



Southern SEQ Distributor-Retailer Authority Participation Agreement

Gold Coast City Council

Logan City Council

Redland City Council

Southern SEQ Distributor-Retailer Authority (trading as Allconnex Water)

Contents

1.	Definitions and Interpretations	2
2.	Enforcement and Effect	4
3.	Business Objectives	5
4.	Participants and Participation Rights	5
5.	Internal Management.....	6
6.	Business Planning	10
7.	Reporting to Participants	12
8.	Decision Making	15
9.	Reserve Powers of Participating Local Governments	15
10.	Profit Distribution	15
11.	Tax Equivalents Regime.....	16
12.	Obligations of Participants	16
13.	Notices	17
14.	Tabling of agreement and amendments	18
Schedule 1	Participants	19
Schedule 2	Participants' Decisions Table	20

Participation Agreement dated 25th JUNE 2010

Parties

Gold Coast City Council of:

135 Bundall Road

Bundall Queensland 4217

Logan City Council of:

150 Wembley Road

Logan Central Queensland 4114

Redland City Council of:

Cnr Bloomfield and Middle Streets

Cleveland Queensland 4163

Southern SEQ Distributor-Retailer Authority (trading as Allconnex Water) of:

58-60 Manila Street

Beenleigh Queensland 4207

Background

- A. Southern SEQ Distributor-Retailer Authority was established under the South-East Queensland Water (Distribution and Retail Restructuring) Act 2009 (**Distribution and Retail Restructuring Act**).
- B. Section 20 of the Distribution and Retail Restructuring Act requires the parties to enter into a participation agreement.
- C. Pursuant to section 23 of the Distribution and Retail Restructuring Act, the Minister, has made this agreement as the Participation Agreement of the Southern SEQ Distributor-Retailer Authority.

Operative Provisions

1. Definitions and Interpretations

1.1 Definitions

In this agreement:

Authority means the Southern SEQ Distributor-Retailer Authority established under the Distribution and Retail Restructuring Act.

Board means the Board Members of the Authority from time to time.

Board Member means a person who is, for the time being, a member of the Board of the Authority.

Business Day means a day except a Saturday, Sunday or public holiday in the state of Queensland.

Controlled Entity means an entity which a Participant or a Participating Local Government (as the case may be) has the capacity to determine the outcome of decisions about such entity's financial and operating policies.

Corporations Act means the Corporations Act 2001 (Commonwealth).

Distribution and Retail Restructuring Act means the South-East Queensland Water (Distribution and Retail Restructuring) Act 2009.

Dividend Policy means the policy adopted by the Board in accordance with Clause 10.1(b)(iii).

Expert means Rowena McNally or if she is unwilling or unable to act, a replacement determined by the Chair of the Queensland Chapter of the Institute of Arbitrators & Mediators.

Financial Benefit includes:

- (a) giving or providing finance or property;
- (b) buying an asset or selling an asset;
- (c) taking a lease or granting a lease;
- (d) supplying services or receiving services;
- (e) issuing Participation Rights or rights to Participation Rights; and
- (f) taking up or releasing an obligation.

Legal Costs of a person means legal costs incurred by that person in defending or resisting any proceedings (whether criminal, civil, administrative, judicial actual or threatened), appearing before or responding to actions taken by any court, tribunal, government authority or agency, other body or commission, a liquidator, an administrator, a trustee in bankruptcy or other authorised official, where that proceeding, appearance or response relates to a Liability of that person.

Liability of a person means any liability to any person including negligence (except a liability for Legal Costs) incurred by that person in or arising out of the discharge of duties as a Board Member of the Authority or in or arising out of the conduct of the business of the Authority,

including as result of appointment or nomination by the Authority as a trustee or as a Board Member, of another body corporate.

Minister means the Minister administering the Distribution and Retail Restructuring Act.

Notice means a notice given pursuant to, or for the purposes of, this agreement.

Participant has the meaning given in Clause 4.1.

Participating Local Government means each of Gold Coast City Council, Redland City Council and Logan City Council.

Participation Return for a Participant means the share of profits of the Authority to be distributed to the Participant as determined in accordance with Clause 10.

Participation Right has the meaning given in Clause 4.2(a).

