

Northern SEQ Distributor-Retailer Authority Participation Agreement

Northern SEQ Distributor-Retailer Authority
Sunshine Coast Regional Council
Moreton Bay Regional Council

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Participation Agreement dated 25th JUNE 2010

- Parties**
- Northern SEQ Distributor-Retailer Authority** of Level 4, 33 King Street, Caboolture in the State of Queensland
- Sunshine Coast Regional Council** of the corner of Bury Street and Currie Street, Nambour in the State of Queensland
- Moreton Bay Regional Council** of 222 Gympie Road, Strathpine in the State of Queensland

Background

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

Operative Provisions

1. Definitions and Interpretations

1.1 Definitions

In this agreement:

Authority means the Northern SEQ Distributor-Retailer Authority established under the 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.

Chief Executive Officer means the chief executive officer of the Authority.

Corporations Act means the *Corporations Act 2001* (Commonwealth).

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;
- (f) taking up or releasing an obligation.

Legal Costs means all legal costs incurred in defending, resisting, responding to or otherwise in connection with any proceedings or investigations (whether criminal, civil, administrative or judicial, actual or threatened) where that proceeding, appearance or response relates to a Liability of that person.

Liability 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 or in or arising out of the conduct of the business of the Authority, including as result of appointment or nomination by the Authority or a subsidiary as a trustee or as a Board Member, of another body corporate.

Minister means the Minister administering the Restructuring Act.

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.

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

Participant means an entity that is the holder of a Participation Right and is recorded in the Register of Participation Rights as Participant.

Participating Local Government has the meaning given to that phrase under the Restructuring Act.

Participation Return means a return to Participants based on Participation Rights determined by the Board in accordance with clause 9.

Participation Return Policy means the Unitywater Participation Return Policy as approved from time to time.

Participation Right has the meaning given to that term set out in clause 5.2(a).

Profit has the meaning given by the accounting standards that apply to the Authority under the Financial Accountability Act 2009.

Register of Participation Rights means the register maintained by the Board in accordance with clause 5.7(a).

Regulated Asset Base means the opening regulated asset base as at 1 July 2010 as determined in accordance with clause 5.4.

Regulated Asset Base Calculation has the meaning given in clause 5.4(a).

Related Party of the Authority means:

- (a) a Participant;
- (b) a Wholly owned Entity;
- (c) a Participating Local Government;
- (d) councillors and senior executives of persons referred to in (a), (b) and (c) above;
- (e) Board Members; and

- (f) spouses, defacto spouses, parents and children of persons referred to in (e) above.

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

Review Year means the year in which the Participants review the Statement of Obligations given to the Authority under clause 7.1 of this agreement.

Rotation Date means 1 September 2013 and 1 September in each year from and including 2014.

Secretary means a person appointed as, or to perform the duties of, secretary of the Authority for the time being.

Statement of Obligations means the document forming Schedule 1 to this agreement, as amended from time to time in accordance with this agreement, the purpose of which is to impose obligations on the Authority in relation to its strategic planning process, its functions and the manner in which it performs its functions.

Tax Equivalents, to be paid by the Authority to the Participants, means amounts representing the value of benefits the Authority derives because it is not liable to pay a government tax that it would be liable to pay if it were not a distributor-retailer as that term is defined under the Restructuring Act.

Tax Equivalents Manual means a manual issued by the Treasurer in accordance with section 100 of the Restructuring Act.

Term means the period for which a Board Member holds office in accordance with clause 6.4.

Wholly owned Entity in relation to Sunshine Coast Regional Council means a body corporate none of whose members is a person other than Sunshine Coast Regional Council or a nominee of Sunshine Coast Regional Council.

Wholly owned Entity in relation to Moreton Bay Regional Council means a body corporate none of whose members is a person other than Moreton Bay Regional Council or a nominee of Moreton Bay Regional Council.

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; and
- (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.

2. Enforcement and Effect

2.1 Enforcement

- (a) The parties submit 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

- (a) In accordance with section 24 of the Restructuring Act, this agreement takes effect on the latest of the following days:
 - (i) the day the Minister gives the parties to this agreement a notice that the Minister has approved it; or
 - (ii) 1 July 2010.

2.3 Restructuring Act prevails over agreement

If a provision of this agreement is inconsistent with a provision of the Restructuring Act, the provision of the Restructuring Act prevails to the extent of the inconsistency.

3. Objectives

3.1 Objectives of the business

The Authority must carry out its functions in a way that is consistent with the following objectives:

- (a) to perform its geographic area functions under the Restructuring Act;
- (b) to operate on a sustainable basis;
- (c) to provide commercial returns to Participants;
- (d) to be an efficient, innovative and responsive organisation that engages with the communities it serves; and

- (e) to ensure continuity of service, maintenance and improvement, of existing customer service standards and focus.

4. Amendment of Participation Agreement

This agreement may be amended in accordance with sections 28, 29 and 30 of the Restructuring Act. This agreement does not provide for amendment in any other way.

