**Body Corporate Volumetric Charges Deed**

between

**Northern SEQ Distributor-Retailer Authority trading as Unitywater**

ABN 89 791 717 472

(**Unitywater**)

and

**The Customer** **described in Item 1 of the Schedule**

[insert customer]

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Schedule 9

**This Deed** is made on 2014

|  |  |
| --- | --- |
| between | **Northern SEQ Distributor-Retailer Authority trading as Unitywater** ABN 89 791 717 472 of Ground Floor, 33 King Street, Caboolture in the State of Queensland (**Unitywater**) |
| and | **The Customer in Item 1 of the Schedule (Customer)** |

**Recitals**

1. The Customer is the Body Corporate for the Community Titles Scheme.
2. Unitywater is the supplier of water services to the Lots and Common Property.
3. The Customer and Unitywater have agreed that the Customer shall be liable for Volumetric Charges on behalf of the Owners or occupiers of the Lots pursuant to section 196(4) of the *Body Corporate Act*.
4. Unitywater shall separately levy Fixed Charges to the Owners of the Lots.

**Now it is agreed** as follows:

# Definitions and interpretation

## Definitions

In this Deed:

**Body Corporate Act** means the *Body Corporate and Community Management Act 1997* (Qld).

**Business Day** means a day other than a Saturday, Sunday or public holiday in Queensland.

**Claim** means any claim for or entitlement to costs, expenses, damages, liabilities or other amounts of whatever nature whether under the contract, equity or otherwise at law.

**Code** means the Customer Water and Wastewater Code made under section 93 of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (Qld).

**Commencement Date** means the date set out in Item 2 of the Schedule.

**Common Property** means land other than a Lot in the Community Titles Scheme.

**Community Management Statement** means the community management statement for the Community Titles Scheme annexed to this Deed.

**Community Titles Scheme** means the community titles scheme described in Item 1 of the Schedule.

**Contribution Schedule**, for a Lot, means the number allocated to the Lot in the Community Management Statement.

**Fixed Charges** means fixed charges, including water access charges and sewerage access charges.

**Land** means land which is scheme land for the Community Titles Scheme and includes each Lot and the Common Property and any building situated on the Land.

**Lot** means a lot in the Community Titles Scheme.

**Owner** means the registered owner of a Lot.

**Otherwise at law** means in the context of a Claim, a claim in any legal jurisdiction, including but not limited to a claim in tort, under statute, for a quantum meruit, for restitution based on unjust enrichment, for rectification or frustration or for any other legal or equitable remedy.

**Schedule** means the schedule to this Deed.

**Security Deposit** means a security deposit of money in an amount required by Unitywater (which must not exceed any maximum set under the Code).

**Unitywater Notice** means a notice issued by Unitywater to the Customer for Unitywater Services supplied to the Land.

## Unitywater Services means any and all services provided by Unitywater, including but not limited to the supply of water (including bulk water and recycled water), sewerage usage charge, trade waste service and related water supply and sewage services.

**Volumetric Charges** means usage charges, including state government bulk water charges, water usage charges and sewerage usage charges.

## Interpretation

In this Deed, unless the context otherwise requires:

### a reference to:

#### one gender includes the others;

#### the singular includes the plural and the plural includes the singular;

#### a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this Deed and references to this Deed include any recital, schedule or annexure;

#### any contract (including this Deed) or other instrument (excluding the Community Management Statement) includes any variation or replacement of it and as it may be assigned or novated;

#### a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

#### a person or entity includes an individual, the estate of an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;

#### a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;

#### a group of persons is a reference to any two or more of them taken together and to each of them individually;

#### an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;

#### a reference to a day or a month means a calendar day or calendar month;

### the meaning of any general language is not restricted by any accompanying example, and the words ‘includes’, ‘including’, ‘such as’, ‘for example’ or similar words are not words of limitation;

### headings and the table of contents are for convenience only and do not form part of this Deed or affect its interpretation;

### where there are two or more persons in a party each are bound jointly and severally; and

### a provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Deed or the inclusion of the provision in this Deed.

# Customer's obligations

## Customer's liability for Owners

The Customer agrees that on and from the Commencement Date, the Customer shall be liable for all Volumetric Charges supplied or provided to the:

### Owners; or

### Land.

## Charges not to be imposed on Owners

During the term of this Deed, Unitywater shall not separately levy Volumetric Charges to the Owners or occupiers of the Lots.

## Charges to be levied on Customer

Unitywater may levy Volumetric Charges to the Customer for:

### the Common Property; and

### each Lot.

## Charges to be levied to Owners

During the term of this Deed, Unitywater shall separately levy Fixed Charges to the Owners of the Lots.

## Payment of charges

On and from the Commencement Date, the Customer shall pay all Volumetric Charges levied on the Customer in accordance with the relevant Unitywater Notice.

## Overdue charges become a debt due

Any Volumetric Charges levied on the Customer which are not paid by the due date set out in the relevant Unitywater Notice shall immediately become a debt due and owing by the Customer to Unitywater.

## Payment of Security Deposit

The Customer must pay to Unitywater a Security Deposit (if required by Unitywater) in accordance with the Code.

## Use of Security Deposit

Unitywater may apply a Security Deposit and any accrued interest against an amount owing to Unitywater (including any reasonable associated costs) if:

### the Customer has failed to pay a Unitywater Notice by the relevant due date; and

### Unitywater has sought to recover the outstanding charges in accordance with the Code.

### Unitywater is not required to bring recovery proceedings before being entitled to use a Security Deposit.

## Reinstatement of Security Deposit

If all or part of the Security Deposit is used by Unitywater, the Customer must reinstate the Security Deposit or such part of the Security Deposit used by Unitywater, within 20 Business Days from receiving of a written request from Unitywater to do so.