Related Party of the Authority means:

- (a) a Participant;
- (b) Board Members;
- (c) Wholly owned Entity of a Participant;
- (d) a Participating Local Government;
- (e) a Controlled Entity of a Participant or a Participating Local Government;
- (f) Councillors and Senior Executives of a Participating Local Government or a Participant; and
- (g) spouses, defacto spouses, parents and children of Board Members, Councillors or Senior Executives of the Participating Local Governments and Participants.

Required Majority means at least two (2) of the three (3) Participants who together hold more than 50% of the total Participation Rights and who each pass a resolution at a meeting of their respective councils agreeing to the matter.

Rotation Date means 1 July 2012 and 1 July in each year from and including 2013.

Senior Executive of an entity means:

- (a) the chief executive officer; or
- (b) the holder of an office in the entity that reports directly to the entity's chief executive officer and that is commensurate with an office held by a senior executive under the Public Service Act 2008.

Term means the period for which a Board Member holds office in accordance with Clause 5.6.

Wastewater Service has the meaning given to that term in the Distribution and Retail Restructuring Act.

Water Service has the meaning given to that term in the Distribution and Retail Restructuring Act.

Wholly owned Entity in relation to a Participant means a body corporate whose only members are the relevant Participant or a nominee of the relevant Participant.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. Unless the context indicates a contrary intention, in this agreement:

- (a) a word importing the singular includes the plural (and vice versa);
- (b) a word indicating a gender includes every other gender;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) the word "includes" in any form is not a word of limitation;
- (e) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (f) a reference to a party includes that party's executors, administrators, successors and permitted assigns;
- (g) a reference to something being "written" or "in writing" includes that thing being represented or reproduced in any mode in a visible form;
- (h) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements; and
- (i) unless otherwise defined, a word or phrase used in this agreement which is defined in the Distribution and Retail Restructuring Act will have the same meaning as set out in that Act.

2. Enforcement and Effect

2.1 Enforcement

- (a) Each Participant submits to the non-exclusive jurisdiction of the courts of Queensland, the Federal Court of Australia 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 agreement.
- (b) If at any time any provision of this agreement is or becomes illegal, invalid or unenforceable in any respect pursuant to the law of any jurisdiction, then that does not affect or impair:
 - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this agreement; or
 - (ii) the legality, validity or enforceability pursuant to the law of any other jurisdiction of that or any other provision of this agreement.

2.2 Takes Effect

In accordance with section 24 of the Distribution and Restructuring Act, this agreement takes effect on the day the Minister gives the parties to this agreement a notice that the Minister has approved it.

2.3 Act to prevail

If a provision of this agreement is inconsistent with a provision of the Distribution and Retail Restructuring Act, the provisions of the Distribution and Retail Restructuring Act prevail to the extent of the inconsistency.

3. Business Objectives

The Authority must carry out its functions for its geographic area as required under section 11 of the Distribution and Retail Restructuring Act in a way that is consistent with the following objectives:

- (a) to be a best practice water industry leader;
- (b) to operate using the principles of excellence in governance, economy, environment, social responsibility and public health;
- (c) to provide the Water and Wastewater Services required to support the communities (including growth) of the participating local governments;
- (d) to deliver optimal returns on investment to the Participants;
- (e) to provide excellence in customer service;
- (f) to be an employer of choice; and
- (g) to proactively contribute to developments in the water industry.

4. Participants and Participation Rights

4.1 Participants

The Participants are those entities listed in Schedule 1.

4.2 Participation Rights

- (a) Participation Rights for a Participant means the entitlement to participate in the profits of the Authority.
- (b) As soon as practicable after the date of this agreement, the Expert will determine the Participation Rights of each Participant. The decision of the Expert will be conclusive and binding on all Participants.
- (c) Subject to the prior agreement of all Participants, a Participant may make a monetary or in-kind contribution to the Authority and the Participation Rights of the Participants determined in accordance with Clause 4.2(b) shall be adjusted as agreed by the Participants.
- (d) The Board agrees to do all things necessary, including signing a deed of variation to the Participation Agreement, to effect an adjustment to the Participation Rights agreed between the Participants in accordance with Clause 4.2(c).

4.3 Transfer of Participation Rights

- (a) Subject to Clause 4.4, a Participant may transfer, by written agreement, Participation Rights of the Participant:
 - (i) to a Wholly owned Entity of that Participant; or

- (ii) to another Participant (**transferee**).
- (b) The agreement to transfer the Participation Rights must be executed by the transferee and delivered to the Authority together with any other evidence that the Board may require to prove the transfer by the parties.