5. Participants and Participation Rights

5.1 Participants

- (a) No entity, other than the entities mentioned in clause 5.1(b) or (c) below shall be eligible to be Participants in the Authority without the prior written approval of the Minister.
- (b) Sunshine Coast Regional Council
- (c) Moreton Bay Regional Council

5.2 Participation Rights

- (a) Participation Rights are rights held by a Participant to participate in a distribution of profits of the Authority in proportion to the percentage set out next to the Participants name in the Register of Participation Rights.
- (b) Only a Participant may hold a Participation Right.
- (c) The Participation Rights of a Participant shall not, without the approval of the Minister, fall below 1%.

5.3 Issue of Participation Rights in connection with Transfer Scheme

The Board will, in consideration of the transfer of assets, employees, instruments or liabilities of a Participating Local Government under a transfer scheme entered into in accordance with Chapter 3 of the Restructuring Act, grant the relevant Participating Local Government an amount of Participation Rights determined in accordance with clause 5.4.

5.4 Quantum of Participation Rights

- (a) The Chief Executive Officer must calculate and have independently validated each Participating Local Government's Regulated Asset Base based on the information available to the Authority using the principles set out in schedule 2 (**Regulated Asset Base Calculation**).
- (b) A copy of the Regulated Asset Base Calculation must be provided to the Board and each Participating Local Government by no later than 31 December 2010.
- (c) Any Board Member or Participating Local Government may, within 30 days after receipt of the Regulated Asset Base Calculation, provide written comments to the Chief Executive Officer on the Regulated Asset Base Calculation.
- (d) The Chief Executive Officer must provide the Regulated Asset Base Calculation and any comments received under clause 5.4(c) to the Minister for final determination.

- (e) Once the Minister has determined that the Regulated Asset Base Calculation is correct, the number of Participation Rights equal to the dollar value of each Participating Local Government's Regulated Asset Base will be granted to each Participating Local Government.

5.5 Adjustments to Participation Rights

- (a) Subject to clause 5.2(c) of this agreement and Ministerial approval in accordance with section 29 of the Restructuring Act:
 - (i) the Authority will adjust the Participation Rights granted to a Participating Local Government under clause 5.3 if the Authority is given written notification signed by both Participating Local Governments that the Participating Local Governments have, by resolution, agreed to the adjustment.
 - (ii) the Authority may, by resolution of the Board and with the written approval of all Participating Local Governments adjust the Participation Rights granted to a Participating Local Government under clause 5.3 if:
 - A. a Participating Local Government makes a monetary or in-kind contribution to the Authority; or
 - B. an unidentified or undisclosed liability is discovered by the Authority.

5.6 Transfer of Participation Rights

- (a) Subject to clause 5.2(c), a Participant may transfer, by written agreement, Participation Rights of the Participant to another Participant.
- (b) The agreement to transfer the Participation Rights must be delivered to the Authority, at the place where the Register of Participation Rights is kept, together with any evidence that the Board may require to prove the proper execution of the agreement to transfer by the parties.
- (c) A Participant transferring Participation Rights remains in the Register as entitled to those Participation Rights until the agreement to transfer has been registered by the Board and the Register of Participation Rights has been adjusted.
- (d) The Board may refuse to register an agreement to transfer Participation Rights where the registration of the transfer may result in a breach of the Restructuring Act or this agreement.

5.7 Register of Participation Rights

- (a) The Board must maintain a Register of Participation Rights.
- (b) The Register of Participation Rights must contain the following information:
 - (i) Participants
 - A. the name and address of each Participant; and
 - B. the date the Participant became a Participant; and
 - (ii) Participation Rights

- A. the Participation Rights of each Participant; and
 - B. the date the Participant became entitled to the Participation Rights.
- (c) The Register of Participation Rights must be kept at the main business office of the Authority.
- (d) The Register of Participation Rights shall be evidence of the Participants and the Participation Rights in the Authority.

6. Internal Management

6.1 Board Membership

The Board for the Authority is to consist of five Members

6.2 Appointment of Board Members

Subject to section 33(3) of the Restructuring Act, a Board Member may be appointed by all Participants signing a document stating that they are in favour of the appointment of the Board Member.

6.3 Removal of Board Members

Subject to the Restructuring Act, a Board Member may be removed from the Board by all Participants signing a document stating that they are in favour of the removal of any Board Member.

6.4 Term of Office

- (a) Subject to the Restructuring Act, and clauses 6.4(b) and 6.4(c), each Board Member may hold office 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, unless earlier removed under clause 6.3.
- (b) The initial Board Members will hold office for a term of between three and five years as determined by all Participants at the expiration of two years after the date of this agreement, such determination to provide for staggered retirement of initial Board Members.
- (c) If one of the initial Board Members ceases to be a Board Member other than by retirement on completion of their Term (**Initial Ceasing Board Member**), the Board Member appointed by the Participants to replace the Initial Ceasing Board Member will hold office for the remainder of the Initial Ceasing Board Member's term.

