associated equipment.

12. Dispute resolution

If a dispute arises between the parties, the complainant must not commence any court or arbitration proceedings, except where that party seeks urgent interlocutory relief, unless it has first complied with this clause:

- a) Notification
The complainant must inform the respondent in writing of the following:
 - i) The nature of the dispute;
 - ii) The outcome the complainant desires, and
 - iii) The action the complainant believes will settle the dispute.
- b) Endeavour to resolve dispute
On receipt of the complaint by the respondent, both parties will make every effort to resolve the dispute by mutual negotiation within 14 business days.
- c) Mediation
Any unresolved dispute or difference whatsoever arising out of or in connection with this agreement shall be submitted to mediation under the Mediation Rules of the Resolution Institute.
- d) Survival of this clause
This clause survives termination of this agreement.

13. Termination

- a) Subject to compliance with the Act, you may terminate this Agreement by giving three (3) months' notice in writing.
- b) Rights and obligations accrued before the end of this Agreement will continue despite the end of the Agreement, including any obligations to pay amounts owed to us.
- c) We will handover to you or an authorised party the relevant administration reports/documents, to enable a smooth transition from us to any new party, if applicable.

14. Indemnities

- a) We will not be responsible for loss or damage to you unless such loss or damage is caused by the wilful or negligent act of ours.
- b) You will indemnify us and hold us indemnified against any claims that are not caused by the wilful or negligent acts of us.
- c) We will not be liable to you for any loss or damage suffered due to a failure by us to perform any of the services contemplated under this Agreement because your acts prevent us from doing so.

15. Notices

- a) A notice or other communication to a party must be in writing and delivered to that party or that party's practitioner in one of the following ways:
 - i) Delivered personally; or
 - ii) Posted to their address when it will be treated as having been received on the second business day after posting; or
 - iii) Faxed to their facsimile number when it will be treated as received when it is transmitted; or
 - iv) Sent by email to their email address, when it will be treated as received when it enters the recipient's information system.

16. Confidentiality

- a) The parties must keep the terms of this Agreement, and any information disclosed in the course of the Agreement, confidential, save for any necessary disclosure to their legal and financial advisers, or otherwise as required by law.

17. Force Majeure

- a) **Effect of force majeure event**
If we cannot meet an obligation under this agreement because of an event outside our control ('a force majeure event'):

- i) the obligation, other than an obligation to pay money, is suspended to the extent it is affected by the force majeure event for as long as the force majeure event continues; and
- ii) We must use our reasonable endeavours to give You prompt notice of that fact including full particulars of the event, an estimate of its likely duration, the extent to which Our obligations are affected and the steps being taken to remove, overcome or minimise those effects.

b) Deemed prompt notice

If the effects of a force majeure event are widespread, we will be deemed to have given you prompt notice if we make the necessary information available by way of an electronic communication service within 30 minutes of being advised of the event or otherwise as soon as practicable.

c) Obligation to overcome or minimise effect of force majeure event

A party that claims a force majeure event must use its reasonable endeavours to remove, overcome or minimise the effects of that event as soon as practicable.

18. APPLICABLE LAW

This agreement is governed by the laws of New South Wales, and the parties submit to the non-exclusive jurisdiction of the courts of that state.

19. GENERAL

a) Relationship

This document does not create a relationship of employment, agency or partnership between the parties or confer on a party the right to pledge the credit of, or otherwise purport to enter into any obligation on behalf of, the other party.

b) Amending this agreement

Subject to compliance with the Act, this Agreement may only be varied in writing signed by both parties.

c) Severance of ineffective clauses

The parties to this agreement agree and acknowledge that each of the clauses are separate, severable and enforceable and in the event that any of the restrictions, terms, conditions, covenants, warranties or other provisions hereof are declared to be void or ineffective, in whole or part, for whatsoever reason, that part must be severed and the remainder must apply with such modification as may be necessary to make them valid and effective.

d) Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same Agreement.

e) Non-waiver

Any failure by Us to enforce or insist upon strict observance of any provision of this agreement by You will not constitute or be construed as a waiver of any breach of this agreement.

f) Further assurance

Each party must execute all documents and perform all actions necessary to give full effect to this document, whether before or after performance of this document.

g) Costs

Each party must pay its own costs in relation to negotiating, preparing and entering this Agreement.

h) Assignment

This Agreement may only be assigned in compliance with the Act.

i) Authority

Each party warrants and represents that it has obtained all necessary consents and approvals to bind itself to this Agreement as a party.

SCHEDULE 1

SCHEDULE OF FEES FOR BODY CORPORATE

Item	Basis	Fee incl. GST
Ad-Hoc Check Read Submitted by Digital Photo	You may supply an unedited, digital photo (incl. meta-data) at no charge.	No Charge
Ad-Hoc or Check Meter Read Fee	This fee may apply if you request for a check meter reading to be taken for the master meter due to concerns regarding your bill. If no errors are found to have been made this fee will appear on your next bill. If an error has been made, this fee will not apply.	\$44.00

SERVICE CHARGES

As quoted for your tailored Fair Water Bills service.

SCHEDULE OF FEES & CHARGES FOR LOT OWNERS

Item	Basis	Fee incl. GST
Credit Card Surcharge	Charged by payment house.	Charged by payment house.
Option to receive printed invoice by mail.	Applies if you opt to have your invoice printed and sent via mail.	\$3.00 per invoice.
Late Payment Fee	May apply if your bill is not paid by the due date.	\$16.50
Payment Repair or Reversal Fee	Per payment.	Charged by payment house. \$10.00
Debt Collection Fee	Added to your account upon referral for debt collection.	Charged by agent. (18% of referred amount)
Dishonoured Payment Fee	A fee may be applied to your account by the nominated payment house if your payment is dishonoured.	Charged by payment house. \$35.00
Ad-Hoc Read Submitted by Photo for Move-In/Move-Out	You may supply an unedited, digital photo for move-in/move-out at no charge.	No Charge
Ad-Hoc or Check Meter Read Fee	This fee may apply if you request for a check meter reading to be taken for your sub-meter due to concerns regarding your bill. If no errors are found to have been made this fee will appear on your next bill. If an error has been made, this fee will not apply.	\$44.00

We will account for any transactional taxes, such as GST.

Fees will be subject to an annual increase in accordance with CPI to be capped at 4%.