4.4 Ministerial Approval

Any change in Participants or the other matters listed in section 29(3) of the Distribution and Retail Restructuring Act shall be of no effect unless the Minister has:

- (a) been given a copy of the proposed change; and
- (b) by notice to the Authority approved the change.

4.5 Appointment as Agent to execute amendment

By signing this agreement, each party irrevocably appoints and authorises any Board Member to execute and deliver on behalf of the relevant party and as the agent of the relevant party any agreement to amend a Participant's Participation Rights as a consequence of an adjustment or transfer made in accordance with Clause 4.2 or Clause 4.3.

5. Internal Management

5.1 Composition of the Board

The Board is to consist of five non-executive Board Members, including a chairperson.

5.2 Appointment of Board Members

- (a) Subject to the Distribution and Retail Restructuring Act including without limitation section 33(3) of the Distribution and Retail Restructuring Act, a Board Member shall be appointed by the Required Majority.
- (b) A person must give the Authority a signed consent to act as a Board Member of the Authority and agreement to be bound by this agreement before being appointed as a Board Member.

5.3 Chairperson of the Board

- (a) Subject to section 35(3) of the Distribution and Retail Restructuring Act, the chairperson of the Board shall be appointed by the Required Majority.
- (b) The chairperson shall be appointed for the term set out in the appointment by the Participants referred to in Clause 5.6. The chairperson may be removed from the position as chairperson by the Required Majority.

5.4 Retirement of Board Members

- (a) On each Rotation Date, a Board Member who has completed his/her Term must retire from office as a Board Member.
- (b) Subject to the Distribution and Retail Restructuring Act, a Board Member who retires on any Rotation Date is eligible for reappointment as a Board Member with effect from that Rotation Date.

5.5 Removal of Board Members

A Board Member may be removed by the Required Majority.

5.6 Term of Office

- (a) Subject to Clauses 5.6(b) and 5.6(c), each Board Member will hold office as a Board Member for the period commencing on the date of their appointment and ending on the Rotation Date which is closest to 3 years from the date of their appointment.
- (b) The first Board Members to be appointed under this agreement (**First Board Member**) will hold office for the following periods:
 - (i) two Board Members will hold office as Board Members for a 2 year period, as specified in their letter of appointment; and
 - (ii) the chairperson and two further Board Members will hold office as chairperson and Board Members for a 3 year period, as specified in their letter of appointment.
- (c) If any Board Member ceases to be a Board Member other than by retirement on completion of their Term (**Ceasing Board Member**), the Board Member appointed by the Participants to replace the Ceasing Board Member will hold office for the remainder of the Ceasing Board Member's Term.

5.7 Termination of office

A person ceases to be a Board Member if the person:

- (a) fails to attend Board meetings for a continuous period of 3 months without the consent of the Board;
- (b) resigns by notice in writing to the Authority;
- (c) is removed from office in accordance with Clause 5.5;
- (d) becomes of unsound mind or a person whose property is liable to be dealt with pursuant to a law about mental health;
- (e) becomes ineligible for appointment under section 33 of the Distribution and Retail Restructuring Act; or
- (f) is disqualified from managing a corporation, pursuant to the Corporations Act.

5.8 Remuneration and benefits of Board Members

The Board may pay or provide to Board Members:

- (a) fees for service as a non-executive director and an additional fee for serving as a member of a Board committee of an aggregate amount or value approved by the Required Majority; and
- (b) any reasonable travelling, accommodation and other expenses that a Board Member properly incurs in attending Board meetings and performing the duties of a Board Member, in accordance with the relevant Board policy (if any).

5.9 Board Performance Review

The Board is to institute a performance review system for the Board and Board Members. An independent third party is to be engaged by the Board to undertake this process. The first review is to be conducted before the end of July 2011. Thereafter, it is to be conducted biennially. The Chair is to present the key outcomes from the review to all Participants.