6.5 Retirement of Board Members

- (a) On each Rotation Date, a Board Member who has completed his or her Term must retire from office.
- (b) Subject to clause 6.5(c), a Board member who retires on any Rotation Date is eligible for reappointment as a Board Member with effect from that Rotation Date.
- (c) No person may serve more than two consecutive Terms as a Board Member.

6.6 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 6.3;
- (d) Becomes of unsound mind or a person whose property is liable to be dealt with pursuant to a law about mental health;
- (e) Is disqualified from managing a corporation, pursuant to the Corporations Act; or
- (f) Becomes someone who, under section 33(3) of the Restructuring Act, can not be appointed as a Board Member.

6.7 Remuneration of Board Members

The Board may, with the unanimous agreement of the Participants, pay or provide to Board Members fees in an amount or value determined by the Board.

6.8 Secretary

The Board may appoint one or more Secretaries, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to any agreement between the Authority and the Secretary, the Board may vary or terminate the appointment of a Secretary at any time, with or without cause.

6.9 Indemnity and insurance

- (a) To the extent permitted by law, the Authority must indemnify each Board Member against a Liability of that person and the Legal Costs of that person.
- (b) To the extent permitted by law, the indemnity pursuant to clause 6.9(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) 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).

6.10 General powers

A power of the Board can only be exercised by:

- (a) a resolution passed at a meeting of the Board held in accordance with Part 4 Division 2 of the Act and this agreement; or
- (b) a resolution passed by signing a document in accordance with section 40(6) of the Act; or
- (c) in accordance with a delegation of the power in accordance with section 53 of the Act.

6.11 Execution of documents

- (a) A person may execute a document if the Board authorises the person to execute the document.
- (b) Notwithstanding section 52 of the Restructuring Act, the chief executive officer or Chairman of the Board may only execute a document if authorised to do so by the Board.
- (c) The Board may determine the manner in which and the persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable or transferable instruments in the name of or on behalf of the Authority, and receipts for money paid to the Authority, must be signed, drawn, accepted, endorsed or otherwise executed.

6.12 Attorney or agent

- (a) The Board may appoint any person to be attorney or agent of the Authority for any purpose, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to the terms of appointment of an attorney or agent of the Authority, the Board may revoke or vary that appointment at any time, with or without cause.

6.13 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.

A person who attends a Board meeting waives any objection that person may have to a failure to give notice of the meeting.

- (c) 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.

6.14 Disclosure of interests

- (a) Where a member of the Board (the *interested member*)

- (i) has an interest in an issue being considered or about to be considered by the Board; and
- (ii) the interest could conflict with the proper performance of the Member's duties about the consideration of the issue;

then after the relevant facts come to the interested member's knowledge, the Member must disclose the nature of the interest to the Board meeting.

- (b) Unless the Board otherwise directs, the interested member must not—

- (i) be present when the Board considers the issue; or
- (ii) take part in a decision of the Board about the issue.

- (c) The interested member must not be present when the Board is considering whether to give a direction under clause 6.14(b).

- (d) If there is another person who must under clause 6.14(a) also disclose an interest in the issue, the other person must not

- (i) be present when the Board is considering whether to give a direction under clause 6.14(b) about the interested member; or
- (ii) take part in making the decision about giving the direction.

- (e) If:

- (i) because of clause 6.14, a Board Member is not present at a Board meeting for considering or deciding an issue or for considering or deciding whether to give a direction under clause 6.14(b); and
- (ii) there would be a quorum if the Member were present;

the remaining Members present are a quorum of the Board for considering or deciding the issue or for considering or deciding whether to give the direction at the meeting.

- (f) If there are no Members who may remain present for considering or deciding an issue, the distributor-retailer's participants may, by each signing consent to a proposed resolution, consider and decide the issue.
- (g) A disclosure under clause 6.14 must be recorded in the Board's minutes.

6.15 Quorum of the Board

- (a) Until otherwise determined by the Board, a quorum for a Board meeting is 3 Board Members entitled to vote on a resolution that may be proposed at that meeting.
- (b) A quorum for a Board meeting must be present at all times during the meeting.
- (c) Subject to section 40 of the Restructuring Act, each individual present is counted towards a quorum as a Board Member.

6.16 Chairman of the Board

- (a) The Participants may appoint a Board Member as chairman of the Board by signing a document stating that they are in favour of the appointment of the Board member as Chairman for any period it resolves, or if no period is specified, until that person ceases to be a Board Member. The Participants may remove the Chairman of the Board at any time.
- (b) Subject to clause 6.16(c), the chairman of the Board must chair each Board meeting.
- (c) If at a Board meeting the chairman of the Board is not present within 15 minutes after the time appointed for the holding of a Board meeting or is not willing to chair all or part of that meeting, the Board Members present must elect one of their number to chair that meeting or part of the meeting.
- (d) A person does not cease to be a chairman of the Board if that person retires as a Board Member at a meeting of Members and is re-elected as a Board Member at that meeting (or any adjournment of that meeting).

