

Northern SEQ Distributor-Retailer Authority Participation Agreement

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

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Attached Schedules:

- Schedule 1 – Statement of Obligations
- Schedule 2 – Regulated Asset Base Principles
- Schedule 3 – Register of Participation Rights

Participation Agreement first made 25 June 2010, and changed to include Noosa Shire Council as a Participant from 1 January 2014.

- 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
 - Noosa Shire Council** of Level 3, 9 Pelican Street, Tewantin 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.
- C. Pursuant to section 23 of the Restructuring Act, the Minister first made the Participation Agreement of the Northern SEQ Distributor-Retailer Authority on 25 June 2010.
- D. On 30 May 2011, the Minister determined the accuracy of the Regulated Asset Base Calculation in accordance with clause 5.4(e).
- E. Accordingly:
 - a) the allocation of Participation Rights granted to each Initial Participating Local Government was set out in the Initial Register of Participation Rights;
 - b) the Participation Agreement, as amended following the determination of the Regulated Asset Base Calculation, took effect from the day the Minister gave the Authority a notice in accordance with section 29(1)(b) of the Restructuring Act.
- F. On 11 September 2013, the Restructuring Act was amended to include Noosa Shire Council as Participating Local Government for the Northern SEQ Distributor-Retailer Authority commencing 1 January 2014.
- G. In October and November 2013, the Initial Participants approved amendments to the Participation Agreement, including the addition of Noosa Shire Council as a participant under the Participation Agreement, noting that changes to restricted matters under the Restructuring Act require approval of the Minister before the changes take effect.
- H. Pursuant to section 29 of the Restructuring Act, the Minister approved the changes to the restricted matters in the Participation Agreement for the Northern SEQ Distributor-Retailer Authority on 19 December 2013, to take effect from 1 January 2014.

- I. In March 2017, clauses 7.4, 7.5 and 9.1 were amended by agreement of all of the Participating Local Governments in accordance with section 28 of the Restructuring Act.

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.

Independent Member has the meaning given to that phrase under the Restructuring Act.

Initial Participating Local Government means Sunshine Coast Regional Council and Moreton Bay Regional Council as at 1 July 2010.

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;

- a) providing for income tax or its equivalent; and
- b) 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 10.

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.

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

Special Majority of the Participants means Moreton Bay Regional Council and Sunshine Coast Regional Council acting jointly in their capacity as Participants.

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 7.4.

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.

Wholly owned Entity in relation to Noosa Shire Council means a body corporate none of whose members is a person other than Noosa Shire Council or a nominee of Noosa Shire 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, as amended to include Noosa Shire Council as a Participating Local Government, 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 January 2014.

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), (c) or (d) 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.
- d) Noosa Shire Council.

5.2 Participation Rights

- a) Participation Rights are rights held by a Participant to share in a distribution of profits and/or other returns of the Authority in proportion to the percentage set out next to the Participants name in the Register of Participation Rights, and in accordance with the Participation Returns Policy.
- 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 Initial 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 Initial 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 Initial Participating Local Government by no later than 31 December 2010.
- c) Any Board Member or Initial 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 Initial 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 each Participating Local Government 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. Participant Decisions

- a) The Participants will consult with each other and endeavour to reach agreement on any decision that may be taken by a Special Majority of the Participants.
- b) Where unanimous agreement is not reached, then a decision taken by a Special Majority of the Participants will be sufficient.

7. Internal Management

7.1 Board Membership

The Board for the Authority is to consist of five Independent Members. For clarity, the Board for the Authority must not consist of any members who are not Independent Members.

7.2 Appointment of Board Members

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

7.3 Removal of Board Members

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

7.4 Term of Office

- a) Subject to the Restructuring Act each Board Member may hold office for the period commencing on the date of their appointment and ending on a date that is between 3 and 5 years from the date of their appointment, unless earlier removed under clause 7.3.
- b) This clause 7.4 does not apply to the Term for any councillor-members. The Term for a councillor-member is set out in the Restructuring Act.

7.5 Retirement of Board Members

- a) A Board Member who has completed his or her Term must retire from office.