5.10 Indemnity and insurance

- (a) To the extent permitted by law, the Authority will indemnify each Board Member against a Liability of that person and the Legal Costs of that person.
- (b) The indemnity pursuant to Clause 5.10(a):
 - (i) is enforceable without the Board Member having first to incur any expense or make any payment; and
 - (ii) is a continuing obligation and is enforceable by the Board Member even though the Board Member may have ceased to be a Board Member of the Authority.
- (c) To the extent permitted by law, the Authority may:
 - (i) enter into, or agree to enter into; or
 - (ii) pay, or agree to pay, a premium for,

a contract insuring a Board Member against a Liability of that person and the Legal Costs of that person provided that such contract does not insure a Board Member against a Liability arising out of conduct involving a wilful breach of duty in relation to the Authority.
- (d) To the extent permitted by law, the Authority may enter into an agreement or deed with a Board Member, pursuant to which the Authority must do all or any of the following:
 - (i) keep books of the Authority and allow either or both that person and that person's advisers access to those books on the terms agreed;
 - (ii) indemnify that person against any Liability and Legal Costs of that person;
 - (iii) make a payment (whether by way of advance, loan or otherwise) to that person in respect of Legal Costs of that person; and
 - (iv) keep that person insured in respect of any act or omission by that person while a Board Member of the Authority, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

5.11 Notice of Board meetings

- (a) Notice of a Board meeting must be given to each Board Member (except a Board Member on leave of absence approved by the Board). Notice of a Board meeting may be given in person, or by post or by telephone, fax or other electronic means.
- (b) A Board Member may waive notice of a Board meeting by giving notice to that effect to the Authority in person or by post or by telephone, fax or other electronic means.

- (c) A person who attends a Board meeting waives any objection that person may have to a failure to give notice of the meeting.
- (d) Anything done (including the passing of a resolution) at a Board meeting is not invalid because either or both a person does not receive notice of the meeting or the Authority accidentally does not give notice of the meeting to a person.

5.12 Quorum of the Board

- (a) Until otherwise determined by the Board, a quorum for a Board meeting is four (4) Board Members.
- (b) A quorum for a Board meeting must be present at all times during the meeting.
- (c) Subject to sections 40 and 42 of the Distribution and Retail Restructuring Act, each Member present is counted towards a quorum as a Board Member.

5.13 Valid proceedings

An act at any Board meeting or a committee of the Board or an act of any person acting as a Board Member is not invalidated by:

- (a) a defect in the appointment or continuance in office of a person as a Board Member, a member of the committee or of the person so acting, or
- (b) a person so appointed being disqualified or not being entitled to vote,

if that circumstance was not known by the Board, committee or person (as the case may be) when the act was done.

5.14 Prohibition on Financial Benefits to Related Parties

The Authority must not give a Financial Benefit to a Related Party of the Authority unless:

- (a) all the Participants approve in writing of the giving of the Financial Benefit;
- (b) the giving of the Financial Benefit is on terms no more favourable to the Related Party of the Authority than would be reasonable in the circumstances if the Authority and the Related Party were dealing at arm's length;
- (c) the giving of the Financial Benefit is a payment to a Board Member under Clause 5.8;
- (d) the giving of the Financial Benefit is an indemnity, payment in respect of Legal Costs or insurance premium payable by the Authority in accordance with Clause 5.10; or
- (e) the Financial Benefit is given to the Related Party of the Authority in their capacity as a Participant and the giving of the benefit does not discriminate unfairly against the other Participants.

5.15 Governance Policies and Procedures

The Board may, from time to time, make, modify, amend or revoke policies and procedures to effectively govern the Authority, either of general application or for a particular case, provided such policies and procedures are consistent with the Distribution and Retail Restructuring Act and this agreement.

6. Business Planning

6.1 Five Year Forward Plan

- (a) The Authority must prepare a plan about the future direction, goals and priorities of the Authority covering a five year period (**Five Year Forward Plan**). The initial Five Year Forward Plan must be prepared within 6 months of the date this agreement takes effect.
- (b) The Authority must:
 - (i) consult with the Participants in formulating and reviewing the Five Year Forward Plan;
 - (ii) review the Five Year Forward Plan annually and update the Five Year Forward Plan so that the Five Year Forward Plan, at all times, covers a five year period; and
 - (iii) provide the Participants with an updated copy of the Five Year Forward Plan no later than 15 May in each year.
- (c) The Five Year Forward Plan must include:
 - (i) strategic goals, key performance indicators and principles;
 - (ii) the five year forecast of capital and operational expenditure;
 - (iii) the annual performance plan for the next financial year, including an aggregate amount for remuneration of the Board; and
 - (iv) all information necessary to satisfy the long term planning requirements detailed in relevant applicable legislation.
- (d) Without limiting Clause 6.1(c), the Five Year Forward Plan must also include details of:
 - (i) Objectives and Strategies of the Authority including:
 - A. Core Business;
 - B. Corporate Objectives;
 - C. Operational Objectives;
 - D. Strategies;
 - E. Performance Drivers;
 - F. Performance Outcomes;
 - (ii) Targets and plans including:
 - A. Financial Targets including EBIT, net profit after tax, return on assets, Participation Return payout ratio, debt to equity ratio, debt to fixed asset ratio and EBITDA;
 - B. Non-Financial Performance Targets including customer service targets and service levels;