6.17 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.

6.18 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 Participants approve in writing of the giving of the Financial Benefit; or

- (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; or
- (c) the giving of the Financial Benefit is remuneration to a Board Member under clause 6.7;
- (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 6.9; or
- (e) the Financial Benefit is given to the Related Party in their capacity as a Participant and the giving of the benefit does not discriminate unfairly against the other Participants.

7. Corporate Planning

7.1 Statement of Obligations

- (a) The Participants may give the Authority a Statement of Obligations.
- (b) The Participants must review the Statement of Obligations every five years after it has been given to the Authority and notify the Authority by 30 May in the Review Year of any changes the Participants wish to make to the Statement of Obligations resulting from the review.
- (c) A document amended in accordance with sub-clause 7.1(b) will be the Statement of Obligations for the purposes of this agreement.

7.2 Strategic Plan

- (a) The Authority must prepare a plan about the future direction, goals and priorities of the Authority (**Strategic Plan**).
- (b) The Strategic Plan must be consistent with and have due regard for the matters contained in the Statement of Obligations.
- (c) The Strategic Plan must include the Authority's:
 - (i) vision and mission;
 - (ii) business objectives, priorities and direction for the medium and long term (**Strategic Objectives**); and
 - (iii) strategies for achieving the Strategic Objectives,for a period of at least five years from the date of the Strategic Plan.
- (d) The Strategic Plan must specify:
 - (i) the expected corporate, financial and non-financial outcomes of the Strategies; and
 - (ii) the risk environment and the strategies for managing risks.
- (e) The Strategic Plan must identify the 30 year strategic outlook for the Authority.

- (f) The Strategic Plan must be approved by the Board within 12 months after the Authority comes into existence and thereafter no later than 30 September each five years.

7.3 Other Planning Requirements

- (a) The Authority must prepare a plan each financial year (**Water and Wastewater Network and Services Plan**) about:
 - (i) the operation of the Authority's business including its budget for the forthcoming financial year;
 - (ii) delivery of infrastructure for supplying water services and wastewater services;
 - (iii) ensuring the provision of safe reliable and secure water services and wastewater services;
 - (iv) integrating land use planning and planning for infrastructure; and
 - (v) managing the Authority's water services and wastewater services in a way that seeks to achieve ecological sustainability.
- (b) The Water and Wastewater Network and Services Plan must be consistent with and have due regard for the matters contained in the Statement of Obligations.
- (c) The Water and Wastewater Network and Services Plan:
 - (i) is the Authority's operational plan; and
 - (ii) must identify the 30 year outlook for the Authority.
- (d) The Authority must give the draft Water and Wastewater Network and Services Plan to each Participant for their consideration no later than 15 April each year.
- (e) The Participants must consider the draft Water and Wastewater Network and Services Plan and jointly notify the Board of suggested changes within six weeks after the Board gives the draft plan to each Participant.
- (f) The Board will review the changes suggested by the Participants:
 - (i) make the changes it considers appropriate; and
 - (ii) decide not to make the changes it considers inappropriate,having regard to the Strategic Plan and any other relevant considerations.
- (g) Within six weeks after the notification referred to in clause 7.3(e) the Board will give a copy of the Water and Wastewater Network and Services Plan to each Participant together with a statement of the changes it has made (if any) and the reasons for not making the changes it considers inappropriate (if any).
- (h) The draft Water and Wastewater Network and Services Plan becomes the Authority's Water and Wastewater Network and Services Plan:

- (i) when the Participants are given a copy of the Water and Wastewater Network and Services Plan in accordance with clause 7.3(g); or
- (ii) if the Participants do not notify the Authority within the six weeks referred to in clause 7.3(e) then, at the end of the six week period.

8. Reporting to Participants

8.1 Provision of Information to Participants

- (a) The Authority will provide the Participants with the following:
 - (i) a copy of the audited accounts of the Authority for each financial year.
 - (ii) a half yearly report within 1 month after 31 December each year or such longer period as may be agreed by the Participants;
 - (iii) an annual report within 4 months of the end of each financial year or such longer period as may be agreed by the Participants;
- (b) The half yearly report and annual report must contain such information that the Participants require 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, including information about—
 - A. profits and losses; and
 - B. assets and liabilities; and
 - C. the prospects of the Authority and its subsidiary entities.
- (c) The annual report must also contain:
 - (i) a comparison of the Authority's performance with:
 - A. the Authority's Water and Wastewater Network and Services Plan;
 - B. the South East Queensland Water Strategy;
 - C. the Authority's previous year's water and energy consumption.
 - (ii) particulars of:
 - A. the financial position of the Authority and its subsidiary entities; and
 - B. the profits and losses of the Authority and its subsidiary entities;
 - C. the prospects of the Authority and its subsidiary entities; and

- D. any material changes made to the Authority's Water and Wastewater Network and Services Plan during the financial year;
- (iii) the Authority's Participation Return policy; and
- (iv) 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.