- b) Subject to clause 7.5(c), a Board member who retires at the completion of his or her Term is eligible for reappointment as a Board Member with effect from that date.
- c) No person may serve more than 10 consecutive years as a Board Member, unless agreed by all Participants.

7.6 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 three 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 7.3;
- 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 36 of the Restructuring Act, can not be appointed as a Board Member.

7.7 Remuneration of Board Members

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

7.8 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.

7.9 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 7.9(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).

7.10 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 Restructuring Act and this agreement; or
- b) a resolution passed by signing a document in accordance with section 40(6) of the Restructuring Act; or
- c) in accordance with a delegation of the power in accordance with section 53 of the Restructuring Act.

7.11 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.

7.12 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.

7.13 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.
- 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.

7.14 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 7.14(b).
- d) If there is another person who must under clause 7.14(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 7.14(b) about the interested member; or
 - ii. take part in making the decision about giving the direction.
- e) If:
 - i. because of clause 7.14, 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 7.14(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 7.14 must be recorded in the Board's minutes.

7.15 Quorum of the Board

- a) Until otherwise determined by the Board, a quorum for a Board meeting is three 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.

7.16 Chairman of the Board

- a) A Special Majority of 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. A Special Majority of the Participants may remove the chairman of the Board at any time.
- b) Subject to clause 7.16(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).

7.17 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.

7.18 Prohibition on Financial Benefits to Related Parties

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

- a) a Special Majority of the 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 7.7;
- 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 7.9; 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.

8. Corporate Planning

8.1 Statement of Obligations

- a) A Special Majority of the Participants may give the Authority a Statement of Obligations.
- b) A Special Majority of the Participants may 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 8.1(b) will be the Statement of Obligations for the purposes of this agreement.

8.2 Corporate Strategic Plan

- a) The Authority must prepare a plan about the future direction, goals and priorities of the Authority (**Corporate Strategic Plan**).
- b) The Corporate Strategic Plan must be consistent with, and have due regard for, the matters contained in the Statement of Obligations.
- c) The Corporate Strategic Plan must include the Authority's:
 - i. vision;
 - ii. strategic priorities;
 - iii. strategies; and
 - iv. financial forecast,
 for a period of at least five years from the date of the Corporate Strategic Plan.
- d) The Corporate Strategic Plan must;
 - i. specify the expected outcomes of the strategies; and
 - ii. describe the operating environment.

- e) The Corporate Strategic Plan must be approved by the Board.
- f) The Authority must give a copy of the Corporate Strategic Plan to each Participant no later than 15 business days after the Board has approved it.

8.3 Water Netserv Plan

- a) The Authority must have a **Water Netserv Plan** that is prepared and reviewed in accordance with the Restructuring Act.
- b) The Authority must give a copy of the Water Netserv Plan to each Participant no later than 15 business days after the Board has approved it.

9. Reporting to Participants

9.1 Provision of Information to Participants

- a) Each year, the Authority will provide the Participants with the following:
 - i. a copy of the audited consolidated financial statements of the Authority within 15 business days of receipt from the Auditor-General;
 - ii. an annual report within 15 business days after the day on which the annual report is tabled by the Minister in the Legislative Assembly;
 - iii. a copy of the semi-annual unaudited consolidated financial statements of the Authority within 15 business days of approval by the Board (and in any event, within 45 days of the end of December each year);
 - iv. a half yearly report by 31 March each year, or such longer period as may be agreed by the Participants.
- b) The annual report and half yearly 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 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 be prepared in accordance with the *Financial Accountability Act 2009*.

10. Participation Return

10.1 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 10.1(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.

10.2 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.

10.3 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.

10.4 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.

11. Tax Equivalents

11.1 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.

12. Obligations of the Parties

12.1 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.

12.2 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.

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 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.

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. Auditor

14.1 Auditor General

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

15. Mediation

- 15.1** 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.
- 15.2** The mediation of any dispute, controversy or claim referred to in Clause 15.1 shall be conducted at Queensland or at such other place as the parties may agree.
- 15.3** The mediation shall be held in accordance with the rules laid down by the mediator.
- 15.4** 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.
- 15.5** 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.