- C. Assumptions;
 - D. Risks and Risk Mitigation Strategies; and
 - E. Employment and Industrial Relations Plans;
- (iii) Financial statements including profit and loss statement, balance sheet, statement of cash flows;
 - (iv) Assets;
 - (v) Capital Expenditure Program including forward capital expenditure and details of major infrastructure investments;
 - (vi) Other Undertakings; and
 - (vii) the Participation Rights on issue.

6.2 Resource Management

- (a) The Authority must establish the following for efficiently, effectively and economically managing the financial resources of the Authority:
 - (i) a revenue management system;
 - (ii) an expense management system;
 - (iii) an asset management system;
 - (iv) a cash management system;
 - (v) a liability management system;
 - (vi) a contingency management system;
 - (vii) a financial information management system; and
 - (viii) a risk management system (**Systems**).
- (b) In establishing these Systems, the Authority must consider and adopt to the extent the Board considers appropriate, any government policies applicable to statutory bodies.
- (c) The Authority must regularly review the Systems to ensure the Systems remain appropriate for managing the financial resources of the Authority.
- (d) The Authority must prepare and maintain a financial management practice manual (**Financial Management Practice Manual**) for use in the financial management of the Authority.
- (e) The Financial Management Practice Manual:
 - (i) must be in accordance with the policies and procedures used by the Authority to manage its financial resources under the systems established under (a) above;
 - (ii) may be in the form of separate policies, guidelines and other relevant material in hard copy or electronic format; and

- (iii) may be in the form of processes that are built electronically into the systems and must be followed by the Authority.

7. Reporting to Participants

7.1 Provision of information to Participants

- (a) The Authority will provide Participants and each Participating Local Government with the following:
 - (i) a copy of the audited accounts of the Authority for each financial year;
 - (ii) a quarterly report within one month after the end of each of the first three quarters of each financial year or such longer period as may be agreed by all the Participants;
 - (iii) an annual report within four months of the end of each financial year or such longer period as may be agreed by all the Participants; and
 - (iv) by 15 May in each financial year:
 - A. an estimate of the aggregate amount of the Participation Returns from the current financial year to be distributed in the next financial year; and
 - B. an estimate of the Authority's net profit for the next financial year.
- (b) In this Clause:
 - net profit** means the Authority's total profit for the financial year after:
 - (i) providing for income tax or its equivalent; and
 - (ii) excluding any unrealised capital gains from upwards revaluation of non-current assets.
 - profit** has the meaning given by the accounting standards that apply to the Authority under the Financial Accountability Act 2009.
- (c) The quarterly report and annual report must contain sufficient information to enable the Participants to make an informed assessment of:
 - (i) the operations of the Authority and its subsidiary entities (if any); and
 - (ii) the financial performance and position of the Authority and its subsidiary entities (if any), including information about:
 - A. profits and losses, and
 - B. assets and liabilities;
 - C. the prospects of the Authority and its subsidiary entities (if any); and
 - (iii) non-compliance issues.
- (d) The annual report must also contain:

- (i) a comparison of the Authority's performance against:
 - A. the functions of the Authority set out in the Distribution and Retail Restructuring Act,
 - B. the objectives specified in Clause 3.1, and
 - C. the key performance indicators contained in the Authority's Five Year Forward Plan;
 - (ii) particulars of the impact of any changes to the Five Year Forward Plan, caused by directions from Participants, in accordance with Clause 9, on:
 - A. the financial position of the Authority and its subsidiary entities (if any); and
 - B. the profits and losses of the Authority and its subsidiary entities (if any); and
 - C. the prospects of the Authority and its subsidiary entities;
 - (iii) the Authority's Dividend Policy;
 - (iv) particulars of any changes made to the Five Year Forward Plan during the financial year;
 - (v) a statement by the Board about whether or not the Board believe the Authority will be able to pay its debts when they become due; and
 - (vi) certification by the Board that the annual report:
 - A. complies with the relevant prescribed requirements (including any prescribed accounting standards) of the Financial Accountability Act 2009 and the Financial Management and Performance Standard 2009; and
 - B. has been prepared having regard to the requirements set out in the Financial Reporting Requirements for Queensland Government Agencies (if applicable).
- (e) The Authority must comply with the reporting requirements under any applicable law.