# Termination

## Termination of Deed for default

If:

### the Customer fails to pay the Volumetric Charges within 60 calendar days from the due date for payment provided in the relevant Unitywater Notice; or

### the Customer:

#### is otherwise in default under the terms of this Deed; and

#### fails to remedy its default within 5 Business Days from receiving a notice by Unitywater to do so,

Unitywater may terminate this Deed on 5 Business Days written notice to the Customer.

## Unitywater Recovery Options

If Unitywater terminates this Deed (including under clause 3.1) Unitywater may:

### levy the Owners for any outstanding Volumetric Charges (including interest), proportionately to the Contribution Schedule;

### bring proceedings against the Customer for the recovery of any outstanding Volumetric Charges (including interest); and

### levy the Owners for any subsequent Volumetric Charges.

## Changes to the Contribution Schedule

The Customer:

### must inform Unitywater of any and all changes to the Contribution Schedule; and

### agrees that Unitywater may rely on the Contribution Schedule in recovering amounts for any Volumetric Charges or Fixed Charges from an Owner or occupier under this Deed.

# Right of Automatic Extension

### Subject to clause 4(b), this Deed will be extended automatically on 1 July each year for a further term of 12 months on the same terms and conditions.

### Unitywater may notify the Customer that it does not wish to extend the term of the Deed by giving notice to the Customer by no later than 31 May of the relevant year.

### If Unitywater gives the Customer a notice under clause 4(b), this Deed will be deemed to come to an end on 30 June after the notice is given.

# Warranty and Indemnity

### The Customer, and each person signing this Deed on behalf of the Customer, warrants to Unitywater that at the date of execution they have the full authority to execute and bind the Customer to this Deed.

### The Customer will indemnify and hold Unitywater harmless from and against any Claim arising out of or in connection with:

#### any act or omission by the Customer on or in relation of the Land;

#### any Claims by any person having an estate or interest in the Land which is affected by Unitywater's actions under this Deed; and

#### a breach by the Customer to comply with any term of this Deed (including to pay an amount under a Unitywater Notice).

### The Customer's obligation to indemnify Unitywater under clause 5(b) shall be reduced proportionately to the extent that Unitywater's unlawful or negligent acts or omissions contributed to the Claim.

### This clause 5 survives the termination of this Deed

# General

## No representation or reliance

### Each party acknowledges that the other party (or any person acting on a party's behalf) has not made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.

### Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of the other party, except for representations or inducements expressly set out in this Deed.

## Severance

If at any time a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

### the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or

### the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed.

## Applicable Law

### This Deed is governed by and must be construed according to the law applying in Queensland.

### Each party submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed.

## Other instruments

Subject to the other covenants of this Deed, the rights and obligations of the Customer and Unitywater pursuant to this Deed are in addition to and not in derogation of any other right or obligation between them under any other deed or agreement to which they are parties or under which they are entitled to benefit.

## Waiver

### If either party fails or delays the exercise or enforcement of a right, power or remedy provided by law or under this Deed, this will not prevent the party from exercising or enforcing that or any other right, power or remedy provided by law or under this Deed.

### A waiver or consent given by a party under this Deed is only effective and binding on that party if the party confirms it in writing.

### No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

## Variations

This Deed may only be varied in writing by a document signed by the parties. It will be sufficient evidence of any agreement to vary a schedule to this Deed if the parties execute and date a document purporting to be a substitute schedule.

## Further Assurances

Each party must do everything reasonably necessary to give effect to this Deed.

## Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Deed:

### must be in writing;

### must be addressed as follows:

**Unitywater:**

See Item 3 of the Schedule.

**Customer:**

See Item 3 of the Schedule.

### must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;

### must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 6.8(b); and

### is taken to be received by the addressee:

#### in the case of prepaid post sent to an address: on the third day after the date of posting;

#### in the case of fax: at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and

#### (in the case of delivery by hand: on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5pm, it is taken to be received at 9am on the next Business Day.

## Counterparts

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Deed, and together constitute one Deed.

## Payment of costs

The Customer must pay all costs, charges and expenses (including those of Unitywater) of and incidental to the negotiation, preparation, execution, completion, registration and stamping of this Deed, all counterparts of it, and any other agreement required by this Deed.

Schedule

1. Customer details

|  |  |
| --- | --- |
| Community Titles Scheme | [INSERT] |
| ABN of Body Corporate of Community Titles Scheme | [INSERT] |
| Address of Premises | [INSERT] |
| Description of Premises (include number of Units) | [INSERT] |

1. Commencement Date

[INSERT]

1. Notices
	1. Unitywater Notices

|  |  |
| --- | --- |
| Address: | PO Box 953, Caboolture QLD 4510 |
| Fax: | 07 5431 8288 |
| For the attention of: | Metering Services |

* 1. Customer Notices

|  |  |
| --- | --- |
| Address: | [INSERT] |
| Fax: | [INSERT] |
| For the attention of: | [INSERT] |

Annexure

[Attach Community Management Statement]

**Executed** as a Deed

|  |  |  |
| --- | --- | --- |
| **SIGNED, SEALED AND DELIVERED** by **NORTHERN SEQ DISTRIBUTOR-RETAILER AUTHORITY** trading as Unitywater ABN 89 791 717 472 this day of 2020 by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of Delegated Officer \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Position held by Delegated OfficerIn the presence of:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of witness | )))))))))))))))))))) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of Delegated Officer\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of witness |

|  |  |  |
| --- | --- | --- |
| **SIGNED SEALED AND DELIVERED** by the authority of the **Customer in Item 1 of the Schedule** under seal in the presence of:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of signatory\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of signatory \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Position held  | ))))))))))))))) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of signatory\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of signatory \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Position held  |