

Version: 9 June 2010 - [Version dated 17 April incorporating feedback from shareholder councils]

**Operative Date: 25 June 2010**

**Amendment Date: .....[ ]**

# Participation Agreement

Central SEQ Distributor-Retailer Authority

**Brisbane City Council**

**Ipswich City Council**

**Lockyer Valley Regional Council**

**Scenic Rim Regional Council**

**Somerset Regional Council**

**Central SEQ Distributor-Retailer Authority**

**Contents**

- 1. Definitions and Interpretations .....3**
  - 1.1 Definitions .....3
  - 1.2 Interpretation.....6
- 2. Enforcement and Effect .....7**
  - 2.1 Enforcement .....7
  - 2.2 Takes Effect.....7
- 3. Objectives .....7**
  - 3.1 Objectives of QUU .....7
- 4. Amendment of Participation Agreement .....8**
  - 4.1 Amendment of Participation Agreement .....8
  - 4.2 Ministerial Approval Required for Change in Particular Matters .....8
- 5. Participants and Participation Rights.....8**
  - 5.1 Participants .....8
  - 5.2 Participation Rights.....8
- 6. Sale or Transfer of Participation Rights .....8**
  - 6.1 Sale or Transfer Process .....8
  - 6.2 Completion of Transfer of Participation Rights .....8
  - 6.3 Ministerial Approval .....9
  - 6.4 Appointment as Agent to execute amendment.....9
- 7. Participant Obligations .....9**
  - 7.1 Concurrence Agency Delegation Indemnity .....9
- 8. Participant Decisions .....9**
  - 8.1 Participant Decisions by Special Majority .....9
  - 8.2 Unanimous Participant Decisions .....9
- 9. The Board .....10**
  - 9.1 Role of the Board .....10
  - 9.2 Board Membership .....10
  - 9.3 Appointment of Board Members .....10
  - 9.4 Criteria for Appointment.....10
  - 9.5 Term .....11
  - 9.6 Consecutive Terms for Board Members .....11
  - 9.7 Termination of Office .....11
  - 9.8 Retirement of Board Members.....11
  - 9.9 Removal of Board Members and Chairperson of the Board.....11
  - 9.10 Remuneration and Benefits of Board Members and the  
Chairperson .....12
  - 9.11 Indemnity and insurance.....12
  - 9.12 Execution of documents .....13
  - 9.13 Attorney or agent .....13
  - 9.14 Chairperson of the Board.....13
- 10. Board Meetings.....13**
  - 10.1 Board Meetings.....13
  - 10.2 Notice of Board Meetings .....14
  - 10.3 Conduct of Board Meetings .....14
  - 10.4 Minutes .....14
  - 10.5 Quorum of the Board .....14

10.6	Valid Proceedings .....	15
<b>11.</b>	<b>Powers of the Board.....</b>	<b>15</b>
11.1	Decisions .....	15
11.2	Powers of the Board .....	15
11.3	Prohibition on Financial Benefits to Related Parties .....	15
11.4	Voting Rights of Board Members .....	16
<b>12.</b>	<b>Disclosure of Interests of Board Members .....</b>	<b>16</b>
<b>13.</b>	<b>Reserve Powers of Participants .....</b>	<b>16</b>
<b>14.</b>	<b>Good faith.....</b>	<b>16</b>
14.1	Good Faith .....	16
14.2	No Fetter on Statutory Obligations .....	17
<b>15.</b>	<b>Strategic Planning .....</b>	<b>17</b>
15.1	Statement of Strategic Intent .....	17
15.2	Annual Operational Plan .....	17
<b>16.</b>	<b>Reporting to Participants.....</b>	<b>18</b>
16.1	Provision of Information to Participants .....	18
<b>17.</b>	<b>Profit Distribution .....</b>	<b>19</b>
17.1	Participation Returns .....	19
17.2	Entitlements on Transfers .....	19
<b>18.</b>	<b>Tax Equivalents .....</b>	<b>19</b>
<b>19.</b>	<b>Confidentiality.....</b>	<b>19</b>
19.1	Confidentiality .....	19
<b>20.</b>	<b>Auditor.....</b>	<b>19</b>
20.1	Auditor General.....	19
<b>21.</b>	<b>Dispute resolution .....</b>	<b>20</b>
21.1	Notice of Dispute .....	20
21.2	Procedure to settle disputes .....	20
21.3	Dispute Negotiation .....	20
21.4	Independent Expert .....	21
<b>22.</b>	<b>Notices.....</b>	<b>21</b>
22.1	Notice to Board Members .....	21
22.2	Notice to Parties .....	22
22.3	Time of service .....	22
22.4	Notice Requirements .....	22
	<b>Schedule 1 – Participants.....</b>	<b>23</b>

## Participation Agreement dated

**Parties**

**Brisbane City Council** of 266 George Street, Brisbane, Queensland 4000;

**Ipswich City Council** of 45 Roderick Street, Ipswich, Queensland 4305;

**Scenic Rim Regional Council** of 82 Brisbane Street, Beaudesert, Queensland 4285;

**Lockyer Valley Regional Council** of 26 Railway Street, Gatton, Queensland 4343;

**Somerset Regional Council** of 2 Redbank Street, Esk, Queensland 4312; and

**Central SEQ Distributor-Retailer Authority ABN 86 673 835 011, trading as Queensland Urban Utilities** of Level 2, 15 Green Square Close, Fortitude Valley, Queensland, 4006.

## Background

- A. QUU was established under the Distribution and Retail Restructuring Act.
- B. Section 20 of the Distribution and Retail Restructuring Act requires the Parties to enter into a Participation Agreement.
- C. The Parties have entered into this Agreement as their Participation Agreement, and it has been approved by the Minister, as the Participation Agreement of QUU, for the purposes of Chapter 2, Part 3 of the Distribution and Retail Restructuring Act.
- D. The Agreement contains amendments made in accordance with clause 4 and sections 28(1) and (3) and 29(1) of the Distribution and Retail Restructuring Act with effect from the Amendment Date.
- E. As section 30 of the Distribution and Retail Restructuring Act requires the Minister to table this amended Agreement in Parliament, this Agreement will be a public document.

## Operative Provisions

---

### 1. Definitions and Interpretations

#### 1.1 Definitions

In this Agreement:

**Annual Operational Plan** means the plan described in clause 15.2.

**Amendment Date** means the date the amendments to this Agreement took effect in accordance with the Distribution and Retail Restructuring Act.

**Board** means QUU's board.

**Board Appointment Protocol** means any protocol for the appointment of Board Members that is agreed to in writing by the Participants from time to time.

**Board Member** means a person who is appointed as a member of the Board in accordance with the Distribution and Retail Restructuring Act and this Agreement.

**Board Remuneration Policy** means a policy setting out the terms on which remuneration and benefits will be paid to Board Members.

**Business Day** means a day except a Saturday, Sunday or public holiday in the place:

- (a) in which the relevant act is to be or may be done; or
- (b) to which the communication is posted, sent or delivered.

**Concurrency Agency Delegation** means a delegation required to be made under clause 8 of the South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2010.

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

**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 same meaning as in the Retail and Restructuring Act.

**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 QUU, including as result of appointment or nomination by QUU or a subsidiary as a trustee or as a Board Member, of another body corporate.

**Majority Participant** means a Participant holding more than 50% Participation Rights.

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

**Minority Participant** means a Participant other than a Majority Participant.

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

**Operative Date** means 25 June 2010, being the date this Agreement first took effect in accordance with the Distribution and Retail Restructuring Act.

**Participants** means the entities listed in Schedule 1.

**Participating Local Governments** means the entities set out in section 5(1)(b) of the Distribution and Retail Restructuring Act.

**Participation Return** means distributions to each Participating Local Government from the profits of QUU in accordance with the Participation Return Policy.

**Participation Return Policy** means the policy approved by Participating Local Governments in 2018 and approved by the Board on 19 March 2018, as amended by written agreement between QUU and a Special Majority of Participants from time to time.

**Participation Rights**, for a Participant, means the entitlement to participate in the profits of QUU in the proportion set out next to the name of the Participant in Schedule 1 as amended from time to time in accordance with this Agreement.

**Parties** means each of the Participating Local Governments and QUU.

**Profit** has the meaning given by the Accounting Standard AASB101 - Presentation of Financial Statements.

**QUU** means the Central SEQ Distributor-Retailer Authority, trading as Queensland Urban Utilities, established under section 8 of the Distribution and Retail Restructuring Act.

**RAB or Regulatory Asset Base** means the value of QUU's fixed assets that the economic regulator recognises for the purposes of earning a regulated return to capital.

**Related Party of QUU** means:

- (a) a Participant;
- (b) a Board Member;
- (c) a Wholly Owned Entity of the entity referred to in paragraph (a) above;
- (d) a body corporate that is controlled by the entity referred to in paragraph (a) above;
- (e) a Participating Local Government;
- (f) a Senior Executive of a Participant;
- (g) a councillor or Senior Executive of a Participating Local Government;
- (h) a spouse, de facto spouse, parent or child of the person referred to in paragraph (b);
- (i) a spouse, de facto spouse, parent or child of any person referred to in paragraph (f) or (g); or
- (j) any additional persons or entities that are specified as being a related entity in relation to a body corporate pursuant to the provisions of the Corporations Act.

**Senior Executive** means:

- (a) the Chief Executive Officer; or
- (b) an employee:
  - (i) who reports directly to the chief executive officer; and
  - (ii) whose position ordinarily would be considered to be a senior position in the local government's corporate structure.

**Special Majority**, in favour of a decision, means:

- (a) if there is a Majority Participant:
  - (i) the Majority Participant; and
  - (ii) 50% of the Minority Participants; or
- (b) if there is no Majority Participant, 75% of the Minority Participants.

**Special Majority Matter** means a matter referred to in clause 8.1(a).

**Statement of Strategic Intent** means the Statement of Strategic Intent referred to in clause 15.

**Term** for a Board Member, means the period of their appointment to office as a Board Member in accordance with clause 9.5.

**Unanimous Matter** means a matter referred to in clause 8.2(a).

**Wholly owned Entity**, in relation to a Participating Local Government, means a body corporate, whose only member is the relevant Participating Local Government or a nominee of the relevant Participating local government.

## 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) should from time to time the trading name of QUU be changed, then any references in this Agreement to QUU will be replaced by a reference to the new trading name;
- (h) a reference to something being "written" or "in writing" includes that thing being represented or reproduced in any mode in a visible form;
- (i) 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;
- (j) unless otherwise expressly defined, a word or phrase used in this Agreement which is defined in the Distribution and Retail Restructuring Act will have the same meaning as set out in that Act; and

- (k) in the case of any inconsistency, the Distribution and Retail Restructuring Act prevails.

---

## **2. Enforcement and Effect**

### **2.1 Enforcement**

- (a) Each Party submits to the non-exclusive jurisdiction of the courts of Queensland, the Federal Court of Australia and the courts competent to determine appeals from those courts with respect to any proceedings that may be brought at any time relating to this Agreement.
- (b) If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect pursuant to the law of any jurisdiction, then that does not affect or impair:
- (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
  - (ii) the legality, validity or enforceability pursuant to the law of any other jurisdiction of that or any other provision of this Agreement.

### **2.2 Takes Effect**

This Agreement takes effect on the day the Minister gives the Participants a notice that the Minister has approved it.

---

## **3. Objectives**

### **3.1 Objectives of QUU**

QUU must carry out its functions in a way that aims to:

- (a) comply with the Distribution and Retail Restructuring Act and all other applicable statutory requirements;
- (b) perform business or other functions it considers appropriate;
- (c) operate on a sustainable basis and to generate returns to Participants in accordance with the Participation Return Policy;
- (d) be an innovative organisation that delivers sustainable and responsive outcomes for customers;
- (e) engage with the communities it serves;
- (f) maintain customer service standards;
- (g) support both the Participating Local Governments' and QUUs' social, environmental and economic objectives;
- (h) provide infrastructure consistent with the needs of its geographic area under the Distribution and Retail Restructuring Act;
- (i) support both the South East Queensland regional plan and the Participating Local Governments' land use planning objectives; and
- (j) do all things necessary and incidental or conducive to attaining the above objectives.

---

## 4. Amendment of Participation Agreement

### 4.1 Amendment of Participation Agreement

- (a) This Agreement may be amended by written Agreement between all the Parties.
- (b) A Participating Local Government may agree to the amendment only if it has passed a resolution to that effect.

### 4.2 Ministerial Approval Required for Change in Particular Matters

Clause 4.1 is subject to section 29 of the Distribution and Retail Restructuring Act.

---

## 5. Participants and Participation Rights

### 5.1 Participants

- (a) The Participants are the entities listed in Schedule 1.
- (b) No entity, other than the entities mentioned in Schedule 1 shall be eligible to be Participants in QUU without the prior written approval of the Minister.

### 5.2 Participation Rights

- (a) The proportion of Participation Rights held by each Participant is set out next to the Participant's name in Schedule 1.
- (b) Only a Participant may hold a Participation Right.
- (c) Where, after the Operative Date, in the reasonable opinion of all other Participants, a Participant (**Defaulting Participant**) breaches any of its obligations under clause 7 (**Liability Amount**), the Defaulting Participant agrees that the proportion of Participation Rights held by all Participants set out next to the Participant's name in Schedule 1 may, without limitation and in the absolute discretion of QUU, be adjusted by QUU and may reference the RAB calculated at the time of the claim, in settlement of payment of the Liability Amount to QUU.
- (d) In adjusting the Participation Rights under clause 5.2(c) the same methodology that was applied to determine the Participation Rights listed in Schedule 1 as at the date of execution of this Agreement will be reapplied.
- (e) Each Participant agrees to do all things reasonable necessary to give effect to such re-adjustment of the Participation Rights.

---

## 6. Sale or Transfer of Participation Rights

### 6.1 Sale or Transfer Process

Subject to clauses 6.2 and 6.3 a Participant may sell or transfer (transfer) all or part of the Participation Rights of the Participant to another Participant.

### 6.2 Completion of Transfer of Participation Rights

- (a) The transfer of Participation Rights in accordance with this clause 6 shall be evidenced in writing by an agreement between the Participant disposing of all or a portion of their Participation Rights and the Participant acquiring the Participation Rights (**Transfer Agreement**).

- (b) A copy of the duly executed Transfer Agreement shall be delivered to QUU.
- (c) Subject to clause 6.3 and receipt of a duly executed Transfer Agreement, QUU will in accordance with clause 6.4 execute and deliver on behalf of each Participant and as agent of each Participant an agreement to amend Schedule 1 as a consequence of a transfer made in accordance with clause 6.

### **6.3 Ministerial Approval**

Any change to the Participants or the Participation Rights held by relevant Participants contained in Schedule 1 shall be of no effect unless the Minister has:

- (a) been given a copy of the proposed amendment to Schedule 1; and
- (b) by notice to QUU approved the change.

### **6.4 Appointment as Agent to execute amendment**

By signing this Agreement, each Party irrevocably appoints and authorises any Board Member to execute and deliver on behalf of the relevant Party and as the agent of the relevant Party any Agreement to amend Schedule 1 as a consequence of a transfer made in accordance with this clause 6.

---

## **7. Participant Obligations**

### **7.1 Concurrence Agency Delegation Indemnity**

Each Participant indemnifies QUU against all liability, loss, costs and expenses (including legal fees, costs and disbursements) arising from or incurred in connection with a failure by the relevant Participant to act in accordance with the Concurrence Agency Delegation or a breach by the relevant Participant of a condition of the Concurrence Agency Delegation.

---

## **8. Participant Decisions**

### **8.1 Participant Decisions by Special Majority**

- (a) Subject to clause 8.2, the Board may not approve QUU undertaking any of the following matters without the Special Majority of Participants signing a document stating that they are in favour of QUU undertaking the matter:
  - (i) any action which could reasonably be perceived by the Participants as a material departure from the Statement of Strategic Intent approved under clause 15;
  - (ii) a change to the Participation Return Policy; or
  - (iii) any other matter stated in this Agreement as requiring the Special Majority of the Participants.
- (b) Subject to the Distribution and Retail Restructuring Act, any resolution or decision made by the Board on a Special Majority Matter, other than in accordance with clause 8.1(a), will have no effect.

### **8.2 Unanimous Participant Decisions**

- (a) The Board may not approve QUU undertaking any of the following matters without all of the Participants signing a document stating that they are in favour of QUU undertaking the matter:

- (i) the creation of any different class of Participation Rights;
    - (ii) the issuing of any additional Participation Rights; or
    - (iii) any other matter stated in this Agreement as requiring the agreement of all of the Participants.
  - (b) Subject to the Distribution and Retail Restructuring Act, any resolution or decision made by the Board on a Unanimous Matter, other than in accordance with clause 8.2(a), will have no effect.
- 

## **9. The Board**

### **9.1 Role of the Board**

- (a) The Board is responsible for the way QUU performs its functions and exercises its powers.
- (b) The Board's role is as specified in the Distribution and Retail Restructuring Act, and includes:
  - (i) deciding the strategies and the operational, administrative and financial policies to be followed by QUU; and
  - (ii) ensuring that QUU performs its functions and exercises its powers in a proper, effective and efficient way; and
  - (iii) ensuring, so far as practicable, that QUU complies with its planning and reporting.

### **9.2 Board Membership**

- (a) The Board of QUU is to consist of a minimum of five and maximum of eight persons (including the Board chairperson).
- (b) All Board Members (including the Board chairperson) must be Independent Members.

### **9.3 Appointment of Board Members**

- (a) Subject to the Distribution and Retail Restructuring Act and clause 9.4, the Special Majority of Participants may appoint any person as a Board Member, including the Board chairperson by signing a document stating that they are in favour of the appointment of the Board Member and/or Board chairperson.
- (b) The appointment of a person as a Board Member will:
  - (i) Comply with the requirements of the Distribution and Retail Restructuring Act; and
  - (ii) Be in accordance with the Board Appointment Protocol.

### **9.4 Criteria for Appointment**

- (a) A person cannot be appointed as a Board Member if the person is disqualified from being a Board Member under the Distribution and Retail Restructuring Act.
- (b) In considering whether to appoint a person as a member of a Board, regard must be had to the person's previous experience and ability to:

- (i) contribute to the carrying out of the Board's role under clause 9.1;
  - (ii) contribute to the strategic oversight of QUU's functions; and
  - (iii) bring an independent judgment to bear on the Board's decision-making.
- (c) Subsection 9.4 does not limit the matters that may be considered.

## **9.5 Term**

Subject to the Distribution and Retail Restructuring Act and this Agreement, each Board Member will hold office for the term stated in the person's appointment, but a term cannot exceed five years.

## **9.6 Consecutive Terms for Board Members**

A person may, in accordance with this Agreement, serve more than two consecutive terms as a Board Member where:

- (a) A Special Majority of Participants agrees in writing to the Board Member serving more than two consecutive terms; or
- (b) Where permitted by the Board Appointment Protocol.

## **9.7 Termination of Office**

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

- (a) fails to attend monthly Board meetings for a continuous period of 3 months without the consent of the Board;
- (b) resigns by notice in writing to QUU;
- (c) is removed from office in accordance with clause 9.9;
- (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 2001; or
- (f) otherwise ceases to be qualified to act as a member of the Board under the Distribution and Retail Restructuring Act.

## **9.8 Retirement of Board Members**

- (a) Subject to clause 9.6 a Board Member must retire from Office on expiry of his or her Term.
- (b) A Board Member who retires is, if not disqualified, eligible for reappointment as a Board Member.

## **9.9 Removal of Board Members and Chairperson of the Board**

Subject to the Distribution and Retail Restructuring Act, a Special Majority of Participants may remove any Board Member from holding office as a Board Member, and the chairperson of the Board from holding office as the chairperson, by signing a document stating that they are in favour of the removal of the Board Member and/or the chairperson of the Board from holding such positions.

## **9.10 Remuneration and Benefits of Board Members and the Chairperson**

- (a) A Board Remuneration Policy must be approved by a notice in writing signed by the duly authorised delegates of a Special Majority of Participants.
- (b) Each Independent Member, including the Chairperson, will be remunerated by QUU in accordance with the approved Board Remuneration Policy.
- (c) QUU must pay all reasonable travelling, accommodation and other expenses that a Board Member properly incurs in attending Board Meetings or otherwise in connection with the business of QUU.
- (d) Board Members, including the Chairperson, will not receive any fees or benefits in addition to those approved under clause 9.10 and 9.11.

## **9.11 Indemnity and insurance**

- (a) To the extent permitted by law, QUU must indemnify each Board Member against a Liability of that person and the Legal Costs of that person.
- (b) The indemnity pursuant to clause 9.11(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 QUU.
- (c) To the extent permitted by law, QUU 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 QUU.
- (d) To the extent permitted by law, QUU may enter into an agreement or deed with a Board Member, pursuant to which QUU must do all or any of the following:
  - (i) keep books and records of QUU and allow either or both that person and that person's advisers access to those books and records 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, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

## **9.12 Execution of documents**

- (a) The chairperson of the Board or the Chief Executive Officer of QUU may only execute a document on behalf of QUU if authorised to do so by the Board in accordance with an approved delegation policy.
- (b) 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 QUU, and receipts for money paid to QUU, must be signed, drawn, accepted, endorsed or otherwise executed.

## **9.13 Attorney or agent**

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

## **9.14 Chairperson of the Board**

- (a) The Participants will appoint the Board chairperson in accordance with clause 9.3 . The initial Board chairperson may be appointed for a period of up to 5 years.
- (b) The Board chairperson must be an Independent Member.
- (c) The Participants may remove the Board chairperson at any time in accordance with clause 9.9.
- (d) Where possible, the Board chairperson will chair each Board meeting.
- (e) If at a Board meeting the office of Board chairperson is vacant, the Board chairperson is not present within 15 minutes after the time appointed for the holding of a Board meeting or the Board chairperson is not willing or able 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.
- (f) The Board chairperson, or acting chairperson under clause 9.14(e), has a casting vote in the case of an equality of votes on a resolution at a Board Meeting, provided that the chairperson is entitled to vote on the resolution.

---

## **10. Board Meetings**

### **10.1 Board Meetings**

- (a) Subject to clause 10.2, the Board chairperson shall endeavour where reasonable, to convene at least 10 Board Meetings every calendar year and give reasonable notice of the date and agenda of each meeting.
- (b) The Board chairperson may at any time call a meeting of the Board.
- (c) The Board chairperson must call a meeting of the Board within a reasonable time (and in any event within 1 month) if asked in writing to do so by at least two Board Members. Any two Board Members may require that particular business to be considered at the meeting be included in the notice convening the Board Meeting.

- (d) The Board may hold meetings or allow Board Members to take part in its meetings by using any technology (for example, teleconferencing) that reasonably allows members to hear and take part in discussions as they happen.
- (e) A Board Member who takes part in a meeting under sub-clause (d) is taken to be present at the meeting.

## **10.2 Notice of Board Meetings**

- (a) Notice of a Board meeting must be given to each Board Member. Notice of a Board meeting may be given in person, or by post or by telephone, fax or other electronic means.
- (b) 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 QUU accidentally does not give notice of the meeting to a person.

## **10.3 Conduct of Board Meetings**

- (a) The Board chairperson is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The Board chairperson may determine any dispute concerning the admission, validity or rejection of a vote at the meeting.
- (c) The Board chairperson may at any time terminate discussion or debate on any matter being considered at the meeting and require that matter be put to a vote.
- (d) The Board chairperson may delegate any power conferred by clause 10.3 to any Board Member.
- (e) Nothing contained in this clause limits the powers conferred by law on the Board chairperson.

## **10.4 Minutes**

- (a) The Board chairperson must cause minutes of each Board Meeting to be promptly prepared and circulated to Board Members.
- (b) Board Members are to promptly communicate their comments, if any, in writing after circulation of the draft minutes.
- (c) The draft minutes are to be finalised at either the next Board meeting, or if the next Board meeting is greater than 30 calendar days after the conclusion of the previous meeting then within 30 calendar days of the previous meeting.
- (d) If approved, the chairperson is to sign those minutes which then are prima facie evidence of the proceedings and decisions of the Board meeting to which they relate. The Board chairperson must cause a summary of the business conducted at a Board meeting to be circulated to the Participants.

## **10.5 Quorum of the Board**

- (a) Until otherwise determined by the Participants by Special Majority, a quorum for a Board meeting is 50% of Board Members entitled to vote on a resolution that may

be proposed at that meeting. If there are an odd number of Board Members then the quorum is 50% of the next nearest even number. <sup>1</sup>

- (b) If, other than for the fact that a Board Member has disclosed an interest under section 42 of the Distribution and Retail Restructuring Act, there would have been a quorum, the remaining Board Members present will represent a quorum.
- (c) A quorum for a Board meeting must be present at all times during the meeting.

## **10.6 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.

---

## **11. Powers of the Board**

### **11.1 Decisions**

- (a) The Board has full powers of management, control and direction of the activities of QUU, upon and subject to the provisions of this Agreement and the Distribution and Retail Restructuring Act.
- (b) A power of the Board can only be exercised by a resolution passed at a meeting of the Board, a written resolution, or in accordance with a delegation of power pursuant to this Agreement.

### **11.2 Powers of the Board**

The Board has overall responsibility for the governance of QUU. Where a matter is a Special Majority Matter or Unanimous Matter, no Board resolution in relation to these matters or any decision by the Chief Executive Officer of QUU has any effect until the relevant approval is obtained in accordance with clause 8.1 or clause 8.2.

### **11.3 Prohibition on Financial Benefits to Related Parties**

Without limiting clause 9.10, QUU must not give a Financial Benefit to a Related Party of QUU unless:

- (a) it has been approved under a policy of QUU; or
- (b) all Participants approve in writing of the giving of the Financial Benefit; or
- (c) the giving of the Financial Benefit is on terms no more favourable to the Related Party of QUU than would be reasonable in the circumstances if QUU and the Related Party of QUU were dealing at arm's length; or

---

<sup>1</sup> For example if the Board comprises seven Board members, then the next nearest even number of eight so the quorum would be four Board members.

- (d) the giving of the Financial Benefit is remuneration to a Board Member under clause 9.10; or
- (e) the giving of the Financial Benefit is an indemnity, payment in respect of Legal Costs or insurance premium payable by QUU in accordance with clause 9.11; or
- (f) the Financial Benefit is given to the Related Party of QUU in their capacity as a Participant and the giving of the benefit does not discriminate unfairly against the other Participants.

#### **11.4 Voting Rights of Board Members**

For the purposes of voting at a Board meeting, each Board Member is entitled to one vote. The Board chairperson or acting chairperson has a casting vote under clause 9.14(f).

---

### **12. Disclosure of Interests of Board Members**

- (a) Any interests of Board Members shall be disclosed and dealt with in accordance with section 42 of the Distribution and Retail Restructuring Act.
- (b) Without limiting clause 12(a), the Board may establish protocols to assist with the identification, disclosure and recording of interests of Board Members.

---

### **13. Reserve Powers of Participants**

- (a) Under section 49 of the Distribution and Retail Restructuring Act, Participants may give QUU a written direction about the way QUU is to perform its functions. Such direction may only be given with the written agreement of all Participants.
- (b) Under section 49A of the Distribution and Retail Restructuring Act, a Participant may give QUU a written direction about the way QUU is to perform certain functions relating to the Participant's local government area. The required period for the Board to give any written opinion about the direction is 20 Business Days.

---

### **14. Good faith**

#### **14.1 Good Faith**

QUU and each Participating Local Government must:

- (a) act in good faith in its dealings with each other in connection with matters dealt with under this Agreement and the Distribution and Retail Restructuring Act;
- (b) not unlawfully impede or restrict the exercise of each other's rights under any Document or related policies;
- (c) not unlawfully impede or restrict the performance by any other of them of its obligations under any Document or related policies;
- (d) act reasonably and honestly;
- (e) do all things required by the Distribution and Retail Restructuring Act, and this Agreement and by any contract, agreement or document related to the Distribution and Retail Restructuring Act, or this or related policies (**Documents**);
- (f) not intentionally do or omit to do anything that would cause or be likely to cause a breach by a party of its obligations under any law, including any law relating to the exercise of the functions the subject of the Water Approval Delegation.

## **14.2 No Fetter on Statutory Obligations**

Nothing in this Agreement shall fetter or restrict a Participating Local Government or QUU from exercising a statutory or regulatory duty, power or discretion granted to, or expressly imposed upon or conferred on QUU or that Participating Local Government.

---

## **15. Strategic Planning**

### **15.1 Statement of Strategic Intent**

- (a) The Board must provide a Statement of Strategic Intent to Participants about the future strategic direction of QUU covering a five year period.
- (b) The initial Statement of Strategic Intent will take effect from 1 July 2019, and extend to 30 June 2024.
- (c) The Statement of Strategic Intent, both initial and subsequent versions, must be approved by the Special Majority of Participants. The approved Statement of Strategic Intent must be adopted by the Board, and provided to each Participant within 20 business days of adoption by the Board.
- (d) QUU will review the Statement of Strategic Intent annually, or as directed by a Special Majority of Participants. Where any amendments are considered by the Board to not change the intent of the statement, the Board will determine if an updated statement is provided to Participants and any updated statement will be provided by the end of the relevant financial year. Where the amendments are considered by the Board to change the intent of the statement, a new five year Statement of Strategic Intent will be issued as per clause 15.1(a)
- (e) In the final year of the Statement of Strategic Intent, QUU will provide Participants with a new five year statement, by three months prior to the end of the expiry of the current statement, for approval by each Participant as per clause 15.1(c).
- (f) The Statement of Strategic Intent must include QUU's:
  - (i) operating objectives, based on those outlined under clause 3.1;
  - (ii) purpose and vision;
  - (iii) strategic priorities, both financial and non-financial, and strategies to delivery, including how successful delivery will be measured;
  - (iv) forecast infrastructure investment;
  - (v) five-year financial forecasts and supporting key financial metrics, including any key assumptions used to determine the financial forecasts; and
  - (vi) strategic risks.

### **15.2 Annual Operational Plan**

- (a) The Board must, prepare an Annual Operational Plan that covers the relevant financial year and is consistent with the Statement of Strategic Intent. The Plan must include:
  - (i) initiatives for the relevant financial year to deliver the strategic priorities;

- (ii) service standards for the services to be delivered consistent with QUU’s operating objectives;
  - (iii) key operational risks;
  - (iv) forecast Participation Returns for the relevant financial year consistent with the Participation Return Policy; and
  - (v) a five year financial forecast (‘Profit and Loss’, ‘Balance Sheet’, cash flow statement and summary of transactions with Participants) to help provide Participants with an insight into gross Participation Returns.
- (b) The Board must approve and provide a copy of the Annual Operational Plan to each Participant by the end of the first month of the new financial year to which it applies.

---

## **16. Reporting to Participants**

### **16.1 Provision of Information to Participants**

- (a) Each year, QUU will provide Participants with the following:
- (i) a half yearly report by the end of February each year, or such longer period as may be agreed by the Participants; and
  - (ii) an annual report within 2 weeks of the report being tabled in the Queensland Parliament, containing a copy of the audited annual financial statement of QUU.
- (b) The half yearly report and annual report must be consistent with the Statement of Strategic Intent and the relevant financial year’s Annual Operational Plan, be prepared in accordance with the Queensland Government’s annual reporting requirements for Queensland Government Agencies, and must contain such information that the Participants require to make an informed assessment of:
- (i) the operations of QUU and its subsidiaries entities (if any) being consistent with its operating objectives;
  - (ii) the financial performance and position of QUU and its subsidiary entities showing actual compared to budget, including information about—
    - A. revenue and expenses;
    - B. assets and liabilities; and
    - C. cash flow.
  - (iii) achievement of and progress towards strategic priorities;
  - (iv) the impact of any material written directions received from Participants, pursuant to clause 13, on QUU’s strategic priorities; and
  - (v) details of any emerging issues that may have an impact on performance and/or capacity to make a Participation Return.
- (c) QUU will not disclose any information regarding QUU, that is required to be provided under this clause 16, to a Participant unless the information is simultaneously disclosed to all other Participants.

---

## **17. Profit Distribution**

### **17.1 Participation Returns**

- (a) Participation Returns (whether interim, final or additional) will be approved and paid in accordance with the Participation Return Policy.
- (b) As from the 2018/19 Financial Year, the Participation Return Policy is the policy that was approved by Participants in 2018 and approved by the Board on 19 March 2018.
- (c) Interest is not payable on a Participation Return.
- (d) A Participation Return approved under clause 17.1(a) shall be distributed to the Participant in accordance with their Participation Rights.

### **17.2 Entitlements on Transfers**

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.

---

## **18. Tax Equivalents**

QUU must, as required under a tax equivalents manual pursuant to section 100 of the Distribution and Retail Restructuring Act, pay tax equivalents to a Participating Local Government in proportion to its Participation Rights.

---

## **19. Confidentiality**

### **19.1 Confidentiality**

Each Party (**recipient party**) agrees not to disclose information of another Party (**disclosing party**), which is made known to them in connection with this Agreement, except:

- (a) to employees, legal advisers, auditors and other consultants of the recipient party who require the information for the purposes of this Agreement (including proceedings in relation to this Agreement) and who have agreed to keep such information confidential;
- (b) to relevant responsible Ministers or Councils;
- (c) with the consent of the disclosing party;
- (d) if the information is required to be disclosed by law; or
- (e) if the information is or becomes generally and publicly available other than through a breach of this Agreement.

---

## **20. Auditor**

### **20.1 Auditor General**

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

---

## **21. Dispute resolution**

### **21.1 Notice of Dispute**

- (a) If a difference or dispute (**Dispute**) between the Participants (**Disputing Parties**) arises in connection with the subject matter of this Agreement, including a Dispute concerning:
- (i) its interpretation;
  - (ii) any right or liability of any party under this Agreement; or
  - (iii) the performance of any action by any party under or arising out of this Agreement, whether prior or after its termination; or
  - (iv) a claim:
    - A. in tort;
    - B. under statute;
    - C. for restitution based on unjust enrichment or other quantum meruit; or
    - D. for rectification or frustration;
    - E. or like claim available under the law governing this Agreement,

then any party shall give the other parties to this Agreement a written notice (**Notice of Dispute**) adequately identifying and providing details of the Dispute.

### **21.2 Procedure to settle disputes**

- (a) The procedure that is to be followed to settle a Dispute is as follows:
- (i) first, negotiation under clause 21.3; and
  - (ii) second, determination of the dispute under clause 21.4 (if agreed).
- (b) A party may not commence Court proceedings in relation to a Dispute until it has exhausted the procedures in this clause 21, unless the party seeks appropriate injunctive or other interlocutory relief to preserve property or rights or to avoid losses that are not compensable in damages.
- (c) Each party must continue to perform any of its liabilities under this Agreement relating to any issue in dispute or otherwise, despite and during any Dispute resolution being conducted under this provision.
- (d) A party is not required to comply with this clause in relation to any Dispute where all other parties to the Dispute are in default under clause 21 in relation to that Dispute.

### **21.3 Dispute Negotiation**

- (a) Within ten (10) Business Days of service of a Notice of Dispute, an officer of each party to the Dispute must confer at least once to attempt to resolve the Dispute or to agree on methods of resolving the Dispute by other means.

- (b) If the Dispute has not been resolved within ten (10) Business Days of service of the Notice of Dispute, it will escalate to the second level (**Second Level**). The relevant Chief Executive Officers of the parties must confer at least once to attempt to resolve the Dispute or to agree on methods of resolving the Dispute by other means.
- (c) If the Dispute has not been resolved within ten (10) Business Days of escalation to the Second Level i.e. 20 Business Days after the Notice of Dispute, the chairperson must meet with the parties at least once to attempt to resolve the Dispute or to agree on methods of resolving the Dispute by other means.
- (d) If the Dispute has not been resolved within ten (10) Business Days of escalation to the chairperson i.e. 30 Business Days after the Notice of Dispute, the Mayors of the parties must confer at least once to attempt to resolve the Dispute or to agree on methods of resolving the Dispute by other means.
- (e) A party in compliance with this provision may terminate the Dispute resolution process being conducted under this clause 21.3 by notice in writing to the other party at any time after forty (40) Business Days following the Notice of Dispute.

## **21.4 Independent Expert**

- (a) If the Disputing Parties agree that a dispute is best resolved by an independent expert, the Parties will submit to the following procedure before any other course of action is taken to resolve the dispute:
  - (i) the Disputing Parties will choose and appoint an independent expert;
  - (ii) in the absence of agreement by the Disputing Parties as to the independent expert within 5 Business Days after the decision to appoint an independent expert), the independent expert will be appointed on the application of any Disputing Parties by the President of the Institute of Arbitrators Australia;
  - (iii) the independent expert must make a determination or finding on the issues in dispute as soon as practicable and in any event within 15 Business Days, or such longer period as may be agreed between the Disputing Parties;
  - (iv) the independent expert will act as an expert and not as an arbitrator and may adopt such procedures as he or she sees fit;
  - (v) the independent expert's decision will be final and binding on the Disputing Parties; and
  - (vi) the costs of the independent expert will be borne by the Disputing Parties equally or as the independent expert may otherwise determine having regard to the merits of the dispute and each Disputing Party will bear its own costs relating to the independent expert's decision.

---

## **22. Notices**

### **22.1 Notice to Board Members**

QUU may give notice to a Board Member by:

- (a) delivering it to that person;
- (b) sending it by pre-paid 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 (if any) nominated by that person for that purpose;
- (d) sending it to the electronic address (if any) nominated by the Board Member for that purpose; or
- (e) any other means agreed between QUU and that person.

## **22.2 Notice to Parties**

A Party may give notice to another Party by:

- (a) addressing the notice to the relevant chief executive officer;
- (b) delivering it or sending it by pre-paid post to the main business office of that Party;
- (c) delivering it or sending it by pre-paid post to a place nominated by the Party for that purpose;
- (d) sending it to the fax number at the main business office of the Party nominated by the Party for that purpose; or
- (e) sending it to the electronic address (if any) nominated by the Party for that purpose.

## **22.3 Time of service**

- (a) A notice is taken to be received by the addressee:
  - (i) (in the case of prepaid post) on the third day after the date of posting;
  - (ii) (in the case of fax or email) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report or receipt confirmation produced by the fax machine or computer from which it was sent; and
  - (iii) (in the case of delivery by hand) on delivery,but if the communication is taken to be received on a day that is not a Business Day or after 5.00pm, it is taken to be received at 9.00 am on the next Business Day.

## **22.4 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.

## Schedule 1 – Participants

<b>Participant</b>	<b>Participation Rights as at the Operative Date</b>
Brisbane City Council	85.007%
Ipswich City Council	12.222%
Lockyer Valley Regional Council	0.903%
Scenic Rim Regional Council	1.042%
Somerset Regional Council	0.826%

## Signed as an Agreement

**Signed** for and on behalf of **Brisbane City Council** by **Greg Evans, Chief Financial Officer** as its duly authorised Council delegate in accordance with the *City of Brisbane Act 1924* in the presence of:

Dated this .....day of .....2010

\_\_\_\_\_  
Print name of Witness

\_\_\_\_\_  
Signature of Delegate

\_\_\_\_\_  
Signature of Witness

**Signed** for and on behalf of **Ipswich City Council** by **Carl Wulff, Chief Executive Officer** as its duly authorised Council delegate in accordance with the *Local Government Act 1993* in the presence of:

Dated this .....day of .....2010

\_\_\_\_\_  
Print name of Witness

\_\_\_\_\_  
Signature of Delegate

\_\_\_\_\_  
Signature of Witness

**Signed** for and on behalf of **Lockyer Valley Regional Council** by **Derek Sellers, Chief Executive Officer** as its duly authorised Council delegate in accordance with the *Local Government Act 1993* in the presence of:

Dated this .....day of .....2010

\_\_\_\_\_  
Print name of Witness

\_\_\_\_\_  
Signature of Delegate

\_\_\_\_\_  
Signature of Witness

**Signed** for and on behalf of **Scenic Rim Regional Council** by **Patrick Murphy, Chief Executive Officer** its duly authorised delegate in accordance with the *Local Government Act 1993* in the presence of:

Dated this .....day of .....2010

\_\_\_\_\_  
Print name of Witness

\_\_\_\_\_  
Signature of Delegate

\_\_\_\_\_  
Signature of Witness

**Signed** for and on behalf of **Somerset Regional Council** by **Robert Bain, Chief Executive Officer** as its duly authorised Council delegate in accordance with the *Local Government Act 1993* in the presence of:

Dated this .....day of .....2010

\_\_\_\_\_  
Print name of Witness

\_\_\_\_\_  
Signature of Delegate

\_\_\_\_\_  
Signature of Witness

**Signed** for and on behalf of **Central SEQ Distributor-Retailer Authority** by its duly authorised Chief Executive Officer, Noel Faulkner

Dated this .....day of .....2010

\_\_\_\_\_  
Signature of Chief Executive Officer