7.2 Provision of additional information to Participants

- (a) In this Clause, **additional information** means information other than information provided by the Authority under Clause 7.1 of this agreement.
- (b) Without limiting Clause 7.1, a Participant or a Participating Local Government may request additional information from the Authority in accordance with this Clause 7.2.
- (c) An additional information request must:
 - (i) be made in writing to the chairperson of the Board;
 - (ii) be for information reasonably required by the Participant making the request to make an informed assessment of the Authority's operations;

- (iii) include details as to why the information is required for the Participant to make an informed assessment of the Authority's operations;
- (iv) not be vexatious or frivolous; and
- (v) be made in good faith,

(additional information request).

- (d) The Board must consider an additional information request:
 - (i) at the next meeting of the Board; or
 - (ii) if the additional information request is received less than 5 Business Days prior to the Board meeting, at the following Board meeting.
- (e) The Board may resolve to reject the additional information request if it determines that it has a reasonable excuse.
- (f) It will be a reasonable excuse for the purposes of Clause 7.2(e) if in the Board's honest and reasonable opinion:
 - (i) the additional information does not exist;
Example: The additional information was never created.
 - (ii) all reasonable steps have been taken to find the additional information but the additional information can not be found;
Example: The additional information has been lost or otherwise disposed of in good faith.
 - (iii) the Participant making the request has reasonable alternative means of obtaining the additional information;
Example: The additional information is publicly available or has previously been provided by the Board.
 - (iv) the additional information is subject to confidentiality or some other form of privilege under which disclosure to the Participants is not excepted or disclosure will be waiving, or could potentially be waiving or otherwise prejudicing, legal professional privilege attaching to all or any part of the additional information in circumstances where the waiver or potential waiver of that privilege would not be in the best interest of the Authority; and
Example: The information is legal advice which is subject to legal professional privilege.
 - (v) the provision of the information would substantially and unreasonably divert the resources of the Authority from their use by the Authority in the performance of its functions.
Example: The scope of the additional information request is very broad and would require a disproportionate use of Authority resources to satisfy.
- (g) If the Board resolves to reject the additional information request, the Board must notify all the Participants of its decision, including providing details of the reasonable excuse relied upon for the purposes of Clause 7.2(e).
- (h) If the Board resolves to accept the additional information request, the Board must direct the Chief Executive Officer to provide the additional information to all

Participants within a reasonable time following the Board meeting at which it was decided to provide the additional information.

8. Decision Making

- (a) The following decisions will only be made with the unanimous agreement of all Participants:
 - (i) amendments to the Participation Agreement (under sections 28, 29 and 30 of the Distribution and Retail Restructuring Act); and
 - (ii) any other matter stated in this agreement as requiring the agreement, consent, approval or determination of all of the Participants.
- (b) All other decisions reserved for the Participants in relation to the Authority will require the Required Majority.
- (c) Each Participant must be given reasonable notice of a proposal to make a decision reserved for the Participants in relation to the Authority.
- (d) Before a resolution to agree to the proposed decision is put before any meeting of a council of a Participant, the Participants must:
 - (i) discuss the proposed decision in good faith; and
 - (ii) use reasonable efforts to reach a consensus on the decision.
- (e) To avoid any doubt, a failure to reach a consensus on the decision in accordance with clause (d) will not prejudice or in any other way affect the validity of a decision made in accordance with this agreement.
- (f) For ease of reference only, a Participants' Decisions Table is contained in Schedule 2. The Schedule is not necessarily exhaustive. To the extent of any inconsistency between the terms of the body of this agreement and Schedule 2, the terms of the body of this agreement shall prevail.