9. Participation Return

9.1 Determination

- (a) The Board may approve the payment of a Participation Return and fix the amount and time for payment of a Participation Return.
- (b) During the period from 15 March to 15 April in each financial year the Authority must give to the Participants—
 - (i) An estimate of the Authority's net profit for the financial year; and
 - (ii) The amount of the Participation Return to be paid for the financial year, including the amount payable for different Participation Rights.
- (c) The amount of the Participation Return must not be more than the amount of the estimated net profit given to the Participants under subsection 9.1(b)(i).
- (d) Interest is not payable on a Participation Return.
- (e) The Authority does not incur a debt merely by fixing the amount or time for payment of a Participation Return. The debt arises only when the time fixed for payment arrives and the decision to pay the Participation Return may be revoked at any time before then.

9.2 Returns to be paid out of profits

- (a) A Participation Return may only be paid out of net profits of the Authority.
- (b) Participation Returns will be paid in accordance with the Participation Return Policy.

9.3 Entitlements to Participation Returns

- (a) A Participation Return must be paid to the Participant whose name appears in the Register of Participation Rights as the holder of that Participation Right as at the time the Board has fixed for that purpose, or if no such time is fixed, on the date on which the Participation Return is paid.
- (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.

9.4 Payment Method

The Authority may pay an entity entitled to an amount payable in respect of a Participation Right (including a Participation Return) by any of the following means, in the Board's discretion, at the sole risk of the person so entitled:

- (a) crediting an account nominated in writing by that entity and acceptable to the Board;
- (b) cheque made payable to bearer, to the entity entitled to the amount or any other entity the entitled entity directs in writing and who is acceptable to the Board; or
- (c) any other manner as the Board resolves.

10. Tax Equivalents

10.1 Entitlements to Participation Returns

- (a) Tax Equivalents in proportion to Participation Rights must be paid to the Participant whose name appears in the Register of Participation Rights as the holder of that Participation Right as at the last day of the period for which the return is lodged by the Authority in accordance with the Tax Equivalents Manual.
- (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. Obligations of the Parties

11.1 Good faith

Each party to this agreement must act in good faith in its dealings with the other parties in connection with matters dealt with under this agreement or the Restructuring Act and must unless specified to the contrary in this agreement:

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

11.2 No fetter on statutory obligations

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

12. Notices

12.1 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.

12.2 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.

12.3 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,

12.4 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 12.1(d) is taken to be given on the day after the date on which the Participant is notified that the Notice is available.

- (d) A certificate by a Board Member or Secretary to the effect that a Notice by the Authority has been given in accordance with this agreement is conclusive evidence of that fact.

12.5 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.

13. Auditor

13.1 Auditor General

The Auditor-General of Queensland will be the auditor of the Authority.

14. Mediation

- 14.1** If any dispute, controversy or claim shall arise out of or in respect of this Agreement or the performance breach or validity thereof, the parties shall refer same to mediation administered by such person or organisation as the parties may determine by agreement or, failing agreement by the leading Queensland dispute resolution centre as nominated by the Queensland Law Society.
- 14.2** The mediation of any dispute, controversy or claim referred to in Clause 14.1 shall be conducted at Queensland or at such other place as the parties may agree.
- 14.3** The mediation shall be held in accordance with the rules laid down by the mediator.
- 14.4** Once the mediation has commenced, no party shall commence proceedings in any Court in respect of a matter touching or concerning the subject matter of the mediation unless it has first given written notice to the other parties that it has abandoned the mediation.
- 14.5** Any document prepared for or in anticipation of or statements, admissions or concessions made by or behalf of the parties during the mediation proceedings shall, without prejudice to the rights of the respective parties, be inadmissible in any proceedings in any Court.

Schedule 1 – Statement of Obligations

STATEMENT OF OBLIGATIONS 2010-2015

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1. PART 1 – PRELIMINARY

1 Commencement and Term

1.1 This Statement of Obligations:

- (a) Commences on 1 July 2010 and operates until it is revoked;
- (b) May be reviewed every five years, in accordance with the Participation Agreement.

2 Authorising Provision

2.1 This Statement of Obligations is issued by the Participating Local Governments in accordance with the Participation Agreement.

3 Purpose

3.1 The purpose of this Statement of Obligations is to impose obligations on the Northern SEQ Distribution-Retailer Authority's strategic planning process.

4 Interpretation

4.1 Definitions of the terms contained in this Statement of Obligations are included in Schedule A **attached.**

2. PART 2 – GENERAL

5 Guiding Principle

5.1 When planning for the delivery of core services the Authority must recognise the serviced region's desire to be Australia's most sustainable region. Accordingly, the Authority is to balance the competing demands of a triple bottom line outcome. The triple bottom line approach is to ensure business as well as environmental, ecological and social sustainability needs are addressed. This is to include:

- (a) The adoption of an objective mechanism for the assessment of all core projects, which demonstrates a balanced approach to ensure sustainability.
- (b) Alignment with the serviced region's councils' land use or town plans' objectives, in the context of a whole of water cycle approach.
- (c) Adaptability and agility to embrace innovations to achieve optimal sustainability objectives.
- (d) Maintenance of a knowledgeable and skilled workforce able to precisely judge triple bottom line outcomes, including value for money and technical suitability – the Authority is to be a smart client.
- (e) Adoption of values, which reflect a commitment to service, the community, teamwork and the need for professional conduct.
- (f) Adoption of leading (industry benchmarked) asset management practices that reflect a triple bottom line risk framework, which incorporates a need for efficiency, optimisation of current assets and a defined link to future needs.

- (g) Provision of affordable water and sewerage services through the adoption of continual improvement and innovation plans.

3. PART 3 – WATER AND WASTEWATER NETWORK AND SERVICES PLAN

6 Preparation and Delivery of a Water and Wastewater Network and Services Plan

6.1 The Authority must develop a Water and Wastewater Network and Services Plan in accordance with:

- (a) The Participation Agreement;
- (b) The SEQ Water (Distribution and Retail Restructuring) 2009 and amendments;
- (c) The Sustainable Planning Act 2009 and amendments;
- (d) The SEQ Regional Plan;
- (e) The SEQ Water Strategy;
- (f) Any Sub-regional Total Water Cycle Management plans made by the Queensland Water Commission under the SEQ Regional Plan; and
- (g) Any particular requirements of the Queensland Competition Authority for the purpose of enabling it to make a price determination for the prescribed services over the Regulatory Period.

6.2 The Authority must include in the Water and Wastewater Network and Services Plan:

- (a) Outcomes to be delivered with respect to:
 - i. Desired Standards of Service;
 - ii. Meeting future demands on Authority services;
 - iii. Complying with any obligations specified in this Statement of Obligations; and
 - iv. Other obligations imposed by or under legislation,
- (b) A description of how the Authority proposes to deliver those outcomes;
- (c) The Authority's revenue requirements in the Regulatory Period; and
- (d) The proposed price to be charged for each of the prescribed services.

7 Procedural Requirements

7.1 In developing the Water and Wastewater Network and Services Plan the Authority must consult:

- (a) Regulatory agencies on outcomes to be included in the Water and Wastewater Network and Services Plan that relate to a regulatory obligation; and

- (b) The Queensland Water Commission, the Queensland Competition Authority and the Participating Local Governments on services to be provided under the Plan, and the standards and conditions applicable to those services.

4. PART 4 – GOVERNANCE AND RISK MANAGEMENT

8 Board Performance

- 8.1 The Authority must annually independently review and report to the Participants on the performance of the Board of the Authority.

9 Customer and Community Engagement

- 9.1 The Authority must develop and implement open and transparent processes to engage its customers and the community in its planning, infrastructure procurement and operational processes to ensure, among other matters, that the services it provides reflect the needs and expectations of both customers and the community. This is to reflect the adopted sustainability approach.

- 9.2 The Authority must:

- (a) Make available to the public, information about the water supply, sewerage and recycled water services it provides; and
- (b) Make available to the public, information about water conservation and the efficient and responsible use of water.

10 Consulting with Councils

- 10.1 The Authority must consult with the serviced area's Participating Local Governments;

- (a) About Council planning scheme issues in general and advise on optimal sustainable ways to meet water and sewerage service requirements.
- (b) In the making of a Water and Wastewater Network and Services Plan.
- (c) Regarding the preparation of Total Water Cycle Management Plans under the Environmental Protection Policy (Water) 2009
- (d) In the development of:
 - i Water Quality Management Plans
 - ii Recycled Water Management Plans
 - iii Emergency and Incident Response Plans

11 Consulting other Authorities

- 11.1 The Authority must consult with agencies including the Department of the Environment and Resource Management, Grid Manager, SEQwater, Linkwater and the Queensland Water Commission:

- (a) About strategies to service growth in customer demand for water and sewage services;
- (b) When considering operational changes which impact or may impact on the activities carried out by these agencies;

- (c) when devising and implementing innovation and research programs on matters of common interest.

12 Managing Risks and Performance

- 12.1 The Authority must develop and implement plans, systems and processes, having regard to the Australian/New Zealand Standard AS/NZS 4360 – Risk Management, as revised from time to time, to ensure that risks to the Utility assets or services are identified, assessed, prioritised and managed.
- 12.2 The Authority must develop and implement a financial risk management framework and document the associated systems in a financial management practice manual.
- 12.3 In managing performance, the Authority must comply, to the extent reasonably applicable to a distributor-retailer authority, with the document prepared by the Department of Premier and Cabinet called "A guide to the Queensland Government performance management framework".

13 Responding to Incidents and Emergencies

- 13.1 The Authority must develop and maintain an appropriate Emergency Response Plan in accordance with Water Grid Manager's instructions. The Authority must ensure the Emergency Response Plan complements and is consistent with comparable plans within the serviced councils' region.
- 13.2 The Authority must undertake such periodic training and exercises as may be necessary to ensure that the Emergency Response Plan can – where necessary - be implemented effectively by both Authority and associated organisations.
- 13.3 The Authority must consult with the serviced region's councils regarding the involvement of the Authority's resources as part of the councils' own Emergency Response Plans

14 Managing Assets

- 14.1 As well as adopting the principles in Part 2, The Authority must develop and implement plans, systems and processes to manage its assets in ways which:
 - (a) Maintains the levels and standards of service specified in the Water and Wastewater Network and Services Plan.
 - (b) Minimises the overall whole-of-life costs of assets.
 - (c) Minimises detrimental social, economic or environmental effects of managing its assets.
- 14.2 The Authority must develop and maintain a comprehensive database of all relevant asset information, including information on the condition and performance of its assets.

5. PART 5 – SUSTAINABILITY AND SERVICE DELIVERY

15 Sustainable Water Management

- 15.1 As well as adopting the principle identified in Part 2, in performing its functions, exercising its powers and carrying out its duties, the Authority must apply sustainable management principles, including:
- (a) The need to ensure that water is conserved and properly managed for sustainable use and for the benefit of present and future generations;
 - (b) The need to encourage and facilitate community involvement in the making and implementation of arrangements relating to the use, conservation and management of water;
 - (c) The need to integrate both long-term and short-term economic, environmental, social and equitable considerations; and
 - (d) The need for the conservation of biological diversity and ecological integrity to be a fundamental consideration.
 - (e) The evaluation of all alternative water sources.
- 15.2 To implement sustainable water management the Authority must develop programs and systems for:
- (a) Managing everyday environmental impacts from system operations;
 - (b) Maintaining and restoring natural assets;
 - (c) The efficient and effective management of demand for water;
 - (d) The efficient and effective management of energy demands associated with the provision of water and sewerage services;
 - (e) Reducing leakage and minimising other losses of water to a best practice, as identified by the Water Services Association of Australia, or at any legislatively prescribed lower (volume) target;
 - (f) Identifying opportunities, in conjunction with the serviced area councils, through Total Water Cycle Planning under the EPP (Water), to substitute potable supplies with water from alternative sources;
- 15.3 Programs developed by the Authority are to be included in its Water and Wastewater Network and Services Plan.

16 Reticulated Water Supply to Unserviced Urban and Rural Areas

- 16.1 The Authority is to develop a policy for providing reticulated water services to unserviced and rural areas by 1 July 2011.

17 Sewerage Services to Unsewered Urban Areas

- 17.1 The Authority is to develop a policy for providing sewerage services to unserviced and rural areas by 1 July 2011.

18 Sewerage Connections to Properties

- 18.1 The Authority must take all reasonable steps to ensure that a property provided with a sewerage service is connected to the Authority sewerage works, unless the owner of a property can demonstrate that sewage and any accompany transporting water can be sustainably reused on site in accordance with State or other legislation or regulations.

19 Trade Waste

- 19.1 The Authority must develop policies and practices to manage trade waste, and consult with the serviced area's councils prior to the implementation, and prior to making any alterations to these policies and practices.

20 Business and Business Growth

- 20.1 The Authority is to increase its value through continuous business development and in doing so improve the return to the Participants.

- 20.2 The Authority is to develop a robust quality framework and deliver transparent performance accountability.

- 20.3 The Authority is to uphold the prescribed standards of service. The standards are to be published by a Customer Charter which is to drive the way the business behaves, structures, plans, resources and responds. During the business establishment phase the Authority must ensure existing standards are maintained. Continuity of supply and service during the transitional period is paramount.

21 Research and Knowledge

- 21.1 The Authority must:

(a) Identify the Authority's research needs;

(b) Prioritise the research needs identified;

(c) Develop collaborative relationships and seek opportunities to cooperate on research requirements; and

(c) Identify how the Authority proposes to meet its research needs.

6. PART 6 - ENVIRONMENTAL MANAGEMENT

22 Environmental Management System

- 22.1 The Authority must develop and implement an Environmental Management System which is in accordance with the following standards from the Standards Australia AS/NZS ISO 14000 Series of Environmental Management Systems Standards:

(i) AS/NZS ISO 14001: – Environmental Management Systems – Requirements with Guidance for Use; and

(ii) AS/NZS ISO 14004: – Environmental Management Systems – General Guidelines on Principles, Systems and Support Techniques.

23 River and Bay Health

- 23.1 The Authority must sustainably manage the impact of its activities on the aquatic environment. This shall include;
- (a) Involvement with the Healthy Waterways Partnership to monitor and gauge the health of the region's waterways.
 - (b) Contribute towards the cost of environmental monitoring in waterways subject to effluent release from the Authority's sewage treatment plants;
 - (c) When implementing a major augmentation on a sewage treatment plant with an effluent release to a waterway; the Authority must ensure that it consults with the serviced area councils to develop Sustainability Principles to be used in deriving augmentation outcomes.

7. PART 7 – COMPLIANCE

24 Complying with Obligations

- 24.1 The Authority must monitor compliance with its obligations under this Statement of Obligations.

8. SCHEDULE A- DEFINITIONS

The following definitions apply:

"Authority" means the Northern SEQ Distribution-Retail Authority, trading as Unitywater

"Desired Standards of Service" means the performance standards applicable to the water and sewerage services provided to customers within the water and sewerage scheme area.

"Prescribed Services" means the water, sewerage and other services provided by the Authority in respect of which the Queensland Competition Authority has the power to regulate prices.

"Regulatory Agencies" refers collectively to the Department of Environment and Resource Management, Queensland Water Commission, Department of Infrastructure and Planning and other state government agencies with regulatory responsibility or control over activities conducted by the *Authority*.

"Regulatory Period" means the five year period commencing on 1 July 2013.

"Sewage Treatment Plant (STP) Sustainability Principles" means a set of guiding principles, which the Authority, in consultation with the serviced area council, will utilise in developing scope, objectives and outcomes for a proposed STP augmentation. The principles are to be agreed during the consultation period.

"Total Water Cycle Management Plan" means the Total Water Cycle Management plan of a participating local government, under the *Environmental Protection (Water) Policy 2009*.

"Water and Wastewater Network and Services Plan" means the Water and Wastewater Network and Services Plan required under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

Statement of Obligations Execution Page

Signed for and on behalf of **Sunshine Coast Regional Council** by its authorised signatory in the presence of:

Signature of witness

Full name of witness

Signed for and on behalf of **Moreton Bay Regional Council** by its authorised signatories in the presence of:

Signature of witness

Full name of witness

Signature of authorised signatory

John Knaggs - Chief Executive Officer
Authorised signatory

Signature of authorised signatory

John Rauber - Chief Executive Officer
Authorised signatory

Schedule 2 – Regulated Asset Base Calculation

In this schedule, **Transferred Assets** means any assets which form part of a transfer scheme for a Participating Local Government excluding any assets that have been disposed of prior to 30 June 2010.

- 1 The Regulated Asset Base must be calculated in accordance with the following formula:

$$RAB = InitialRAB + CE - RD - D + I$$

where:

RAB = Regulated Asset Base;

InitialRAB = each Participating Local Government's initial regulated asset base as at 1 July 2008 as advised by the Minister;

CE = costs attributable to capital expenditure by the Participating Local Government for the period from 1 July 2008 to 30 June 2010 for any Transferred Assets which were not included in the InitialRAB;

RD = the aggregate of:

- (a) the amounts recorded in the Participating Local Government's financial statements for the period from 1 July 2008 to 30 June 2010 for depreciation of the Transferred Assets; and
- (b) the amounts calculated as depreciation for the assets acquired as a result of capital expenditure from the date of acquisition of the asset;

D = the aggregate of the amounts attributable in the InitialRAB to assets which have been disposed of in the period between 1 July 2008 and 30 June 2010; and

I = the amount calculated in accordance with the following formula:

$$I = TA \times CPI\%$$

where:

I = indexation amount;

TA = Transferred Assets; and

CPI = the average Consumer Price Index for the period from 1 July 2008 to 30 June 2010.

- 2 In assessing actual and prudent capital expenditure (including information technology systems) the Authority must accept as prudent:
- actual capital expenditure for water and wastewater included in a Participating Local Government's financial accounts for the period 1 July 2008 to 30 June 2010;
 - contributed, donated and gifted assets at the value determined by the Chief Executive Officer acting in good faith; and
 - allowable establishment costs as advised by the Minister.

- 3 In assessing depreciation for regulatory purpose, the Authority must take into account for the period 1 July 2008 to 30 June 2010 the apportionment of each Participating Local Government's distribution valuations to individual assets and evidence that regulatory depreciation on physical assets has been calculated using existing useful lives attaching to individual assets.
- 4 In assessing indexation, the Authority is to take account of the latest available Australian Bureau of Statistics Consumer Price Index (all groups, Brisbane); however for the period 1 July 2009 to 30 June 2010 the 2009-10 Queensland State Budget inflation forecast may, at the discretion of the Chief Executive Officer, be used.

Participation Agreement Execution Page

Signed as an Agreement

Signed for and on behalf of Sunshine Coast Regional Council by its authorised signatory in the presence of:

Signature of witness

Signature of authorised signatory

Full name of witness

John Knaggs - Chief Executive Officer
Authorised signatory

Signed for and on behalf of Moreton Bay Regional Council by its authorised signatories in the presence of:

Signature of witness

Signature of authorised signatory

Full name of witness

John Rauber - Chief Executive Officer
Authorised signatory

Signed for and on behalf of Northern SEQ Distributor-Retailer Authority by its authorised signatory in the presence of:

Signature of witness

Signature of authorised signatory

Full name of witness

James Soorley
Authorised signatory