9. Reserve Powers of Participating Local Governments

Subject to section 49 of the Distribution and Retail Restructuring Act, the Participating Local Governments may give the Authority a written direction about the way the Authority is to perform its functions if the written direction has been decided to be given by all of the Participating Local Governments.

10. Profit Distribution

10.1 Dividend Policy

- (a) Within 2 months of the date this agreement takes effect, the Board shall meet with the Participants to discuss the Dividend Policy.
- (b) The Dividend Policy shall be:
 - (i) prepared by the Board;
 - (ii) approved by the Required Majority;
 - (iii) adopted by the Board following approval by the Required Majority under Clause 10.1(b)(ii).

- (c) The Dividend Policy may be amended by the Board with the approval of the Required Majority.
- (d) An amended Dividend Policy shall be adopted by the Board following the approval of the Required Majority under Clause 10.1(c).

10.2 Determination

- (a) The Board may determine that a Participation Return is payable and fix the amount and time for payment of the Participation Return in accordance with the Dividend Policy.
- (b) Where the Board considers that it is appropriate that a Participation Return, other than in accordance with the Dividend Policy (**Special Return**), should be payable, the Board will:
 - (i) promptly notify the Participants; and
 - (ii) seek to amend to the Dividend Policy in accordance with Clause 10.1(c) and Clause 10.1(d).
- (c) Where the Dividend Policy is not amended in accordance with Clause 10.1(c) and Clause 10.1(d) and the Board still considers that it is appropriate that a Special Return should be payable, the Board may determine that a Special Return is payable and fix the amount and time for payment of the Special Return.
- (d) A distribution of profits of the Authority in accordance with this Clause 10.2 is an approved distribution for the purposes of section 43 of the Distribution and Retail Restructuring Act.

10.3 Entitlements to Participation Returns

- (a) Participation Returns are to be based on the Participation Rights determined in accordance with Clause 4.2 unless all Participants agree to an alternative method of determining Participation Returns.
- (b) If a transfer of Participation Rights occurs after the time determined for entitlements to a return on that Participation Right but before the Participation Return is paid, the person transferring that Participation Right is entitled to that Participation Return.

11. Tax Equivalents Regime

The Authority must, as required under the tax equivalents manual pursuant to section 100 of the Distribution and Retail Restructuring Act, pay tax equivalents to the Participating Local Governments in proportion to the Participation Rights held by the Participating Local Governments and/or their Wholly owned Entities.

12. Obligations of Participants

12.1 Good faith

The Participants and the Authority must each act in good faith in their dealings with each other and the Participating Local Governments in connection with matters dealt with under this agreement or the Distribution and Retail Restructuring Act and must unless specified to the contrary in this agreement:

- (a) be reasonable and honest;

- (b) do all things required by the Distribution and Retail Restructuring Act, this agreement and by any contract, agreement or document related to the Distribution and Retail Restructuring Act or this agreement (**Document**);
- (c) not unlawfully impede or restrict the performance by any Participant or the Authority of its obligations under any Document; and
- (d) not unlawfully impede or restrict the exercise by any Participant or the Authority of its rights under any Document.

12.2 No fetter on statutory obligations

Nothing in this agreement shall fetter or restrict a Participant from exercising a statutory or regulatory duty, power or discretion granted to, or expressly imposed upon or conferred on that Participant.

13. Notices

13.1 Notices to Participants

The Authority may give Notice to Participants by any of the following means in the Board's discretion:

- (a) delivering it to that Participant or person;
- (b) delivering it or sending it by post to the address nominated by a Participant;
- (c) sending it to the fax number or electronic address (if any) nominated by that Participant for that purpose; or
- (d) notifying that Participant of the notice's availability by an electronic means nominated by the Participant for that purpose.

13.2 Notice to Board Members

The Authority may give Notice to a Board Member by:

- (a) delivering it to that person;
- (b) sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person for that purpose;
- (c) sending it to the fax number or electronic address (if any) nominated by that person for that purpose; or
- (d) any other means agreed between the Authority and that person.

13.3 Notice to the Authority

A person may give Notice to the Authority by:

- (a) delivering it or sending it by post to the main business office of the Authority;
- (b) delivering it or sending it by post to a place nominated by the Authority for that purpose;
- (c) sending it to the fax number at the main business office of the Authority nominated by the Authority for that purpose;

- (d) sending it to the electronic address (if any) nominated by the Authority for that purpose,

13.4 Time of service

- (a) A Notice sent by post or air-mail is taken to be given on the day after the date it is posted.
- (b) A Notice sent by fax or other electronic transmission is taken to be given when the transmission is sent provided that in the case of notice to the Authority or a Board Member, the sender meets any action required by the recipient to verify the receipt of the document by the recipient.
- (c) A Notice given in accordance with Clause 13.1(d) is taken to be given on the day after the date on which the Member is notified that the Notice is available.
- (d) A certificate by a Board Member to the effect that a Notice by the Authority has been given in accordance with this agreement is conclusive evidence of that fact.

13.5 Notice requirements

The Board may specify, generally or in a particular case, requirements in relation to Notices given by any electronic means, including requirements as to:

- (a) the classes of, and circumstances in which, Notices may be sent;
- (b) verification (whether by encryption code or otherwise); and
- (c) the circumstances in which, and the time when, the Notice is taken to be given.

14. Tabling of agreement and amendments

The parties acknowledge that the terms of this agreement and any amendments to this agreement are not confidential as this agreement and any amended agreement will be tabled in the Legislative Assembly in accordance with sections 25 and 30 of the Distribution and Retail Restructuring Act.

Schedule 1 Participants

Participants

Gold Coast City Council

Logan City Council

Redland City Council

Schedule 2

Participants' Decisions Table

Decision	Methodology		References	
	Unanimous	Required Majority	Participation Agreement	Distribution and Retail Restructuring Act
Adjustment of Participation Rights	✓		Clause 4.2(c)	Section 22(a)
Financial Benefits to Related Parties	✓		Clause 5.14(a)	Section 20(1)(c)
Extension of date to provide annual report and quarterly report	✓		Clause 7.1(a)	Section 20(1)(c)
Amendments to Participation Agreement	✓		Clause 8(a)	Sections 28-30
Alternative method for determining Participation Returns	✓		Clause 10.3(a)	Section 56
Reserve Powers	✓*		Clause 9.1	Section 49
Appointment of chairperson		✓	Clause 5.3(a)	Section 35(2)
Appointment of Board Members		✓	Clause 5.2(a)	Section 33(2)
Removal of chairperson		✓	Clause 5.3(b)	Section 36(2)
Removal of Board Members		✓	Clause 5.5	Section 36(2)
Remuneration of Board Members		✓	Clause 5.8(a)	Section 36(3)
Dividend Policy		✓	Clause 10.1(b)(ii)	Sections 20 (1)(c) and 43
Amendment of Dividend Policy		✓	Clause 10.1(c)	Sections 20(1)(c) and 43

* A reserve power may only be exercised by the Participating Local Governments. Accordingly, the requirement for unanimous approval only applies to the Participating Local Governments.

Signed as an agreement

~~Executed~~ on behalf of))
~~GOLD COAST CITY COUNCIL~~))
By Ronald William Clarke MBE, Mayor) AND By Dale Robert Dickson, Chief Executive Officer)
on the day of 2010) on the day of 2010)
.....))
Ronald William Clarke MBE) Dale Robert Dickson)
Mayor) Chief Executive Officer)

Signature of Witness:) Signature of Witness:)
Name of Witness:) Name of Witness:)

~~Executed~~ on behalf of))
~~LOGAN CITY COUNCIL~~))
By Pamela Lorraine Parker, Mayor) AND By Christopher Charles Rose, Chief Executive Officer)
on the day of 2010) on the day of 2010)
.....))
Pamela Lorraine Parker) Christopher Charles Rose PSM)
Mayor) Chief Executive Officer)

Signature of Witness:) Signature of Witness:)
Name of Witness:) Name of Witness:)

~~Executed~~ on behalf of))
~~REDLAND CITY COUNCIL~~))
By Melva Elizabeth Hobson PSM, Mayor) AND By Gary John Stevenson, Chief Executive Officer)
on the day of 2010) on the day of 2010)
.....))
Melva Elizabeth Hobson PSM) Gary John Stevenson PSM)
Mayor) Chief Executive Officer)

Signature of Witness:) Signature of Witness:)
Name of Witness:) Name of Witness:)

M

Executed on behalf of)

ALLCONNEX WATER)

By John Patrick Dempsey, Chair)

on the day of 2010)

.....)

John Patrick Dempsey
Chair

Signature of Witness:

Name of Witness:

