

# ENERGY SUPER

# TRUST DEED

## **Consolidated Trust Deed**

**Trust deed dated 16 June 1995 as amended**

*Compiled by Fund staff to incorporate amendments to 30 June 2005*

*Updated by Corrs to incorporate amendments in:*

- 2 x Deed of Amendments dated 1 November 2006
- Deed of Amendment dated 28 June 2007
- Deed of Amendment dated 24 February 2009
- Deed of Amendment dated 21 October 2009
- Deed of Amendment dated 25 May 2010
- Deed of Amendment dated 22 February 2011

Replacement provisions adopted by:

**Deed of Amendment dated 18 December 2012, effective from 1 July 2013**

*[drafted by Minter Ellison]*

*Updated by Corrs to incorporate amendments in:*

- Deed of Amendment dated 23 June 2014
- Deed of Amendment dated 3 December 2015
- Deed of Amendment dated 4 March 2016

**ENERGY SUPER**

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**ELECTRICITY SUPPLY INDUSTRY  
SUPERANNUATION FUND (QLD)\***

**TRUST DEED**

**PREAMBLE**

- BETWEEN:** Queensland Transmission and Supply Corporation a statutory government owned corporation established under the Government Owned Corporations Act 1993 with its principal office at 61 Mary Street, Brisbane ("Sponsoring Employer")
- AND:** Queensland Generation Corporation a statutory government owned corporation established under the Government Owned Corporations Act 1993 with its principal office at 61 Mary Street, Brisbane ("Sponsoring Employer")
- AND:** Electricity Supply Industry Superannuation (Qld) Ltd  
ACN 069 634 439 an Australian company with its registered office at Level 4, Qantas House, 247 Adelaide Street, Brisbane (the "Trustee");

**RECITALS:**

- A. Under the provisions of the Electricity Act 1994, State electricity entities are required to participate in an approved industry superannuation scheme which will operate as a continuation of the Queensland Electricity Supply Industry Employees' Superannuation Scheme ("QESI ESS") and the Queensland Electricity Supply Industry Employer-funded Accumulations Superannuation Fund ("Accumulations Fund").
- B. By operation of the Electricity Act 1994, on the date fixed by regulation as being the commencement date for approval of the approved industry superannuation scheme for the purposes of that Act all the assets and liabilities of QESI ESS and the Accumulations Fund continue to be the assets and liabilities of the approved industry superannuation scheme, all the rights, entitlements and obligations of the Queensland Electricity Supply Industry Superannuation Board ("Board") under contracts and arrangements between the Board and other persons become the rights, entitlements and obligations of the trustee of the approved industry superannuation scheme and the accrued entitlements of each person in QESI ESS and the Accumulations Fund will continue as their accrued entitlements in the approved industry superannuation scheme.
- C. This Deed establishes an industry superannuation scheme called **Electricity Supply Industry Superannuation Fund (Qld)** (the "Fund") which it is intended will become an approved industry superannuation scheme for the purposes of the Electricity Act 1994.

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\* The name of the Fund changed to "Energy Super" effective on 1 April 2011.  
14351701/10B



D. The Trustee has agreed to act as the first Trustee of the Fund.

**NOW THIS DEED WITNESSES THAT** an indefinitely continuing superannuation fund to be known as the **Electricity Supply Industry Superannuation Fund (Qld),\*** shall vest in and be controlled and administered by the Trustee upon the trusts of this Deed (which includes this preamble and all of the following Parts) and shall commence on the day on and from which the Fund is an approved industry superannuation scheme for the purposes of the Electricity Act 1994 (the "Commencement Date").

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\* **The name of the Fund changed to "Energy Super" effective on 1 April 2011.**  
14351701/10B

# PART 1

## GENERAL PROVISIONS

### DIVISION 1 - INTERPRETATION

#### 1. Definitions

In this Deed -

"Accumulations Fund" means the Queensland Electricity Supply Industry Employer-funded Accumulations Superannuation Fund constituted under the Electricity Act 1976.

"Act" means the Electricity Act 1994.

"Actuary" means a person who is or, in the case of a company or firm, who employs a person who is qualified to provide actuarial services to the Fund.

"Additional Contributions" means the additional contributions that a Member is required to contribute to the Fund under Clause 115.

"Annual Salary" of a Member at any date means the actual Salary as defined in Clause 3 received by that Member in the 12 month period ending on that date. If a Member has not received a Salary for the full 12 month period, the Member's Salary actually received will be annualized.

"Another Fund" means a superannuation or other benefit arrangement (other than this Fund).

"Articles" means the Articles of the QESI ESS as at 30 June 1995.

"Auditor" means the person appointed for the time being as Auditor of the Fund under Clause 36.

"Basic Contributions" means contributions made by a Member under Clause 114.

"BCC Fund" means the Brisbane City Council Superannuation Fund.

"Binding Nomination" means a notice to the Trustee given by an applicant or Member directing the Trustee to pay all or part of the benefit payable on their death to a person or persons nominated in the notice, and the notice complies with the following rules:

- (a) each person nominated is within a class of persons the Trustee has prescribed as eligible to be nominated in a binding nomination;
- (b) the nomination notice is in the form prescribed by the Trustee for binding nominations;

- (c) the nomination notice otherwise complies with form and content requirements prescribed by the Trustee for binding nominations;
- (d) the nomination notice has not expired, in terms of the expiry period prescribed by the Trustee for binding nominations.

"Calendar month" means a period starting at the beginning of any day of one of the 12 named months and ending -

- (a) immediately before the beginning of the corresponding day of the next named month; or
- (b) if there is no corresponding day - at the end of the next named month.

"Choice Product" means a class of beneficial interest in the Fund that is not:

- (a) a MySuper Product; or
- (b) a class of interest whose only Members are Defined Benefit Members.

"Commencement Date" means the date fixed by regulation on which the Fund became an approved industry superannuation scheme for the purposes of the Act.

"Complying Superannuation Fund" means a superannuation fund that is a complying superannuation fund for the purposes of section 42 of the SIS Act.

"Death Benefit Instruction" means a notice to the Trustee given by an applicant or Member directing the Trustee to pay all or part of the benefit payable on their death to a person or persons nominated in the notice, and the notice complies with the following rules:

- (a) each person nominated is within a class of persons the Trustee has prescribed as eligible to be nominated in a death benefit instruction;
- (b) the notice is in the form prescribed by the Trustee for a death benefit instruction;
- (c) the notice otherwise complies with form and content requirements prescribed by the Trustee for a death benefit instruction.

"Declared Rate" means a rate of interest declared by the Trustee as a crediting rate for allocation to Members' benefits.

"Deed" means this Trust Deed, including all of the Parts hereof, as amended, added to, deleted from or replaced from time to time.

"deemed employment" means any arrangement or agreement between an Employer and a person other than an Employee for the supply of services by that person where the Employer is obliged to treat that person as an employee under the SG legislation and includes, for example, an arrangement or agreement with a non-executive director or a contractor.

"Defined Benefit" means that part of the benefit of a Defined Benefit Member that is calculated by reference to the Member's Benefit Multiple or Member's Reserve (as defined in Clause 109).

"Defined Benefit Assets" means the value of the assets of the Fund from time to time attributable to contributions made to the Fund for the purpose of funding Defined Benefits.

"Defined Benefit Member" means a Member whose entitlements from the Fund are subject to the provisions of Part 2 of this Deed.

"Defined Contribution Member" means a Member whose entitlements from the Fund are subject to the provisions of Part 3 of this Deed.

"Dependant" has the same meaning as that term has in the SIS Act.

"Disablement" means any mental or bodily injury, illness, disease or infirmity which the Trustee, after obtaining such medical evidence as the Trustee decides is necessary, determines is either Total and Permanent Disablement or Temporary Disablement.

"Eligible Person" means a person who is eligible under the Relevant Law to become a member of a Regulated Superannuation Fund.

"Employee" means -

- (a) a person who is employed by an Employer; and
- (b) any other person whom the Employer determines is an Employee for the purposes of this Fund.

"Employer" means a State electricity entity within the meaning of the Act and each other employer who participates in the Fund and, in relation to a Member, means the Employer by whom that Member is employed.

"Employer Account" means the account of that name established by the Trustee for a Member under Clause 135.

"Employment" means actual or deemed employment with an Employer.

"Family Law Act" means the Family Law Act 1975 (C'wlth).

"Family Law Requirements" means any requirements under:

- (a) the Family Law Act;
- (b) any other legislation,

in relation to the superannuation benefits of parties or former parties to a marriage and incidental matters.

"Final Average Salary" has the meaning given by Clause 4.

"full-time hours" for a period means the total number of hours that a full-time Employee is or would be employed to work during the period.

"Fund" means the superannuation fund established by this Deed and includes all the assets held in accordance with this Deed.

"Fund Expenses" means the costs and expenses of and incidental to the establishment, operation, management, administration and investment of the Fund (including remuneration for the Trustee, if any, under Clause 47) but not including tax.

"Investment Portfolio" means an investment portfolio referred to in Clause 31(5).

"Member" means a person who has been admitted to membership of the Fund as provided in the Deed but does not include a person who has ceased to be a Member under Clause 58.

"Member Account" means the account of that name established by the Trustee under Clause 112 or 134.

"Member's Accumulated Balance" means the balance of the Member's entitlement, if any, in the Accumulations Fund on the date immediately prior to the Commencement Date and which is transferred to the Fund, adjusted for net changes in value allocated to that amount from time to time from the Commencement Date to the date of payment.

"Member's Accumulated Contributions" with respect to a Member means the amount of the Member's Accumulated Contributions in QESI ESS immediately prior to the Commencement Date.

"Member's Benefit Multiple" has the meaning given by Clause 109.

"Member's Reserve" has the meaning given by Clause 109.

"Membership" and "Membership Period" have the meanings given by Clause 2.

"Minimum Requisite Benefit" of a Member means the benefit which the Actuary certifies (in the benefit certificate) must be provided by the Fund to comply with the SG Legislation.

"Month" means a calendar month.

"MySuper Product" means a class of beneficial interest which satisfies the requirements of Clause 58A(5).

"MySuper Start Date" means the date from which the Trustee must treat any contribution (or part of a contribution) to the Fund as a contribution to be paid into a MySuper Product of the Fund under the Relevant Law or such earlier date as determined by the Trustee.

"Non-Member Spouse" has the meaning given by Section 90MD of the Family Law Act.

"Operational Risk Reserve" means the reserve established pursuant to Clause 43A.

"Participating Entity" means a State electricity entity or other Employer that agrees to recognise an Employee's period of Employment with other Participating Entities.

"Payments Split" has the meaning given by Section 90MD of the Family Law Act."

"Pension" means a benefit from the Fund calculated at an annual rate and payable by regular periodic instalments.

"Personal Member" means a Member who at the relevant time is not an Employee of an Employer.

"Projected Final Average Salary" in relation to a Member, means the Member's Final Average Salary at age 60 assuming that -

- (a) the Member continues to be a contributor to the Fund until attaining age 60; and
- (b) the Member's Salary remains unaltered.

"QESI ESS" means the Queensland Electricity Supply Industry Employees' Superannuation Scheme established under the Electricity Act 1976.

"REB Fund" means any one or more of the funds defined as an REB Fund in Section 3 of the Articles.

"Regulated Superannuation Fund" has the same meaning as that term has in the SIS Act.

“Relevant Law” means the SIS Act and any other requirement of a law or a Superannuation Regulator:

- (a) prescribed for the operation of Regulated Superannuation Funds;  
or
- (b) which must be complied with in order to:
  - (i) obtain the maximum tax concessions available to Regulated Superannuation Funds; or
  - (ii) avoid any penalty.

“Reversionary Beneficiary” means, in relation to a Member:

- (a) a person:
  - (i) whom the Member nominated;
    - (A) on commencement of the Member’s pension benefit; or
    - (B) at such other time during the term of the pension as the Trustee permits,  
  
in a form acceptable to the Trustee, as the person entitled to receive the Member’s pension benefit on the Member’s death; and
  - (ii) who is eligible under the Relevant Law to be a Reversionary Beneficiary of the pension (at the time of the nomination and at the time of the Member’s death); or
- (b) in respect of a former member of SPEC Super, a person:
  - (i) whom:
    - (A) the trustee of SPEC Super notifies the Trustee was nominated by the former member of SPEC Super, on commencement of a pension that was being paid to the Member while a member of SPEC Super; or
    - (B) the Member nominated at such other time during the term of the pension as the Trustee permits; and
  - (ii) who is eligible under the Relevant Law to be a Reversionary Beneficiary of the pension (at the time the Member becomes a Member or at the time of nomination (if later) and at the time of the Member’s death).



"Review Period" means a period of up to 12 months determined by the Trustee.

"Rules of the Accumulations Fund" means the rules prescribed under section 381B of the Electricity Act 1976.

"Salary" has the meaning given by Clause 3.

"SEAQ, NEAQ and REB Funds" means the superannuation funds referred to in Section 9(1) of the Articles.

"Secretary" means the person appointed by the Trustee as Secretary of the Fund under Clause 38 and includes any deputy or acting Secretary appointed under that clause.

"Section 11 Member" means a Member whose entitlements from the Fund are subject to the provisions of Part 4 of this Deed.

"Section 18 Member" means a Member whose entitlements from the Fund are subject to the provisions of Part 4 of this Deed.

"SG Legislation" means the Superannuation Guarantee (Administration) Act 1992 and the Superannuation Guarantee Charge Act 1992.

"SIS Act" means the Superannuation Industry (Supervision) Act 1993.

"SPEC Super" means the superannuation fund known as SPEC Super, established (as the "Superannuation Plan for Electrical Contractors (Queensland)" by a trust deed dated 30 November 1987 as amended.

"Spouse":

- (a) other than in Clause 89A, has the same meaning as that term has in the SIS Act;
- (b) in Clause 89A, has the meaning given by Section 90MD of the Family Law Act 1975.

"Staff Retiring Provident Account" means the account of that name established under Clause 110 or 132.

"State electricity entity" means an Employer defined as a State electricity entity in the Act.

"Subsidising Employer" means an Employer referred to in Clause 58A(5)(e).

"Superannuation Regulator" means the governmental body or bodies having responsibility for the regulation of, or the administration of tax concessions available to, Regulated Superannuation Funds, including:

- (a) the Australian Prudential Regulation Authority;
- (b) the Australian Securities & Investments Commission; and
- (c) the Australian Taxation Office.

"Temporary Disablement" means a disablement the Trustee accepts as making a member temporarily incapable of discharging the duties of the member's office or position unless a different definition is included in a schedule to this deed and is stated to apply to a particular Member or group of Members or a definition is included in a policy of insurance under which the benefit on Temporary Disablement is provided.

"Termination Date" means the date referred to in Clause 103.

"Total and Permanent Disablement" means in respect of a Member disablement such that the Member's physical or mental disability, bodily injury, illness, disease or infirmity is of a degree that, in the opinion of the Trustee, after obtaining the advice of one or more medical practitioners designated by it, the Member is unlikely ever again to be able to undertake any suitable form of remunerative work for which the Member is reasonably qualified by education, training or experience and "Totally and Permanently Disabled" has a comparable meaning. However, where a benefit on Total and Permanent Disablement is provided under a policy of insurance, the definition of total and permanent disablement or a corresponding term in the policy of insurance applies in place of this definition.

"Trustee" means the trustee for the time being of this Fund.

"Unrestricted Amount" means in relation to a Member the amount of the Member's entitlement in the Fund which under the Relevant Law may be cashed at any time.

"Valid Death Benefit Instruction" has the meaning given in sub-clause 79A(5).

"Voluntary Contribution Account" means the account of that name established by the Trustee for a Member under Clause 111 or 133.

"Voluntary Contributions" means contributions made by a Member under Clause 116 or 137.

"workers compensation payment" means a payment received by an employee under the Workers Compensation Act 1990, or a similar law of the Commonwealth or another State or a Territory, in respect of an injury suffered by the employee.

"working hours" for a period, for an employee, means the total number of hours that the employee was scheduled to work during the period, other than on overtime, and whether on a full-time or part-time basis.

## 2. Meaning of Membership and Membership Period

- (1) In this Deed, subject to the following subsections of this Clause, Membership or Membership Period of a person means the sum of -
- (a) the period during which the person contributed, or under this Deed is taken to have contributed, to the Fund; and
  - (b) for a person who immediately prior to the Commencement Date was a member of QESI ESS - the person's membership period under the Articles; and
  - (c) any other period included in the person's Membership or Membership Period under this Deed.

- (2) If, during a period –

- (a) a person is employed part-time; and
- (b) the entire period would, but for this section, be included in the person's Membership or Membership Period,

the following proportion of the period is included in the person's Membership or Membership Period -

$$\frac{W}{F}$$

where  $W$  is the number of the Member's working hours for the period; and

$F$  is the number of full-time hours for the period.

- (3) For the purpose of calculating -

- (a) a Member's Total and Permanent Disablement or death benefit; or
- (b) a Member's Temporary Disablement Pension or any other benefit which becomes payable to or in respect of a Member -
  - (i) while the Member is in receipt of a Temporary Disablement Pension, or
  - (ii) after the Member has received a Temporary Disablement Pension for a continuous period of 2 years,

if the Member was a Full-Time Employee and under age 60 when the Member became entitled to receive the benefit, the Member's

Membership or Membership Period is taken to include the period from the day the Member -

- (c) in a case mentioned in paragraph 2(3)(a) - ceased to be an Employee; or
- (d) in a case mentioned in paragraph 2(3)(b) - first became entitled to a disablement pension,

until the Member attained, or would have attained, age 60.

- (3A) For benefits that become payable in respect of a Full-Time Employee on or after subclause 120(3A) commences,<sup>1</sup> the following applies instead of subclause 2(3):

For the purpose of calculating a Member's Total and Permanent Disablement or death benefit, if the Member was under age 60 when the Member became entitled to receive the benefit, the Member's Membership or Membership Period is taken to include the period from the day the Member ceased to be an Employee until the Member attained, or would have attained, age 60.

- (4) Despite any other provision of this Clause 2, for the purpose of calculating -

- (a) a Member's Total and Permanent Disablement or death benefit;
- or

- (b) a Member's Temporary Disablement Pension or any other benefit which becomes payable to or in respect of a Member –

- (i) while the Member is in receipt of a Temporary Disablement Pension, or

- (ii) after the Member has received a Temporary Disablement Pension for a continuous period of 2 years,

if the Member was a Part-Time Employee and under age 60 when the Member became entitled to receive the benefit, the Member's Membership or Membership Period is taken to include the following proportion of the period from the day the Member -

- (c) in a case mentioned in paragraph 2(4)(a) - ceased to be an Employee; or
- (d) in a case mentioned in paragraph 2(4)(b) - first became entitled to a disablement pension,

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<sup>1</sup> subclause 120(3A) commenced on 23 June 2014

until the Member attained, or would have attained, age 60 -

$$\frac{W}{F}$$

where W means the Member's working hours for the part of the Member's Membership or Membership Period before the Member ceased to be an Employee or became eligible to receive a disablement pension; and

F means the number of the full-time hours for the same period.

- (4A) For benefits that commence to be payable in respect of a Part-Time Employee on or after subclause 120(3A) commences,<sup>2</sup> the following applies instead of subclause 2(4):

Despite any other provision of this Clause 2, for the purpose of calculating a Member's Total and Permanent Disablement or death benefit, if the Member was under age 60 when the Member became entitled to receive the benefit, the Member's Membership or Membership Period is taken to include the following proportion of the period from the day the Member ceased to be an Employee until the Member attained, or would have attained, age 60 –

$$\frac{W}{F}$$

where W means the Member's working hours for the part of the Member's Membership or Membership Period before the Member ceased to be an Employee; and

F means the number of the full-time hours for the same period.

- (5) An Employer may by written notice to the Trustee increase the Membership Period of a Member or a group of Members either generally or for a particular purpose. However, the Trustee will not be obliged to recognise that increased Membership Period unless the Employer pays any further contributions to the Fund which the Trustee, acting on the advice of the Actuary, advises the Employer is required to finance that increase.
- (6) The calculation of a person's Membership, Membership Period and periods of membership of other funds for the purposes of this Deed shall be based on years and completed days.

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<sup>2</sup> subclause 120(3A) commenced on 23 June 2014

### 3. Meaning of Salary

- (1) In this Deed, subject to this clause, Salary of a person means the amount (by whatever name) that is paid to the person by the person's Employer by way of fixed remuneration, including any allowance permanently included in the remuneration.
- (2) To remove any doubt, a person's Salary does not include any payment to the person for acting in a higher classification, overtime, commission, bonuses, shift allowances, weekend or other penalty rates, fees or any other allowance, unless the payment is part of the person's fixed remuneration.
- (3) For the purposes of the Deed, the amount of an Employee's Salary is -
  - (a) if the Employee is a shift worker other than a salaried shift worker - the amount that would otherwise be the Employee's Salary plus -
    - (i) for a "continuous 3-shift worker" - 30% of the amount; or
    - (ii) for any other shift worker - 15% of the amount; or
  - (b) if the Employee's Salary consists wholly or partly of commission - the amount notified to the Trustee under Clause 5.
- (3A) In subclause 3(3) the term "salaried shift worker" means a person whose fixed remuneration includes a component calculated to reflect that the person is a shift worker but who does not receive a separate shift allowance in addition to the person's fixed remuneration.
- (4) For the purposes of the Fund, if an Employee is granted leave without pay for a reason other than illness or injury, the Employee's Salary during the period of the leave is taken to continue at the same rate as immediately before the leave.
- (5) For the purposes of calculating a Member's benefit under this Deed, a person's Salary during any period that the person is employed part-time is taken to be the amount that would be the person's Salary if the person were employed full-time.
- (6) In any particular case and notwithstanding the other provisions of this clause, Salary shall be such other amount or determined in such other manner as may be agreed by the Employer, the Trustee and the Member for the purposes of the whole or any particular provision of the Deed.

#### 4. Meaning of Final Average Salary

- (1) In this Deed, subject to subclause 4(2), Final Average Salary in relation to a member means at any particular date, the Member's average annual salary during -
- (a) in the case of a Member who at that date had been in employment for less than 2 years - the Member's employment; or
  - (b) in any other case - the 2 years ending on that date.
- (2) The Final Average Salary of a Member who has been in employment for at least 2 years and whose Salary was reduced on or after 18 June 1993, will be the greater of -
- (a) the Member's Final Average Salary calculated when the Member ceased employment; or
  - (b) the Member's Final Average Salary immediately before the Member's Salary reduction indexed in accordance with subclause 4(3).

- (3) The Member's Final Average Salary mentioned in paragraph 4(2)(b) is to be indexed as follows -

$$\text{average salary} \times \frac{\text{cessation index}}{\text{reduction index}}$$

where -

average salary means the Member's Final Average Salary mentioned in paragraph 4(2)(b);

cessation index means the index number published for the quarter two quarters immediately before the Member ceased employment;

reduction index means the index number published for the quarter two quarters immediately before the Member's Salary reduction;

index number means, in relation to a quarter, the full-time adult average weekly ordinary time earnings index published by the Australian Statistician for the quarter.

- (4) If a Member's Salary was reduced prior to 18 June 1993 Section 11N of the Articles will apply with respect to that Member's benefit entitlements from Part 2 of the Fund.
- (5) For the purposes of this clause, "in employment" means Employment with the Member's current Employer or, if employed by a Participating Entity, consecutive periods of Employment with Participating Entities.

## **5. Employer to Notify Trustee of the Amount of Commission Paid**

- (1) This clause applies to an Employer who pays to an Employee a Salary that consists wholly or partly of commission.
- (2) As soon as is practicable after each financial year, the Employer must notify the Trustee of the amount of the Employee's Salary for the year.
- (3) If the Trustee requests the Employer to notify it of the amount of the Employee's Salary for any other period, the Employer must comply with the request.

## **6. Similar Terms**

A term similar to any term defined in this Deed has a corresponding meaning, for example, "Totally and Permanently Disabled" has a corresponding meaning to "Total and Permanent Disablement".

## **7. Words and Phrases**

In this Deed -

- (a) the term -
  - (i) "agreed" means agreed from time to time and agreed generally or in any particular case;
  - (ii) "amendment" includes an addition, variation, deletion and substitution;
  - (iii) "approved" means approved generally or in any particular case;
  - (iv) "beneficiary" includes a contingent beneficiary, a Member and a pensioner;
  - (v) "consent" means consent given either generally or in any particular case;
  - (vi) "determined" means determined from time to time and determined generally or in any particular case and the term determines has a corresponding meaning;
  - (vii) "including" means including without limitation;
  - (viii) "insurance" includes assurance and vice versa;
  - (ix) "person" includes -
    - (A) a body corporate and any other person recognised at law;



- (B) a partnership and any other group or association;
  - (C) a governmental authority,
- but the expression "natural person" must be given its normal meaning;
- (x) "tax" includes income tax, capital gains tax and other taxes and any duty, charge, levy and other government impost;
  - (b) "for example" is only illustrative and means including without limitation;
  - (c) "may" confers absolute discretion on the person entitled to exercise the right or power conferred but does not infer any obligation to exercise that right or power;
  - (d) reference to a benefit means a reference to all or part of that benefit;
  - (e) the singular includes the plural and vice versa;
  - (f) words implying one gender include the other genders; and
  - (g) any power, right or discretion given under this Deed, for example, the power to determine or agree, may be exercised -
    - (i) from time to time; and
    - (ii) generally or in any particular case.

## **8. Law**

References to any law includes any legislation and any regulation, prudential standard, binding determination, declaration, notification, order, class order, determination, ruling and any other instrument made under or in connection with it and any consolidations, amendments, re-enactments or replacements of any of them.

## **9. Conflicts**

- (1) Conflict between this Deed and the Relevant Law is dealt with in Clause 18.
- (2) If there is a conflict between -
  - (a) a provision in Part 1 of this Deed; and
  - (b) a provision in a subsequent Part, an Appendix or Schedule of this Deed,

Part 1 prevails unless the subsequent Part, Appendix or Schedule specifically provides otherwise.

#### **10. Amended Provisions**

All references to clauses or paragraphs of this Deed must be read as references to those clauses or paragraphs as altered, from time to time, unless the contrary is stated or implied.

#### **11. Severance**

Any provision of this Deed which is -

- (a) invalid in whole or in part; or
- (b) is required to be limited or read down in order to be valid,

is severed or limited or read down to the extent of the invalidity, but the remainder of the provision continues in full force and effect.

#### **12. Express References**

- (1) An express reference to one matter (including a clause or law) must not be taken as excluding other matters (including clauses or laws).
- (2) An express reference in this Deed to a clause must not be taken to infer that that clause does not have relevance to other clauses which do not have specific references.

#### **13. Headings and Index**

The index and headings in this Deed are included for convenience and do not affect the interpretation of this Deed.

#### **14. Defined Terms**

Whilst for convenience a particular word or group of words defined in the Deed may commence with capital or lower case letters, failure to use capital or lower case letters in that word or group of words elsewhere in the Deed does not of itself mean that that word or group of words has a meaning different from the meaning assigned thereto in the relevant definition.

## **DIVISION 2 - FUND**

### **15. Vesting of Fund**

The assets of this Fund are vested in the Trustee.

### **15A. Name of Fund**

The name of the Fund is “**Energy Super**”, or such other name as the Trustee may determine.

### **16. Sub-funds and Defined Benefit Assets**

- (1) The Trustee may determine to divide this Fund into separate sub-funds and may allocate particular assets to each sub-fund for one purpose but not another. (For example, the Trustee may regard assets as allocated to a sub-fund for an Employer for the purpose of determining the contributions to be made by that Employer under paragraph 59(1)(b) but not for other purposes.)
- (2) The Trustee must separately account for Defined Benefit Assets. (However, to avoid doubt, this subclause does not require the Trustee to segregate assets or to maintain any particular sub-funds.)

### **17. Sub-Accounts**

- (1) The Trustee may sub-divide any account or establish additional accounts, if, in the opinion of the Trustee, it is appropriate or desirable to do so for the purposes of the Fund.
- (2) The Trustee may vary the items to be credited or debited to any accounts if, in the opinion of the Trustee, it is necessary or desirable to do so, for the purposes of the Fund, having regard to the interests of Members.

## **DIVISION 3 - COMPLIANCE WITH RELEVANT LAW**

### **18. Regulated Superannuation Fund**

- (1) This Fund is and must remain a Regulated Superannuation Fund.
- (2) The Trustee of this Fund must be a Constitutional Corporation.
- (3) The Trustee may comply with any standard prescribed under the Relevant Law, notwithstanding that:
  - (a) compliance with the standard conflicts with an express provision of this Deed; and
  - (b) the standard is not required under the Relevant Law to be included in this Deed.
- (4) The Trustee may do or procure to be done or refrain from doing such acts, matters and things as in the opinion of the Trustee may be necessary or desirable:
  - (a) to enable the Fund to become and continue to be a Complying Superannuation Fund for the purposes of the Relevant Law; and
  - (b) to comply with or satisfy any provision or requirement of the Relevant Law.
- (5) The Trustee is not taken to have committed any breach of trust by virtue of any act or thing done to comply with the Relevant Law.
- (6) Notwithstanding any other provision in this Deed, the Trustee in the exercise of its powers under this Deed is not subject to the direction of any other person except where the Relevant Law permits the direction to be given to the Trustee by that person, and where any provision of this Deed would permit the person to give a direction to the Trustee other than as permitted by the Relevant Law:
  - (a) the Trustee must treat any direction given by a person under that provision as a request made by that person to the Trustee; and
  - (b) the Trustee may alone exercise the power, authority or discretion which is by the terms of this Deed subject to the direction of that other person.
- (7) Notwithstanding any other provision in this Deed, where any discretion under this Deed may be exercised by a person other than the Trustee, and the Relevant Law does not permit the exercise of that discretion without the Trustee's consent:
  - (a) the person on whom the discretion is conferred may not exercise that discretion in any case unless the Trustee consents to the

exercise of the discretion in the manner in which the person proposes to exercise the discretion;

- (b) the provision conferring the discretion is deemed to require the consent of the Trustee to the exercise of the discretion; and
  - (c) the person on whom the discretion is conferred may exercise the discretion with the Trustee's consent.
- (8) Without limiting the preceding provisions of this Clause 18, the provisions of Part 6 of the Superannuation Industry Supervision Act 1993 override any provision of this Deed which is inconsistent with them.

## **DIVISION 4 - TRUSTEE**

### **19. Appointment of Trustee**

- (1) If:
  - (a) the Superannuation Regulator removes the Trustee, the Trustee must by deed retire from office and appoint as a replacement trustee the constitutional corporation approved by the Superannuation Regulator for the purpose;
  - (b) the Members remove the Trustee (where Relevant Law prescribes a procedure for the Members to remove the Trustee), they must appoint a replacement trustee in accordance with the Relevant Law;
  - (c) the Trustee resigns from office or the Trustee's office is otherwise vacated, the Trustee must by deed retire from office and appoint as a replacement trustee a constitutional corporation which is eligible to act as trustee of the Fund.
- (2) The new Trustee must be appointed in writing and in accordance with the Relevant Law.
- (3) The new Trustee may be appointed for a definite or an indefinite period.
- (4) The acts of the Trustee are valid notwithstanding any defect in its appointment.

### **20. Eligibility to act as Trustee**

The board of directors of the Trustee –

- (a) must consist of an equal number of Employer representatives and Member representatives; and
- (b) may include an additional director, who is independent and who does not exercise a casting vote in addition to his or her deliberative vote in any proceedings of the board of directors.

### **21. Term of Office of Trustee**

The Trustee must hold office until the earliest of -

- (a) its removal by the Superannuation Regulator;
- (b) its retirement from that office;

- (c) the appointment of a receiver, receiver and manager or liquidator in respect of it or a court approves a scheme of arrangement providing for its dissolution;
- (d) its disqualification from that office by law;
- (e) it becoming a disqualified person as defined in the Relevant Law;
- (f) the Members remove the Trustee from office in accordance with the Relevant Law, where Relevant Law prescribes a procedure for the Members to remove the Trustee.

**22. Deleted**

**23. Deleted**

**24. Deleted**

**25. Deleted**

**26. Deleted**

**27. Deleted**

**28. Deleted**

**29. Deleted**

## DIVISION 5 - TRUSTEE POWERS

### 30. General Powers

- (1) The Trustee may do all acts and things which it considers necessary, desirable or expedient for the administration, maintenance and preservation of this Fund, including power to -
  - (a) appoint or remove custodians, managers, agents, delegates, employees and any other persons it considers appropriate and fix and pay fees or other remuneration to those persons out of this Fund;
  - (b) delegate any or all powers, duties or discretions to any person and to vary the terms of any delegation;
  - (c) seek and act on the advice of a person the Trustee considers to be capable of giving that advice without being liable in respect of anything done or omitted by reason of that advice;
  - (d) institute, conduct, defend, settle or abandon legal proceedings;
  - (e) refer claims to arbitration, conciliation or mediation;
  - (f) settle any claim;
  - (g) operate bank accounts or accounts with other institutions;
  - (h) enter into contracts;
  - (i) give undertakings, guarantees, discharges, releases and indemnities;
  - (j) provide for or transfer any tax;
  - (k) borrow money and to secure the borrowing in any manner, subject to clause 31A;
  - (l) deduct any taxes, duties, expenses or due but unpaid Member contributions from any account held on behalf of a Member in the Fund and from any benefit payable to a Member;
  - (m) make determinations or adopt procedures not inconsistent with this Deed for the calculation and rounding-off of contributions, benefits or interest; and
  - (n) make determinations of periods of time or other matters as appropriate to facilitate the management, operation, control and administration of the Fund.
- (2) These powers are in addition to all other powers given to the Trustee by law.



### **31. Power of Investment**

- (1) The Trustee may invest all money, which is not immediately required, in any manner which it could invest if acting personally and not as a trustee.
- (2) The Trustee may -
  - (a) manage, develop, improve, change or otherwise exploit any investment of this Fund;
  - (b) participate in any financial arrangement (usually called a synthetic or derivative investment) for the purpose of risk management or hedging;
  - (c) grant or exercise any right or power associated with any particular investment, for example, a right to vote as a result of shareholding;
  - (d) pool this Fund's money with other persons' money for investment purposes; and
  - (e) pay all expenses relating to investments out of the Fund including the cost of investigation and negotiation for a prospective investment which does not become part of this Fund.
- (3) The Trustee must set investment objectives for the Fund, and formulate an investment strategy to achieve those objectives, in accordance with the Relevant Law.
- (4) The Trustee may set different investment objectives, and formulate different investment strategies to achieve those objectives, for different parts of the Fund or a sub-fund.
- (5) The Trustee may:
  - (a) set different investment objectives for two or more Investment Portfolios;
  - (b) formulate an investment strategy for each Investment Portfolio;
  - (c) divide the assets of the Fund or a sub-fund between the different Investment Portfolios;
  - (d) invite Members to nominate the Investment Portfolio, or combination of Investment Portfolios, to apply to them;
  - (e) determine:

- (i) which categories of Members may make a nomination;
  - (ii) when, how and in what manner Members may change their nominations;
  - (iii) the minimum amount which may be invested in an Investment Portfolio; and
  - (iv) any other matters which the Trustee considers appropriate; and
- (f) change the investment objectives, strategies, Investment Portfolios and the assets of the Fund which comprise the Investment Portfolios.
- (6) The Trustee is not responsible or liable for:
- (a) the potential profitability of an Investment Portfolio nominated by a Member, in comparison with any other Investment Portfolio the Member, or any other Member, could have nominated; or
  - (b) monitoring the performance or progress of the Investment Portfolio of any Member, other than as required by the Relevant Law.

### **31A. Restrictions on Power of Investment**

The Trustee must not:

- (a) lend money of the Fund, or give any other financial assistance using the resources of the Fund, to any Member or to a relative of any Member except as permitted under the Relevant Law;
- (b) intentionally acquire any asset from a Member or a relative of a Member except as permitted under the Relevant Law;
- (c) borrow, or give security, except as permitted by the Relevant Law.

### **32. Power to Insure**

- (1) The Trustee may purchase or renew insurance of any kind, including -
  - (a) insurance in respect of Members on an individual or a group basis;
  - (b) trustee liability insurance; and
  - (c) insurance on the property or other assets of this Fund.
- (2) The Trustee may pay insurance premiums out of this Fund.

### **33. Discretionary Powers**

- (1) The Trustee may, in its discretion, permit a person to exercise a right or grant to the person a privilege or benefit under the Fund, if the Trustee is satisfied that -
  - (a) the person has lost or ceased to be entitled to the right, privilege or benefit through no fault of the person; and
  - (b) it is just and equitable to allow the person to have the enjoyment of the right, privilege or benefit.
- (2) The Trustee may, in the exercise of its powers under subclause 33(1), impose the conditions and requirements as it thinks just.

### **34. Deleted**

### **35. Discretions and Determinations**

In the exercise of its powers and discretions under this Deed, the Trustee

- (a) may rely on any information provided by any person including an Employer, Employee and a Member; and
- (b) has absolute discretion -
  - (i) to exercise that power or discretion;
  - (ii) not to exercise that power or discretion; and
  - (iii) to partly exercise that power or discretion,and is not obliged to explain its conduct.

## **DIVISION 6 -TRUSTEE DUTIES**

### **36. Appointment of Auditor**

The Trustee must appoint an Auditor to the Fund and may change the appointment from time to time.

### **37. Accounts and Audit**

The Trustee must ensure that -

- (a) proper records and accounts are kept in respect of this Fund and are retained for the period prescribed under the Relevant Law;
- (b) the records and accounts of this Fund are audited by the auditor each year.

### **38. Appointment of Secretary**

- (1) The Trustee must appoint a person as Secretary of the Fund (or acting or deputy Secretary).
- (2) The appointment shall be on the terms decided by the Trustee.
- (3) The Secretary shall perform the duties and have the powers provided by the Deed as well as any other duties and powers determined by the Trustee.
- (4) The person appointed as Secretary may be removed from office by the Trustee.

### **39. Appointment of Actuary**

- (1) The Trustee:
  - (a) must appoint an Actuary to the Fund, and may change the appointment from time to time;
  - (b) may appoint an Actuary in respect of the Defined Benefit Assets attributable to the sub-fund maintained for an Employer, to advise on that sub-fund instead of the Actuary to the Fund, and may change that appointment from time to time.
- (2) Without limiting paragraph 39(1)(b), an Employer may request the Trustee to appoint an Actuary in respect of the Defined Benefit Assets attributable to the sub-fund maintained for that Employer, and the Trustee may (but is not obliged to) appoint the Actuary requested by the Employer.

#### **40. Actuarial Valuation**

The Trustee may cause an actuarial valuation to be conducted at any time but must ensure that -

- (a) an actuarial valuation is conducted when the Relevant Law requires or at the request of an Employer;
- (b) an Employer is consulted and the Employer's views taken into account with respect to the actuarial assumptions used in any actuarial valuation of the Defined Benefit Assets attributable to the sub-fund maintained for that Employer;
- (c) an Employer receives a copy of each actuarial valuation report that relates to the Defined Benefit Assets attributable to the sub-fund maintained for that Employer; and
- (d) if any actuarial valuation is conducted at the request of one or more Employers, the costs of that valuation must be paid by that Employer or Employers.

#### **41. Actuarial Certificates**

The Trustee must obtain all actuarial certificates required by the Relevant Law in relation to this Fund and provide to each Employer a copy of any actuarial certificate applicable to that Employer's participation in the Fund.

#### **42. Information to Members and Employers**

The Trustee must comply with the Relevant Law in relation to the provision of information to Members, Employers and other persons.

#### **43. Change in value of the Fund**

- (1) The Trustee must:
  - (a) identify consecutive Review Periods up until the Fund is terminated;
  - (b) determine the net change in the value of the assets of the Fund for each Review Period.
- (2) In determining the net change in value of the assets of the Fund for a Review Period, the Trustee may take into account, in relation to the Review Period:
  - (a) investment returns on the assets of the Fund;

- (b) expenses, and any provision for expenses, in connection with the Fund;
  - (c) capital gains and losses on realisation of any of the assets of the Fund;
  - (d) unrealised gains and losses arising on revaluation of any of the assets of the Fund;
  - (e) allowance for capital appreciation and depreciation on any of the assets of the Fund;
  - (f) write-offs of bad debts;
  - (g) the appropriateness of averaging the net earnings of the Fund over two or more Review Periods;
  - (h) any reserves maintained by the Trustee; and
  - (i) any other factors which the Trustee considers appropriate.
- (3) The net change in value of the assets of the Fund for a Review Period may be positive or negative. A net change in value may be allocated by determining a crediting rate (including a Declared Rate) or a net earning rate, or in any other manner the Trustee determines.
- (4) Where the Trustee:
- (a) adopts a different investment strategy for different sub-funds, the Trustee must determine the change in value of the assets of the Fund for that Review Period which is attributable to each sub-fund;
  - (b) maintains two or more Investment Portfolios during a Review Period, the Trustee must determine the change in value of the assets of the Fund for that Review Period which is attributable to each Investment Portfolio,
- instead of determining the change in value of the assets of the Fund for that Review Period.
- (5) The Trustee must on determining a change in value of the assets of the Fund:
- (a) for the Fund;
  - (b) for any sub-fund; or
  - (c) for any Investment Portfolio,

determine the extent to which, and the manner in which, that change in value is to be allocated to Members' accounts or benefits.

- (6) The Trustee may maintain a reserve or reserves for:
  - (a) the Fund;
  - (b) any sub-fund;
  - (c) any Investment Portfolio, or a number of Investment Portfolios,for any purposes which the Trustee determines and Relevant Law permits.
- (7) The Trustee may allocate any amounts to a reserve which the Trustee determines, including:
  - (a) amounts deducted from contributions or Member accounts or benefits as provision for Fund Expenses;
  - (b) earnings on the Fund's investments, capital gains on realisation of any of the Fund's investments, and any other accretions to or arising out of the Fund's investments;
  - (c) where the Relevant Law permits, any contributions by an Employer not allocated to any Member account or benefit.
- (8) Without limiting Clause 43(7), the Trustee may if Relevant Law permits use a reserve to:
  - (a) allocate any amount to Members' benefits, in a manner that is equitable to all Members in respect of whom the reserve is maintained;
  - (b) allocate any amount to be applied in determining the amount of a change in value of the assets of the Fund, or the sub-fund or Investment Portfolio or Investment Portfolios, which is available for allocation to Member benefits;
  - (c) pay any Fund Expenses.
- (9) Where this Deed refers to an account or amount "adjusted for net changes in value allocated to" the account or amount from time to time, net changes in value and the allocation to the account or amount are determined in accordance with this Clause 43.

## **DIVISION 6A –OPERATIONAL RISK RESERVE**

### **43A. Operational Risk Reserve**

- (1) In addition to any other reserve maintained in accordance with Clause 43(6), the Trustee may maintain an Operational Risk Reserve where required or permitted by Relevant Law. The Operational Risk Reserve must:
  - (a) be separately identifiable from member accounts and reserves held in the Fund for other purposes; and
  - (b) provide an unrestricted commitment of funds to address losses arising from operational risks in a timely manner.
- (2) The Trustee may allocate any amounts to the Operational Risk Reserve which the Trustee determines in accordance with a policy determined by the Trustee in relation to the operation of the Operational Risk Reserve and the Relevant Law.
- (3) The Trustee may debit such amounts (if any) from the Operational Risk Reserve which the Trustee determines in accordance with a policy determined by the Trustee in relation to the operation of the Operational Risk Reserve and the Relevant Law.



## **DIVISION 7 - TRUSTEE INDEMNITY**

### **44. Exclusion from Liability**

Neither -

- (a) the Trustee;
- (b) a director or employee of the Trustee; nor
- (c) a director or employee of an Employer,

is liable in connection with this Fund except to the extent that -

- (d) that person fails to act honestly in relation to this Fund; or
- (e) that person intentionally or recklessly fails to exercise the degree of care and diligence required; or
- (f) exemption from liability is prohibited by Relevant Law.

### **45. Indemnity Against Liability**

To the extent that Clause 44 is not sufficient to protect any of the persons mentioned from liability, then that person is indemnified out of the assets of this Fund in respect of any liability in connection with this Fund, except to the extent that -

- (a) that person fails to act honestly in relation to this Fund; or
- (b) that person intentionally or recklessly fails to exercise the degree of care and diligence required; or
- (c) indemnity from this Fund is prohibited by Relevant Law.

### **45A. No Liability for Performance of or Failure to Perform Legally Restrained Acts**

The Trustee is not liable to any person for:

- (a) doing or performing any act or thing which the Trustee is, or which the Trustee believes in good faith the Trustee is, required to do or perform; or
- (b) failing to do or perform any act or thing which the Trustee is, or which the Trustee believes in good faith the trustee is, hindered, prevented or forbidden from doing or performing,

by any statutory provision or decree, order or judgement of any court or tribunal.

## **DIVISION 8 - EXPENSES/REMUNERATION**

### **46. Fund Expenses**

All Fund Expenses in connection with this Fund and the Trustee must be paid from this Fund, unless an Employer agrees with the Trustee to pay or reimburse a Fund Expense.

### **47. Trustee Remuneration**

The Trustee may be remunerated for acting as trustee, such remuneration is to be set based on comparable fees for administration of similar funds.

#### **47A. Directors' Remuneration**

- (1) A director of the Trustee may be remunerated in accordance with the constitution of the Trustee.
- (2) The remuneration of a director of the Trustee is payable from this Fund, except to the extent that the Trustee pays that remuneration, or an Employer agrees to pay that remuneration.

## **DIVISION 9 - EMPLOYERS**

### **48. Admission of Employers**

- (1) The Trustee may permit any other employer to participate in this Fund on the basis outlined in this Deed or on a basis agreed between the Trustee and the employer concerned. Any agreed basis takes precedence over the basis outlined in this Deed. The employer must sign an application for participation or such other document in such form as the Trustee prescribes or accepts.
- (2) The Trustee and an Employer may change the basis on which that Employer participates in this Fund. Any such change must be in accordance with subclause 96(1) as if it were an amendment of this Deed.
- (3) The Trustee may –
  - (a) accept or reject an application to become an Employer without giving any reason;
  - (b) impose any conditions when accepting an application; and
  - (c) at any time, remove or vary any condition so imposed.
- (4) An applicant is admitted as an Employer on the date determined by the Trustee.
- (5) If Relevant Law permits, the Trustee may admit an Employer notwithstanding that the Trustee has not received a duly completed application or other document in the prescribed form, on such terms and conditions and effective from such date as the Trustee determines, where the Employer has –
  - (a) nominated Employees for whom the Employer wishes to contribute to the Fund; and
  - (b) delivered to the Trustee a contribution for the credit of those Employees or any of them.

### **49. Cessation of Participation**

- (1)
  - (a) An Employer may at any time by at least 3 months notice in writing to the Trustee terminate the Employer's participation in the Fund as from a date specified in the notice and accepted by the Trustee.
  - (b) The Trustee may by notice in writing given to an Employer terminate the Employer's participation in the Fund on a date determined by the Trustee and specified in the notice.

- (2) Where –
- (a) the whole or substantially the whole of the assets of an Employer’s business are acquired by another person; or
  - (b) another person commences to employ all or any Members formerly employed by an Employer,

the Trustee may elect to accept the performance by that other person of the obligations of the Employer under this Deed in place of the performance of those obligations by the Employer. Acceptance by the Trustee of performance of an Employer’s obligations by another person discharges the Employer from any further obligations under this Deed.

- (3) On termination of an Employer’s participation (except where the Employer’s obligations are performed by another person under subclause 49(2)), the Trustee must set aside the amount of the benefit entitlements that the Trustee determines have accrued in respect of each Member then employed by the Employer concerned (“Affected Member”) under this Fund for the period up to the date of cessation of participation.
- (4) (a) If the Trustee has established a separate sub-fund for the Employer under Clause 16, the Trustee must calculate the value of the sub-fund as at the date of cessation of participation after deducting any accrued Fund Expenses and tax which should properly be deducted from that sub-fund, and that value will be the amount set aside under subclause 49(3).
- (b) If the Trustee has not established a separate sub-fund for the Employer under Clause 16, the Trustee may allocate any accrued Fund Expenses and tax to the benefit entitlements of Affected Members, to the extent and in the manner which the Actuary determines is fair and reasonable, and the amount set aside under subclause 49(3) will be adjusted accordingly for each Affected Member that the allocation applies to.
- (5) The Trustee must make appropriate arrangements for the benefit entitlements of Affected Members in respect of the amount set aside, which may include (for example) any of the following arrangements –
- (a) Affected Members may be eligible to retain their membership of the Fund, on terms determined by the Trustee;
  - (b) subject to Clause 58A(4), benefit entitlements of Affected Members may be transferred to Another Fund (“Transferee Fund”), on terms agreed between the Trustee and the trustee or administrator of the Transferee Fund;

- (c) any amount by which the value of a sub-fund maintained for the Employer under Clause 16 exceeds the benefit entitlements of the Affected Members, or the amount of any reserve or other unallocated amount in the Fund attributable to the former Employer (whether or not maintained as part of a sub-fund for the Employer under Clause 16), may be –
  - (i) allocated to Affected Members, or otherwise allocated in a manner determined by the Trustee in accordance with Relevant Law; or
  - (ii) transferred to Another Fund as an unallocated amount, to be applied for the benefit of Affected Members or Employees of the former Employer or otherwise as permitted under Relevant Law;
- (d) The Trustee may adjust any amount allocated to an Affected Member or transferred to Another Fund, to account for any net change in value of the benefit entitlements of Affected Members or the value of the sub-fund during the period between cessation of participation and the date of allocation or transfer.

## **DIVISION 10 - EMPLOYER POWERS**

### **50. Employer's Decision Final**

The decision of an Employer is final and binding on all persons on any matter relating to the Employment of an Employee of the Employer to the extent that it affects the Employee's entitlements as a Member of the Fund including -

- (a) the date on which a person commenced or left Employment; and
- (b) whether or not an Employee is actively employed; and
- (c) an Employee's salary or wages; and
- (d) the terms and conditions of an Employee's Employment generally.

### **51. Information from Employers**

The Employers must give the Trustee all information in its power or possession which is reasonably required by the Trustee in relation to this Fund.

## **DIVISION 11 - MEMBERSHIP**

### **52. Admission of Members**

- (1) An Employer must determine -
  - (a) whether or not an Employee is to be admitted as a Member of the Fund; and
  - (b) for an Employee who is to be admitted as a Member - whether the Member is to be -
    - (i) a Defined Benefit Member;
    - (ii) a Defined Contribution Member; or
    - (iii) any other category of Membership.
- (2)
  - (a) An Employee who is nominated by an Employer for membership of the Fund may apply to become a Member.
  - (b) An Employer may apply for an Employee to become a Member.
  - (c) An Eligible Person, who is not an Employee of an Employer, may apply to become a Member ("Personal Member"), where that Eligible Person is in a category of persons that the Trustee has determined is eligible for membership of the Fund.
- (3) Any application for membership must be in a form acceptable to the Trustee. However (if Relevant Law permits) the Trustee may admit a person as a Member without having received an application for membership by or in respect of the person.
- (4) The Trustee may –
  - (a) accept or reject an application for membership without giving any reason;
  - (b) impose any conditions when accepting an application; and
  - (c) at any time remove or vary any condition so imposed.
- (5) A person admitted as a Member becomes a Member –
  - (a) on a date determined by the Trustee; or
  - (b) if the Trustee makes no determination, on the earlier of:
    - (i) the date the Trustee accepts the application for membership; and

- (ii) the date the Trustee accepts the first contribution, transfer or rollover for the credit of the Member.

### **53. New Member who was Previously a Member**

Unless otherwise provided for in this Deed -

- (a) Members who leave but rejoin Employment -
  - (i) must be treated as if they were never Members before; but
  - (ii) will remain entitled to any benefit retained in this Fund in respect of the previous period of Membership ("Retained Benefit"); and
- (b) rejoining Employment will have no affect on the Member's Retained Benefit.

### **54. Information and Evidence**

Each Member must -

- (a) give such information and evidence; and
- (b) sign such documents; and
- (c) undergo such medical examinations and tests; and
- (d) satisfy such other requirements,

as and when the Trustee requires.

### **55. Special Restrictions or Conditions**

- (1) If -
  - (a) a Member fails to comply with any of the requirements imposed under Clause 54; or
  - (b) the Trustee considers the results of a medical examination or test are not satisfactory; or
  - (c) any statement made or evidence given contains a mis-statement, mistake, inaccuracy or omission,

the Trustee may impose special terms, conditions, limitations and/or restrictions as to benefits to be provided by this Fund and/or contributions to this Fund in respect of the Member concerned.

- (2) Any special terms, conditions, limitations and/or restrictions are binding on all persons despite anything to the contrary in this Deed.



- (3) The Trustee may remove or change any special terms, conditions, limitations and/or restrictions in relation to benefits and/or contributions previously imposed.

## **56. Classification of Members**

- (1) The Trustee may, if necessary or convenient for the administration of the Fund, divide the Members into categories.
- (2) If categories of Members are established, the Trustee must -
  - (a) determine the number of categories and the conditions for entry to and exit from each category; and
  - (b) subject to Clause 52, classify Members into the relevant categories.
- (3) If any doubt or dispute arises as to whether or for how long a Member is classified in a particular category, the decision of the Trustee is final and binding on all persons.

## **57. Members Bound by Deed**

Every Member and other beneficiary (including a potential beneficiary) under this Fund is bound by this Deed.

## **58. Cessation of Membership**

A person ceases to be a Member when all benefits which are or may be payable in respect of the Member have been paid, transferred, or otherwise applied.

### **58A. Classes of Membership Interests**

- (1) With effect from the MySuper Start Date, the Fund is divided into the following classes of beneficial interest as determined by the Trustee:
  - (a) one or more MySuper Products;
  - (b) the Choice Product;
  - (c) a class of interest whose only members are Defined Benefit Members.
- (2) A Member may hold more than one class of beneficial interest in the Fund at a time.
- (3) Subject to the Relevant Law, the Trustee must allocate a Member's benefits in the Fund to one or more classes of beneficial interest.

- (4) Notwithstanding any other provision of this Deed, the Trustee must not transfer a Member's benefits in the Fund from a MySuper Product to:
- (a) another MySuper Product in the Fund;
  - (b) the Choice Product in the Fund; or
  - (c) another Complying Fund,
- except:
- (d) with the consent of the Member, which must be given within such period (if any) specified in the Relevant Law before the transfer occurs; or
  - (e) as otherwise permitted by the Relevant Law.
- (5) Notwithstanding any other provision of this Deed, with effect from the MySuper Start Date, a MySuper Product in the Fund has the following characteristics:
- (a) the assets attributed to the MySuper Product must be invested in accordance with a single diversified investment strategy. For the avoidance of doubt, this rule may be satisfied by the MySuper Product being invested in an Investment Portfolio which has a single diversified investment strategy;
  - (b) Despite Clause 31(5)(d), the Trustee may not invite Members to nominate the Investment Portfolio, or combination of Investment Portfolios to apply to them within the MySuper Product. However, subject to the Relevant Law and such rules as are determined by the Trustee from time to time, a Member may elect to:
    - (i) transfer all or part of their benefits from the MySuper Product to the Choice Product; and
    - (ii) transfer all or part of their benefits from the Choice Product to the MySuper Product;
  - (c) each Member who holds an interest in the MySuper Product must be entitled to the same options, benefits and facilities in respect of that interest as required by the Relevant Law;
  - (d) the Trustee must not attribute amounts to Members in relation to their interest in the MySuper Product in a way that streams gains or losses that relate to any assets attributed to the MySuper Product to only some of those Members, except to the extent permitted by the Relevant Law;

- (e) the Trustee may permit an Employer ("**Subsidising Employer**") to subsidise the fees payable by Members in relation to the MySuper Product provided that subsidisation does not favour one Member holding a MySuper Product employed by the Subsidising Employer over another such Member who is employed by that Subsidising Employer;
- (f) the only fees that can be charged by the Trustee in relation to the MySuper Product are as set out in the Relevant Law;
- (g) the only limitations that may be imposed on the source or kind of contributions made by or on behalf of a Member who holds an interest in the MySuper Product are those permitted under Relevant Law;
- (h) the insurance policies arranged by the Trustee in relation to the MySuper Product must comply with the Relevant Law; and
- (i) a pension cannot be paid from the MySuper Product.

## DIVISION 12 - CONTRIBUTIONS - GENERAL PROVISIONS

### 59. Employer Contributions

- (1) Unless contributions are varied under another provision (for example Clause 68 or 74) -
  - (a) each Employer must contribute at the rate, if any, specified in subsequent Parts of this Deed; and
  - (b) each Employer must also contribute such additional contributions as may be agreed between the Trustee and the Employer, on the advice of the Actuary, as being necessary to finance the benefits payable from the Fund to Members who are employed by that Employer or to finance the cost of any augmentation of benefits requested by that Employer.
- (2) An Employer may make extra contributions to this Fund in respect of some or all Members, in addition to the contributions which are required under subclause 59(1). Unless the extra Employer Contributions are made to satisfy a requirement under another clause of this Deed, they must be applied as the Employer directs.
- (3) Employer contributions must be paid to this Fund in the manner and at the times directed by the Trustee.
- (4) An Employer may request the Trustee to allocate, out of any unallocated amount in the Fund attributable to the sub-fund maintained for the Employer under Clause 16, amounts equal to any or all of the contributions the Employer is required to make under subclause 59(1), or which the Employer elects to make under subclause 59(2), for the benefit of any Defined Contribution Members. The Trustee must allocate those amounts for the credit of those Members as if the Employer had made those contributions, where the Actuary certifies that the unallocated amount attributable to that Employer's notional sub-fund is sufficient to fund the allocations and the Trustee is satisfied the allocations will not adversely affect funding of benefits for any other Members.<sup>3</sup>

### 60. Member Contributions

- (1) Any amount which Members are obliged or permitted to contribute is set out in a later Part of this Deed.

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<sup>3</sup> Clause 59(4) does not apply to in relation to the participation of Energex companies. Energex companies means:

- (a) Energex Limited ABN 40 078 849 055;
- (b) Allgas Energy Pty Ltd ABN 52 009 656 446;
- (c) Service Essentials Pty Ltd ABN 48 101 691 409.

- (2) Any Member contributions must be deducted by the Employer from the Member's pay, except where the law does not allow.
- (3) Member contributions must be paid to this Fund in the manner and at the times directed by the Trustee.
- (4) If Member contributions are not paid as required, the Trustee must adjust the benefits payable in respect of that Member to take account of the shortfall.
- (5) (a) The Employer -
  - (i) may release a Member from making contributions to this Fund; and
  - (ii) may attach conditions to such release.
- (b) If a Member is released from making contributions the Trustee must adjust the benefits payable in respect of that Member unless -
  - (i) those contributions are deemed to have been made to this Fund; and
  - (ii) an Employer pays or agrees to pay any further contributions which the Actuary advises are necessary to make up any shortfall in that Member's contributions.

**61. Contributions During Periods of Sick Leave Without Pay**

Where a Defined Benefit Member is on approved sick leave without pay and is not receiving a Pension for Temporary Disablement, the following provisions shall apply -

- (a) if the period of such leave is less than 14 consecutive days, the Member's normal contributions for that period shall be deducted by the Employer from the Member's Salary when the Member resumes duty;
- (b) if the period of such leave exceeds 14 consecutive days, the Employer shall pay the Member's normal contributions and shall make arrangements with the Member for reimbursement of the Member's contributions when the Member resumes duty;
- (c) if the Member is in receipt of workers compensation or similar payment payable under any Act or law (whether State or Commonwealth) the Member shall continue to contribute to the Fund during such period.

**62. Contributions During Disablement**

No contributions shall be payable by a Member in respect of any period during which the Member is in receipt of a Pension under Clause 120.

### **63. Contributions During Periods of Other Absence Without Pay**

Where a Member is on approved leave without pay for reasons other than illness or injury, the following provisions shall apply -

- (a) if the period of absence does not exceed 2 weeks, the Member's normal contributions for that period shall be deducted by the Employer when the Member resumes duty;
- (b) if the period of absence exceeds 2 weeks, the Member, before commencing such leave, shall elect in writing to the Employer to either -
  - (i) continue contributing to the Fund and also pay the Employer's contributions for that period; or
  - (ii) suspend contributions to the Fund for the period of absence, in which case the period of absence will not form part of the Member's Membership Period when calculating the Member's Benefit Multiple;
- (c) the Employer shall notify the Trustee of -
  - (i) any election by a Member pursuant to sub-paragraph (b)(ii) and the period of approved leave; and
  - (ii) the date the Member resumes duty and recommences contributions to the Fund;
- (d) a Member who fails to make an election in accordance with paragraph (b) or who fails to make contributions shall be deemed to have elected to suspend the Member's contributions from the date the Member commenced leave or first failed to contribute to the Fund, as the case may be, until the date on which the leave granted ceases and that period shall not form part of the Member's Membership period for the purposes of calculating the Member's Benefit Multiple.

### **64. Contributions During Unapproved Periods of Absence Without Pay**

Where a Defined Benefit Member is absent from duty without pay and without the approval of the Employer, the following provisions shall apply -

- (a) the Member will, except where the Member makes an election in accordance with paragraph (b), be required to pay both the Member's and Employer's normal contributions to the Fund during this period;
- (b) if the period of absence exceeds 2 weeks, the Member may, within 2 weeks after the date on which the Member resumes duty, elect in writing to the Employer to suspend the Member's contributions to the Fund for the period of absence and that period of absence will not form

part of the Member's Membership Period for the purposes of calculating the Member's Benefit Multiple;

- (c) the Employer shall notify the Trustee immediately of any election by a Member under paragraph (b).

#### **64AA. Insurance During Periods of Absence Without Pay**

- (1) For any period during which the Member is on leave of absence without pay for any reason, and contributions are not required to be paid by or for the Member during that period, the Employer and the Trustee may make arrangements by agreement between them for continuation of:
  - (a) the payment of any insurance premiums necessary to maintain the Member's cover under a policy of insurance taken out by the Trustee to provide benefits on death or Total and Permanent Disablement of that Member; or
  - (b) any other funding arrangement adopted by the Trustee to provide the benefits payable on the Member's death or disablement.
- (2) Arrangements made under subclause 64AA(1) may include (but are not limited to):
  - (a) an agreement that the Trustee continue to debit the insurance premiums (or other amounts necessary to fund the Member's benefit entitlement on death or disablement) from the Member's accrued benefit entitlement, in such manner as is agreed;
  - (b) continuation of contributions by or for the Member at least of an amount sufficient to cover continued payment of the insurance premiums (or other amounts necessary to fund the Member's benefit entitlement on death or disablement).

#### **64A. Contributions by other persons**

Contributions to the Fund for the credit of a Member by a person other than the Member or an Employer shall be paid in the manner and at the times determined by the person making the contribution and accepted by the Trustee.

#### **65. Contributions other than Cash**

The Trustee may accept contributions other than in cash including, for example, superannuation guarantee shortfall vouchers.

## **66. Contributions Paid by Mistake**

The Trustee must repay contributions which it determines were paid by mistake unless -

- (a) the Relevant Law prevents such repayment; or
- (b) the person who mistakenly paid the contributions and the Trustee agree otherwise.

## **67. Prohibition on Contributions**

The Trustee must refuse to accept any contribution to this Fund if acceptance would contravene the Relevant Law. However if the Trustee has mistakenly accepted such contributions, or is required under Relevant Law to repay contributions that have been accepted, the Trustee:

- (a) must repay those contributions; and
- (b) may make such adjustments to the amount repaid as the Trustee considers appropriate and the Relevant Law permits.

## **68. Notice to Cease, Reduce or Suspend Employer Contributions**

An Employer may cease, reduce or suspend its obligation (or agreement) to contribute in respect of some or all Members by giving one month's notice (or such shorter period agreed to by the Trustee) in writing to the Trustee. The cessation, reduction or suspension takes effect -

- (a) unless the Employer and the Trustee agree otherwise, even if the Employer is then on a contribution holiday; and
- (b) from the date of receipt of the notice or any later date specified in the notice.

## **69. Effect of Notice**

- (1) The Trustee must adjust benefits (in respect of the Members concerned) to take account of -
  - (a) termination, reduction or suspension of an Employer's obligation (or agreement) to contribute; or
  - (b) failure by an Employer to contribute as required or agreed.
- (2) The adjustment must be determined -
  - (a) after obtaining the Actuary's advice; and



- (b) ignoring any surplus in the Fund (therefore if the Employer concerned is on a contribution holiday the adjustment must be the same as if that Employer was not on a contribution holiday).

## **70. Revocation of Notice**

A person who gives a notice to terminate, reduce or suspend contributions may revoke it with effect from the date of that notice. If a notice is revoked the Trustee may adjust benefits and contributions in respect of the Members concerned in a manner the Trustee considers equitable.

## DIVISION 13 - BENEFITS - GENERAL PROVISIONS

### 71. Payment of Benefits

The Trustee must comply with the Relevant Law in relation to benefits, including -

- (a) the preservation of benefits; and
- (b) the transfer of unclaimed benefits; and
- (c) non-payment of any benefit during a "period of technical insolvency" (as defined in the Relevant Law) without the approval of the Actuary to this Fund.

### 71A. Other Grounds for Payment of Benefits

- (1) The Trustee may pay an amount out of a Member's benefit entitlement to or for the benefit of the Member or the Member's Dependants where:
  - (a) the Member has requested payment of the amount; and
  - (b) the Trustee is satisfied that the amount can be paid as requested under the Relevant Law, notwithstanding that a benefit has not become payable in respect of the Member under Part 2 or Part 3 (whichever applies to the Member).
- (2) Where an amount is paid under clause 71A(1), the Trustee must adjust the benefits which may become payable to or in respect of the Member under Part 2 or Part 3 (whichever applies to the Member), in such a manner and to such an extent as the Trustee considers is reasonable having regard to the amount paid, the advice of the Actuary in respect of a Member to whom Part 2 applies, and any other relevant circumstances.

### 72. Retained Benefits and Unrestricted Amounts

- (1) Where a benefit has become payable in respect of a Member, under any provision of this Deed, the Member may make a request to the Trustee to retain some or all of the Member's benefit in the Fund. Where the Trustee agrees to retain a Member's benefit, the Trustee:
  - (a) must maintain an accumulation account in the Fund for that benefit (**Retained Benefit Account**):
    - (i) which shall be adjusted for net changes in value allocated from time to time;
    - (ii) from which shall be debited Fund Expenses and tax, if any, which the Trustee determines to deduct from that

account, and any other debits attributable to the Member; and

- (b) may, if the Relevant Law permits, accept contributions and other amounts for the Member and allocate them to that account.

(2) A Member may at any time request:

- (a) payment of all or part of the Member's Retained Benefit Account to the Member (where the Relevant Law permits);
- (b) transfer of all or part of the Member's Retained Benefit Account to Another Fund (in accordance with the Relevant Law).

(2A) A Member may at any time request:

- (a) payment of all or part of the Member's Unrestricted Amount to the Member;
- (b) transfer of all or part of the Member's Unrestricted Amount to Another Fund (in accordance with the Relevant Law).

(3) Subject to the Relevant Law, the Trustee may impose conditions and restrictions on partial withdrawals or transfers of benefits and Unrestricted Amounts, including (for example):

- (a) minimum or maximum amounts that may be withdrawn or transferred;
- (b) minimum amounts that must be retained in the Fund for the credit of the Member after a withdrawal or transfer is made;
- (c) the frequency of withdrawals or transfers.

(4) The Trustee may on receipt of a request in accordance with subclause 72(2) or (2A) which complies with any restrictions imposed by the Trustee under subclause 72(3), pay the amount requested as a benefit of the Member, or transfer or rollover in respect of the Member (as the case requires), after deducting from the amount any fees, costs, charges or other expenses levied on or arising from payment of that amount.

### **73. Interest Payments**

The Trustee may add interest to a benefit payable under this Deed in respect of the period between when the benefit became payable and the actual date of payment.

#### **74. Augmentation of Benefit**

The Trustee must augment a person's benefit entitlement under this Fund to any extent requested by the Employer, subject to the payment of any further contributions which the Actuary advises are necessary to finance that augmentation.

#### **75. Special Arrangements**

- (1) The Employer and either a Member or an Employee who has not yet become a Member of this Fund may vary by agreement any or all of -
  - (a) the benefits which would otherwise be payable as a result of that person's membership of this Fund; and/or
  - (b) the contributions otherwise payable as a result of that person's membership of this Fund; and/or
  - (c) other terms and conditions of membership.
- (2) The Trustee may refuse to honour any agreement made under subclause 75(1) if any further contributions which the Actuary advises are necessary to finance that special arrangement are not paid.

#### **76. Proof of Entitlement**

The Trustee may delay payment or continued payment of a benefit from this Fund until such proof of entitlement it requires is supplied.

#### **77. Amount and Form of Benefits**

- (1) The later Parts of this Deed contain details of -
  - (a) the amount of the benefits provided in respect of Members (but those amounts may not apply if, for example, there is a special arrangement in force); and
  - (b) the usual form of benefits, that is whether benefits are paid in lump sum or in pension form.
- (2) Instead of taking a benefit in its usual form, a beneficiary may elect that all or part of that benefit be replaced with another benefit payable -
  - (a) in a different form; or
  - (b) in different circumstances,unless the Trustee determines otherwise, but -

- (c) the beneficiary must make the election at the time and within the period determined by the Trustee; and
  - (d) the terms and conditions determined by the Trustee will apply.
- (3) Any election under subclause 77(2), to which effect is given is final and binding on all persons, including any person with a contingent entitlement, except where the terms of this Deed expressly permit a person to commute a pension benefit.
- (4) The Trustee may pay a pension in accordance with Clause 77A or purchase a pension or annuity from a suitable institution, and every person will be bound by the Trustee's decision and the terms on which the pension or annuity is arranged.
- (5) If the Trustee considers the size of any pension or annuity benefit is trivial, the Trustee may pay the whole of that benefit in lump sum form.

#### **77A. Payment of Benefits**

- (1) Any benefit payable from the Fund under Part 2 or Part 3 must be paid as a lump sum to the recipient unless:
  - (a) the benefit is payable on Temporary Disablement, or the Relevant Law otherwise requires that the benefit is paid as a pension;
  - (b) the benefit is payable to a Reversionary Beneficiary; or
  - (c) the recipient requests and the Trustee agrees that the benefit, or part of the benefit, is to be paid in the form of a pension, and Relevant Law permits payment of the benefit to that recipient as a pension.
- (2) Where a benefit is paid as a pension, the terms of the pension must comply with the Relevant Law applicable to allocated pensions, market linked pensions or account based pensions, and where applicable transition to retirement income streams, as required. The terms of a market linked pension must also comply with the Social Security Act 1991. The Trustee may offer the person entitled to the pension benefit such options in relation to:
  - (a) the annual amount of the pension;
  - (b) the frequency of pension payments;
  - (c) the term for which the pension is payable;
  - (d) nomination of a Reversionary Beneficiary on commencement of the pension or at any time during the term of the pension, and

revocation of a nomination of Reversionary Beneficiary at any time during the term of the pension,

as the Relevant Law applicable to the pension permits, and the person may select from the options offered.

- (3) The amount of and frequency of the instalments of a pension, and the terms on which payment is made, may be varied from time to time by the Trustee in accordance with any standards prescribed by the Relevant Law applicable to the pension.
- (4) The Trustee may, at the request of the person entitled, commute to a lump sum all or part of the capital value of a pension, to the extent and in the circumstances permitted under the Relevant Law applicable to the pension. On commutation of any part of a pension the Trustee must adjust the amount of the subsequent pension payments to take account of the commutation.
- (5) If a Member in receipt of a pension dies:
  - (a) where there is a Reversionary Beneficiary, the Trustee must pay a pension to the Reversionary Beneficiary;
  - (b) where there is no Reversionary Beneficiary, the Trustee must pay the balance of the Member's benefit then remaining as a death benefit of the Member in accordance with Clause 79 and this Clause 77A.
- (6)
  - (a) On the death of a person then in receipt of a death benefit paid as a pension, unless paragraph 77A(6)(b) applies the Trustee must pay the balance of the Member's benefit then remaining as a death benefit of the Member in accordance with Clause 79 and this Clause 77A.
  - (b) On the death of a Spouse in receipt of a market linked pension as a Reversionary Beneficiary, the Trustee must pay a lump sum benefit of an amount equal to the balance of the Member's benefit then remaining either:
    - (i) as a death benefit of the Member in accordance with subclause 79(2); or
    - (ii) to one or more of the Spouse's Dependents (and if more than one in proportions determined by the Trustee) or to the Spouse's legal personal representative.
- (7) Where a benefit is payable as a lump sum, the Trustee:
  - (a) must pay the benefit as soon as practicable after it becomes payable;

- (b) may pay the benefit in more than one instalment unless the Relevant Law requires that the benefit be paid in single lump sum.

## **78. Nomination of Beneficiary**

- (1) A Member may at any time nominate a person or persons to whom the Member wishes to have paid the benefit arising from the Member's death.
- (2) If more than one person is nominated, the nomination may specify the proportion to be paid to each person.
- (3) The nomination may be revoked or replaced at any time.
- (4) The Trustee is not bound by any nomination made by a Member under this Clause 78.

## **79. Payment of Death Benefits**

- (1) The Trustee may offer Members and applicants, or any group or class of them, the option of making a Binding Nomination. Where the Trustee has offered them that option, a Member or applicant may at any time make a Binding Nomination. Where on the death of a Member the Trustee has a Binding Nomination, the Trustee must pay the benefit to the person or persons nominated in the Binding Nomination, and if more than one person is nominated, in the proportions nominated. A Binding Nomination given to the Trustee revokes any previous Binding Nomination or Death Benefit Instruction in respect of that benefit.
- (1AA) A Binding Nomination in respect of a benefit is revoked if the Member:
  - (a) gives the Trustee notice in writing, in a form prescribed or accepted by the Trustee, that the Binding Nomination is revoked;
  - (b) gives the Trustee another Binding Nomination, or a Death Benefit Instruction or a nomination under sub-clause 78(1), in respect of that benefit; or
  - (c) where the benefit has become payable or is being paid as a pension, nominates a Reversionary Beneficiary.
- (1A) Where on the death of a Member in receipt of a pension there is a Reversionary Beneficiary, the Trustee must pay the benefit to the Reversionary Beneficiary. Nomination of a Reversionary Beneficiary in respect of a benefit taken as a pension revokes any previous Binding Nomination or Death Benefit Instruction in respect of the pension.

- (1B) Where on the death of a Member the Trustee has a Valid Death Benefit Instruction, the Trustee must pay the benefit in accordance with Clause 79A.
- (2) Where on the death of a Member there is no Binding Nomination or Valid Death Benefit Instruction and no Reversionary Beneficiary, the Trustee must pay the benefit to such one or more of the Member's Dependants and legal personal representative as the Trustee in its discretion determines, and if more than one in such proportions as the Trustee determines.
- (3) If the Trustee cannot locate a Dependant or legal personal representative, the Trustee may pay the benefit to any one or more persons the Trustee determines.
- (4) On the death of a person:
- (a) who is a Non-Member Spouse of a Member;
  - (b) who is not a Member; and
  - (c) in respect of whom a Payment Split is in operation in relation to the Member's benefit,

the Trustee must pay the amount of the Non-Member Spouse's interest under the Payment Split, calculated in accordance with the Family Law Requirements, in accordance with this Clause 79 as if the Non-Member Spouse were a Member or as otherwise prescribed under the Family Law Requirements.

#### **79A. Death Benefit Instructions**

- (1) The Trustee may offer Members and applicants, or any group or class of them, the option of making a Death Benefit Instruction. Where the Trustee has offered them that option, a Member or applicant may at any time make a Death Benefit Instruction. A Death Benefit Instruction given to the Trustee revokes any previous Death Benefit Instruction or Binding Nomination in respect of that benefit.
- (2) A Death Benefit Instruction in respect of a benefit is revoked if the Member:
- (a) gives the Trustee notice in writing, in a form prescribed or accepted by the Trustee, that the Death Benefit Instruction is revoked;
  - (b) gives the Trustee another Death Benefit Instruction, or a Binding Nomination or a nomination under sub-clause 78(1), in respect of that benefit; or



- (c) where the benefit has become payable or is being paid as a pension, nominates a Reversionary Beneficiary.
- (3) On receipt of a notice in the form of a Death Benefit Instruction, the Trustee must:
  - (a) consider whether to consent to the Death Benefit Instruction; and
  - (b) notify the Member if the Trustee does not consent.
- (4) A Death Benefit Instruction becomes invalid if:
  - (a) the Member's Spouse named in a Death Benefit Instruction ceases to be the Member's Spouse or becomes permanently separated from the Member;
  - (b) the Member commences a relationship with a Spouse who is not named in the Death Benefit Instruction; or
  - (c) any person nominated as a Dependant:
    - (i) dies;
    - (ii) ceases to be a Dependant of the Member; or
    - (iii) ceases to be in a class of persons the Trustee has prescribed as eligible to be nominated in a Death Benefit Instruction.
- (5) A Valid Death Benefit Instruction is a Death Benefit Instruction that at the time of the Member's death has not become invalid under sub-clause 79A(4).
- (6) On the death of a Member, where there is a Valid Death Benefit Instruction the Trustee must pay the benefit to the person or persons nominated, and if more than one person is nominated in the proportions specified, subject to sub-clause 79A(7).
- (7) If, before the Trustee has paid the benefit that the Death Benefit Instruction relates to, the Trustee receives information and has actual knowledge of any circumstance and:
  - (a) the Trustee would not have given consent had the circumstance existed, and had the Trustee been aware of the circumstance, at the time of giving consent; or
  - (b) the circumstance has resulted in the Death Benefit Instruction becoming invalid,the Trustee must pay the benefit in accordance with sub-clause 79(2).

## **80. Beneficiary under Disability**

- (1) If -
  - (a) a beneficiary (including a Member) is under a legal disability (for example, if the beneficiary is a minor child); or
  - (b) the Trustee considers that the beneficiary is unable to manage the beneficiary's affairs; or
  - (c) the Trustee considers that the beneficiary would be unable to deal with the benefit in a suitable way,

the Trustee may apply the whole or part of the benefit -

  - (d) towards the maintenance or education of the beneficiary; or
  - (e) directly for the benefit of the beneficiary; or
  - (f) to some other person a guardian, trustee, spouse, parent or child of the beneficiary or some other person who the Trustee considers has the care and custody of the beneficiary for the time being.
- (2) Any payment or application of the whole or part of a benefit under subclause 80(1) is a complete discharge to the Trustee for the amount paid or applied and no person has a right of action against the Trustee for that amount on any grounds.

## **81. Changes in Employment**

- (1) If a Member's Employment status changes, for example, from -
  - (a) full-time, part-time, casual, temporary or permanent;

or any combination, to

  - (b) full-time, part-time, casual, temporary or permanent;

or any combination, the Member's benefit entitlement under this Fund will be based on the benefits applicable to the Member's new Employment status (unless otherwise agreed between the Member, the Trustee and the Employer) but adjusted, as the Trustee considers appropriate, to take account of entitlements accrued before the change in Employment status.
- (2) A change in the proportion of a full-time week worked to another proportion of a full-time week must be treated as a change in Employment status for the purpose of this clause.

## **82. Transfer to this Fund**

- (1) The Trustee may accept money or other assets from an Another Fund in respect of a Member or prospective Member (with or, where permitted by the Relevant Law, without, the Member or prospective Member's consent).
- (2) If the Trustee accepts money or other assets under subclause 82(1) in respect of a prospective Member, then that person becomes a Member on the date determined in accordance with subclause 52(5).
- (3) The Trustee may make such arrangements as the Trustee considers appropriate with:
  - (a) the Member or prospective Member;
  - (b) the Member's Employer, employer or former employer; or
  - (c) the trustee or administrator of that fund,in relation to providing benefits for the Member from the money or assets accepted from Another Fund in respect of that Member.

## **83. Transfer from this Fund**

- (1) Subject to Clause 58A(4), if a Member, who remains in Employment, becomes or is eligible to become a member of an Another Fund, the Trustee may transfer -
  - (a) the amount representing the benefit to which that Member would have been entitled on voluntarily cessation of Employment on the day of the transfer; or
  - (b) (on any conditions set by the Employer) any greater amount agreed between the Trustee and the Employer,to that fund,
  - (c) in the case of a Defined Benefit Member, with the consent of the Employer; but
  - (d) without the consent of that Member if permitted to do so under the Relevant Law.
- (2) Subject to Clause 58A(4), the Trustee may transfer to Another Fund all or part of the amount which the Trustee considers represents the benefit to which a Personal Member is then entitled –
  - (a) with the consent of the Member; or

(b) without the consent of that Member if permitted to do so under the Relevant Law.

- (3) If a Member, who remains in Employment, becomes or is eligible to become a member of an Another Fund and wishes to transfer part of the Member's benefit entitlement accrued in the Fund to Another Fund, the Trustee may make such arrangements for calculation and transfer of that part of the Member's benefit as the Trustee determines in accordance with the Relevant Law. In the case of a Defined Benefit Member, the benefits payable in respect of the Member under this Deed must be reduced by an equivalent amount, unless the Employer otherwise agrees. The Trustee may impose such conditions or restrictions on partial transfers as the Trustee determines in accordance with the Relevant Law.

#### **84. Effect of Transfer from this Fund**

No person (including any contingent beneficiary) has a right of action against the Trustee or an Employer in respect of any amount transferred to an Another Fund. The receipt of the person responsible for the Another Fund is a complete discharge to the Trustee and the Trustee has no responsibility to see to the application of the amount transferred.

#### **85. No Claim Apart From Deed**

No beneficiary shall be entitled to require any payment from the Fund except as may be expressly provided in the Deed.

#### **86. Application in Writing**

- (1) Every person to whom a benefit is payable shall notify the Trustee either in writing (or in such other way as the Trustee decides) at the time the benefit becomes payable and provide details of the person's place of residence and full residential address.
- (2) The Trustee may from time to time or at specified times require each Member to confirm or give written notice of the Member's then place of residence and full postal address.
- (3) Any person to whom a benefit is payable shall, if so required by the Trustee, furnish to the Trustee a duly completed receipt or a duly completed receipt and discharge.

#### **87. Benefits Not Grounds for Damages**

The benefits to which a Member or any other person might become or claim to be entitled under the Fund shall not be used as a ground for increasing damages in any action at law brought by the Member or the Member's personal representative or any other person against the Member's Employer

in respect of the dismissal of or any injury or negligence causing the death of any person who is or has been a Member.

## **DIVISION 14 - REDUCTIONS IN BENEFITS**

### **88. Taxation**

- (1) The Trustee must comply with the law in force in relation to the deduction and payment of tax.
- (2) The benefits set out in this Deed are gross of tax and the Trustee must deduct any tax which the law requires it to deduct and must remit that tax to the proper authority at the appropriate time.
- (3) The Trustee may (but must if the Employers decide that the Employers will not meet any additional associated cost) adjust the amount of and conditions relating to any benefits and contributions as a result of changes in tax or tax arrangements. Any such adjustment will have immediate effect without the necessity of amending this Deed.
- (4) The Trustee may make provision for tax in the accounts of this Fund.

### **89. Deductions and Forfeiture**

- (1) Subject to subclause 89(3), a Member, and any other person whose entitlement depends on the Member's membership of this Fund, is not entitled to benefits from this Fund if the Member has been dismissed from Employment because of, and is subsequently convicted of, fraud, stealing or misappropriation from the Member's Employer.
- (2)
  - (a) This Clause 89 will apply if the Member's Employer provides a written notice to the Trustee stating that the Member has been dismissed from Employment because of the Member's fraud, stealing or misappropriation from the Member's Employer.
  - (b) On the receipt of such written notice the benefit to which the Member would have been entitled in the absence of this clause will be retained in the Fund pending the commencement and resolution of any criminal proceedings with respect to the Member on the basis of the Member's alleged fraud, stealing or misappropriation.
  - (c) If the Member is convicted of fraud, stealing or misappropriation then the remaining provisions of this Clause 89 will apply.
  - (d) If criminal proceedings are not commenced within what the Trustee regards as a reasonable period of time or if the Member is acquitted in those proceedings, then the Member's full benefit will be paid to the Member, or to one or more of the Member's Dependants (as determined in the absolute discretion of the Trustee) if the Member dies in the meantime.

- (3) Notwithstanding the effect of subclause 89(1), the Trustee shall pay to the Member or beneficiary, as the case may be, the greater of -
  - (a) the minimum amount which the Relevant Law requires to be paid; and
  - (b) the difference between the benefit which would otherwise have been payable and the amount or amounts owed to the Employer or Trustee and/or the loss suffered by the Employer.
- (4) The balance of the benefit which remains after the operation of subclause 89(3) must be -
  - (a) paid to the Employer if the Employer has suffered a loss unless the Relevant Law prevents that payment, in which case it will remain in the Fund and be used as the Employer requests; or
  - (b) if paragraph 89(4)(a) does not apply, be retained in the Fund to be used as the Trustee considers appropriate.

#### **89A. Reduction in Relation to Payment Split**

Despite any other provision in this Deed or the terms of any agreement in relation to a Member's benefits, where the Trustee:

- (a) creates a new interest for the Spouse or former Spouse of a Member to give effect to a Payment Split; or
- (b) transfers or rolls over the entitlement of the Spouse or former Spouse of a Member under a Payment Split,

the Trustee must reduce the amount of the Member's benefit by an amount determined by the trustee to account for the interest or entitlement of the Member's Spouse or former Spouse.

#### **90. Deleted**

#### **91. Insurance Offset**

- (1) If -
  - (a) the Trustee has not determined to self-insure the risk; and
  - (b)
    - (i) insurance is not obtained in respect of some or all Members on the insurer's standard terms; or
    - (ii) the level or scope of insurance obtained is restricted in respect of some or all Members; or
    - (iii) the insurer does not admit or pay all or part of a claim in respect of a Member; or

- (iv) where contributions have ceased to be paid by or for the Member during any period of leave of absence without pay, and no arrangements have been made under Clause 64AA for continuation of payment of the insurance premiums

the Trustee must reduce any benefit otherwise payable on the death or disablement (or both death and disablement) of the Member concerned, unless the Trustee and the Employer of the Member agree otherwise.

(2) If –

- (a) the Trustee has determined to self-insure the risk; but
- (b) the Trustee considers that -
  - (i) insurance would not be obtained from an insurer in respect of some or all Members on standard terms; or
  - (ii) the level or scope of insurance would have been restricted in respect of some or all Members; or
  - (iii) an insurer would not admit or pay all or part of a claim in respect of a Member; or
  - (iv) contributions have ceased to be paid by or for the Member during any period of leave of absence without pay, and the Trustee is of the opinion, having regard to the funding arrangement adopted by the Trustee to provide the benefits payable on the Member's death or disablement, the Member's insurance cover would have ceased had the risk been insured under an insurance policy

the Trustee must reduce any benefit otherwise payable on the death or disablement (or both death and disablement) of the Member concerned, unless the Trustee and the Employer of the Member agree otherwise.

(3) The Trustee must obtain the advice of the Actuary as to how benefits are to be reduced under subclauses 91(1) or (2).

## **92. Other Scheme Offset**

If –

- (a) a Member is entitled to benefit from Another Fund; and
- (b) part of the costs of providing that entitlement is met by the Employer,

the benefits payable in respect of the Member under this Deed must be reduced by an equivalent amount, unless the Employer otherwise agrees.



### **93. Corporations Law Restriction**

The Trustee may refuse to pay any benefit to the extent that the payment would contravene any provision of the Corporations Law.

### **94. Insufficiency of Assets**

If the Trustee considers that the assets of this Fund may be insufficient to meet any benefits or other payments under this Deed, the amounts payable must be reduced as the Trustee considers appropriate. However, where the Trustee considers that the assets of the Fund attributable to a sub-fund maintained for an Employer under Clause 16 are insufficient to meet any benefits or other payments in respect of Employees of that Employer, the reduction of the amounts payable must be allocated to those Employees and must not be allocated to other Members.

### **95. Incorrect or Misleading Information**

(1) Where, after such inquiry as it thinks fit, the Trustee is satisfied that a Member has -

- (a) in any notice or document given or sent to or lodged with the Trustee by or on behalf of the Member for any of the purposes of the Fund, failed to fully and honestly disclose any information that the Member was required to give in relation to the Member's age or the state of the Member's health or furnished false or misleading information in relation to the Member's age or the Member's state of health; or
- (b) for the purposes of a medical examination required to be undergone by the Member for any of the purposes of the Fund, failed to fully and honestly disclose any information in relation to the state of the Member's health or the Member's medical history that the Member was requested to give to the medical practitioner making the examination or furnished to such medical practitioner false or misleading information in relation to the state of the Member's health or the Member's medical history,

the Trustee in its discretion may make an order in respect of -

- (a) the Member's Benefit Multiple;
- (b) the Member's Additional Contributions; and/or
- (c) otherwise in respect of the Member's benefits, rights, privileges and liabilities under the Fund.

(2) Any such order shall take effect from the day specified by the Trustee which may be retrospective.

## **DIVISION 15 - AMENDMENTS**

### **96. Power to Amend**

- (1) The Trustee may, subject to subclause 96(4), amend this Deed (including this clause) by deed or resolution to the extent that -
  - (a) the amendment is permitted under the Relevant Law; and
  - (b) either:
    - (i) the Trustee is of the opinion that a Member's accrued benefits up to the date of the amendment are not reduced; or
    - (ii) the Member consents to the reduction in accrued benefits.
- (2) An Employer may request the Trustee to, subject to subclause 96(4), amend this Deed in relation to the benefits of Members who are Employees of that Employer, to the extent that -
  - (a) the amendment is permitted by the Relevant Law; and
  - (b) the affected Members consent to the change in accrued benefit.

Subject to the Relevant Law the Trustee must not unreasonably refuse to consent to such request, provided that the requesting Employer undertakes to fund and funds any increase in benefits in accordance with paragraph 59(1)(b).
- (3) **[Deleted]**
- (4) Any amendment to this Deed will be subject to the consent of any Employer whose liability to contribute to the Fund will or may increase because of the amendment, unless the amendment is required by the Relevant Law.

### **97. Retrospective Effect**

Any amendment under Clause 96 will take effect -

- (a) on any effective date specified in the deed or resolution of amendment; or
- (b) if no effective date is specified, on the date the deed of amendment is executed or the resolution is made.

## **DIVISION 16 - PROPER LAW AND JURISDICTION**

### **98. Proper Law**

This Deed is governed by the law of the State of Queensland. But the governing law must change to the law of another State or Territory of Australia if the Employers and the Trustee so agree.

### **99. Jurisdiction**

No legal action or proceedings may in connection with this Fund be instituted or conducted in any jurisdiction outside Australia.

## **DIVISION 17 - NOTICES**

### **100. Giving Notices**

A notice to any person may be given by -

- (a) handing it personally to that person; or
- (b) by delivering it to that person's last known address, or in the case of a company, the registered address (delivery may be by any method including by hand, courier and post); or
- (c) if it is a notice to an Employee, by placing it on a notice board at that Employee's workplace or an internet site that is generally accessible to Employees at that workplace; or
- (d) if it is a notice to an Employee, Member or other beneficiary, by:
  - (i) placing that notice in a newspaper which the Trustee or the Employer considers appropriate;
  - (ii) placing the notice on the Fund's internet site;
  - (iii) sending the notice by fax to the person's current fax number according to the records of the Trustee; or
  - (iv) sending the notice by email to the person's current email address according to the records of the Trustee,

subject to any requirements of Relevant Law in relation to means of sending particular notices.

### **101. Receipt of Notice**

- (1) A notice is considered received by the person to whom it was sent -
  - (a) on the 5th normal working day after it was placed on a notice board or internet site;
  - (b) 2 days after publication of the newspaper in which the notice was placed;
  - (c) if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee, and that report is conclusive evidence that the addressee received the fax in full at the time indicated on that report;
  - (d) if sent by email, when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has entered the information system of the

recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient.

- (2) A notice or a cheque is considered received by the person to whom it was sent -
  - (a) on delivery; or
  - (b) the day after it was sent; or
  - (c) 5 days after posting.

## **DIVISION 18 - TERMINATION OF FUND**

### **102. Circumstances**

The Trustee may decide to terminate the Fund.

### **103. Termination Date**

The Termination Date is the date determined by the Trustee as the date on which the Fund is to terminate.

### **104. Arrears of Contributions**

Each Employer and each Member must immediately pay any arrears of contributions up to the Termination Date.

### **105. Application of Assets**

- (1) On termination of this Fund, the Trustee must apply this Fund's assets in the following order of priority –
  - (a) all costs, expenses and liabilities which have been incurred or are likely to be incurred in respect of this Fund (including the termination of this Fund);
  - (b) pensions being provided from this Fund which commenced payment prior to the date of termination and any Minimum Requisite Benefits;
  - (c) the amount which this Fund's Actuary determines has accrued in respect of each Member under this Fund during the period up to the Termination Date (less the amount mentioned in paragraph 105(1)(b) in respect of that Member),  
  
subject to subclauses 105(2) and (3).
- (2) If the Defined Benefit Assets attributable to the sub-fund maintained for an Employer are not sufficient to pay the full amount of the accrued Defined Benefits determined by the Actuary in respect of Members who are Employees of that Employer:
  - (a) the amount to be applied in respect of the Defined Benefits of those Members must be proportionately reduced; and
  - (b) the reduction must not be allocated to other Members or other benefits.

(To avoid doubt, the Trustee is not precluded from making an allocation of reserves under subclause 43(8) in respect of those Members, but has no obligation to do so.)

- (3) If the Defined Benefit Assets attributable to any sub-funds maintained for Employers are greater than the amount required to pay the full amount of the accrued Defined Benefits determined by the Actuary in respect of Members who are Employees of those Employers, any balance must be paid to the Employers in the proportions determined by the Trustee, acting on the advice of the Actuary taking into account the financial position of the respective sub-funds, unless –
- (a) an Employer requests the Trustee to use all or part of the balance the Trustee has determined to allocate to that Employer in increasing entitlements, and/or pensions then in payment from this Fund, in relation to Members employed by that Employer, and the Trustee agrees;
  - (b) an Employer requests the Trustee to transfer all or part of the balance the Trustee has determined to allocate to that Employer to Another Fund for the purpose of providing benefits for Employees of that Employer; or
  - (c) an Employer:
    - (i) is insolvent;
    - (ii) is in liquidation, or under any form of external administration; or
    - (iii) has ceased to carry on business,in which event the balance the Trustee has determined to allocate to that Employer must be applied in increasing entitlements, and/or pensions then in payment from this Fund, in relation to Members employed by that Employer, on a proportionate basis.
- (4) If the assets of the Fund other than Defined Benefit Assets are greater than the amount required to pay the full amount of each Member's accrued benefit other than Defined Benefits, the Trustee may:
- (a) apply all or part of the balance in increasing entitlements of the Members, by allocating amounts to Members' benefits in a manner that is equitable among the Members;
  - (b) transfer all or part of the balance to Another Fund that Members are or will become members of.

## **106. Securing of Entitlements**

- (1) The Trustee may make any arrangements it considers appropriate in securing the entitlements of beneficiaries on the termination of this Fund, including -
  - (a) the purchase of an annuity; or
  - (b) the transfer of assets representing the entitlement to an Another Fund; or
  - (c) payment to the Member,or any combination of the above.
- (2) Subject to Relevant Law, the Trustee does not need to obtain a beneficiary's consent in relation to an arrangement under subclause 106(1) to secure that beneficiary's entitlement, and the Trustee may proceed with any arrangement even if it is contrary to the beneficiary's wishes.
- (3) The completion of the arrangement under subclause 106(2) is a complete discharge to the Trustee for all entitlements under this Fund in respect of the beneficiary concerned. No person has a right of action against the Trustee concerning any entitlement in respect of the relevant beneficiary under this Fund.
- (4) The Trustee has no obligation to enquire about the application of any money or assets transferred to Another Fund.



## **PART 2**

### **DEFINED BENEFIT SECTION**

#### **DIVISION 19 - APPLICATION AND REFERENCE TO MEMBERS**

##### **107. Application**

The provisions of this Part 2 shall apply to -

- (a) all members of QESI ESS who were entitled to Part 5 benefits under the Articles and who became Members of the Fund by force of the Act;
- (b) any other members of QESI ESS who became Members of the Fund by force of the Act and who elect to become subject to this Part. The conditions of such election and the contributions to be paid by any such Member will be determined by the Trustee; and
- (c) any other Member whom the Employer of that Member nominates to be subject to this Part.

##### **108. Reference to a Member**

A reference to a Member in this Part shall be a reference to a Defined Benefit Member.

## **DIVISION 20 - DEFINITIONS**

### **109. Definitions**

In addition to the definitions contained in Clause 1, the following definitions will apply in relation to the benefits to be provided pursuant to this Part 2 of the Deed -

"Accumulation Account Balance" of a Member means the sum of –

- (a) the balance of the Member's Staff Retiring Provident Account; plus
- (b) the balance of the Member's Voluntary Contribution Account; plus
- (c) the Member's Accumulated Balance less the Member's Portion; plus
- (d) if the Member was at any time a Defined Contribution Member under Part 3 of the Deed, the balance of the Member's Employer Account.

"disablement pensioner" means a Member who is, for the time being, entitled to receive a pension in relation to the Member's Temporary Disablement.

"Member's Benefit Multiple" means -

- (a) for Members who immediately before the Commencement Date were members of QESI ESS and who last became Members of the Fund by force of the Act, their Member's Benefit Multiple with respect to their period of membership in QESI ESS calculated in accordance with the Articles; and
- (b) for all Members, 19.5% for each complete year, and pro-rata for the remaining period, of membership from the Commencement Date or date of commencement of membership of the Fund, whichever is the later, up to the date on which the Member ceases to contribute to the Fund.

"Member's Portion" means the amount of the Member's Portion from the Accumulations Fund as defined in the Articles but calculated on the day immediately prior to the Commencement Date rather than on the day a person ceases to be a member of QESI ESS, adjusted for net changes in value allocated to that amount from time to time from the Commencement Date to the date of payment.

"Member's Reserve" at a particular date means the greater of the following -

- (a) the amount that is 2.5 times the balance of the Member Account of the Member at that date; and
- (b) the amount calculated as follows -

benefit multiple x final average salary x factor

where -

benefit multiple means the Member's Benefit Multiple at the relevant date;

factor means the factor obtained from the table set out in Schedule 1 according to the Member's age in years and complete days at the relevant date and interpolating between the factors for whole ages;

final average salary means the Member's Final Average Salary at the relevant date,

**PROVIDED THAT** if a Member made an election under Section 17A or 18D of the Articles, the Member's Reserve of that Member shall be the amount determined by the Trustee in consultation with the Actuary.

## **DIVISION 21 - ACCOUNTS**

### **110. Staff Retiring Provident Account**

- (1) The Trustee shall establish with respect to each Member who had an entitlement in the Staff Retiring Provident Account in the QESI ESS a Staff Retiring Provident Account which shall consist of 2 sub-accounts called the Provident Fund Sub-Account and the SEAQ Accumulation Fund Sub-Account.
- (2) Credited to the appropriate sub-account of this account shall be -
  - (a) the amount standing to the credit of the Member in the Member's Provident Fund Account or SEAQ Accumulation Fund Account in the QESI ESS on the day immediately prior to the Commencement Date which is transferred to the Fund,  
and from the sub-account shall be debited -
  - (b) Fund Expenses and tax, if any, which the Trustee determines to deduct from that sub-account; and
  - (c) any benefits which are due to be paid to or with respect to the Member from that sub-account,and the sub-account shall be adjusted for net changes in value allocated to the sub-account from time to time.

### **111. Voluntary Contribution Account**

The Trustee shall establish with respect to each Member a Voluntary Contribution Account to which shall be credited -

- (a) the amount standing to the credit of the Member in the Member's Voluntary Contribution Account in QESI ESS on the day immediately prior to the Commencement Date and which is transferred to the Fund;
- (b) contributions to the Fund made by the Member pursuant to Clause 116; and
- (c) if so directed by the Employer, additional contributions paid by the Employer to the Fund with respect to a Member pursuant to subclause 59(2),

and from which shall be debited -

- (d) Fund Expenses and tax, if any, which the Trustee determines to deduct from that account;
- (e) any benefits which are due to be paid to or with respect to the Member from that account; and

- (f) any amount, comprising part or all of a contribution or contributions allocated to the Member's Voluntary Account, debited at the request or direction of the Member for allocation to the benefit of another Member or for transfer to Another Fund for the credit of the person nominated by the Member,

and which shall be adjusted for net changes in value allocated to that account from time to time.

## **112. Member Account**

The Trustee shall establish with respect to each Member a Member Account to which shall be credited -

- (a) the Member's Accumulated Contributions of the Member;
- (b) basic contributions to the Fund made by a Member pursuant to Clause 114, and any contributions deemed under Clause 60(5)(b) to have been made for the credit of the Member in substitution for the Member's basic contributions; and
- (c) Additional Contributions to the Fund made by a Member pursuant to Clause 115, and any contributions deemed under Clause 60(5)(b) to have been made for the credit of the Member in substitution for the Member's Additional Contributions,

and from which shall be debited -

- (d) Fund Expenses and tax, if any, which the Trustee determines to deduct from that account; and
- (e) any benefits which are due to be paid to or with respect to the Member from that account,

and which shall be adjusted for net changes in value allocated to that account from time to time.

## **113. Deleted**

### **113A. Other allocations to accounts**

The Trustee may allocate such amounts, other than contributions, to the Voluntary Contribution Account or Member Account of the Member, as determined by the Trustee (or, where the Trustee has established other accounts or sub-accounts in respect of the Member, to such of those accounts or sub-accounts as the Trustee determines).

## **DIVISION 22 - CONTRIBUTIONS**

### **114. Basic Contributions**

Each Member shall contribute to the Fund at a rate of 5% of Salary from time to time until the happening of the earlier of the Member -

- (a) ceasing to be an Employee; and
- (b) attaining the age of 70 years.

### **115. Additional Contributions**

A Member who, immediately prior to the Commencement Date, was making additional contributions to QESI ESS under Section 9 of the Articles shall continue to pay those additional contributions to the Fund until the Member ceases to be an Employee or attains the age of 60 years.

### **116. Voluntary Contributions**

Members may on joining the Fund and at such other times as the Trustee may determine elect to make Voluntary Contributions to the Fund either on a regular basis or as a lump sum, with the form of election being determined by the Trustee and the manner of payment being as agreed by the Member and the Trustee. An election to make Voluntary Contributions to QESI ESS will continue as an election to make Voluntary Contributions to the Fund.

## **DIVISION 23 - BENEFITS**

### **117. Retirement Between 55 and 70**

The Trustee must pay a benefit to a Member, on the Member ceasing to be an Employee and a Member on or after attaining 55 but on or before attaining 70, if a benefit is not payable under Clause 119 or Clause 124, equal to the sum of -

- (a) the greater of:
  - (i) the Member's Benefit Multiple x Final Average Salary; and
  - (ii) 2.5 times the balance of the Member Account of the Member immediately before the Member attained age 55; plus
- (b) the Member's Accumulation Account Balance.

### **118. Retirement after age 70**

The Trustee must pay a benefit to a Member, on the Member ceasing to be an Employee and a Member after attaining age 70, equal to the sum of:

- (a) the greater of:
  - (i) the Member's Benefit Multiple x Final Average Salary calculated at the date the Member turns 70 years of age; and
  - (ii) 2.5 times the balance of the Member Account of the Member immediately before the Member attained age 55;  
  
adjusted from the date the Member attained age 70 for net changes in value allocated to that amount from time to time until the Member ceases Employment; plus
- (b) the Member's Accumulation Account Balance.

### **119. Retirement on Total and Permanent Disablement**

- (1) The Trustee must pay a benefit to a Member on the Member ceasing to be an Employee and a Member because of the Member's Total and Permanent Disablement.
- (2) In the case of a Member who has not attained 60 when the Member ceases to be an Employee and a Member, subject to any special restrictions or conditions imposed by the Trustee under Clause 55, the benefit is an amount equal to the sum of -
  - (a) the greater of:

- (i) the Member's Benefit Multiple x Projected Final Average Salary; and
  - (ii) 2.5 times the balance of the Member Account of the Member immediately before the Member attained age 55; plus
- (b) the Member's Accumulation Account Balance.
- (3) In the case of Member who has attained 60 but not yet 70 when the Member ceases to be an Employee and a Member, the benefit is an amount equal to the benefit that would have been payable under Clause 117 had a benefit been payable under Clause 117.
- (4) In the case of a Member who has attained 70 when the Member ceases to be an Employee and a Member, the benefit is an amount equal to the benefit that would have been payable under Clause 118 had a benefit been payable under Clause 118.
- (5) Despite subclauses (2) to (4), the Member's Benefit Multiple of a Member who was a member of any of SEAQ, NEAQ and REB Funds or the BCC Fund and made an election under Section 9(1) or 18A of the Articles is to be at least the benefit multiple that would have applied under the trust deed of the relevant fund at the Commencement Date had the Member remained a contributor to that fund.

## **120. Pension on Temporary Disablement**

- (1) The Trustee must pay a disablement pension to a Member who -
  - (a) is suffering Temporary Disablement; and
  - (b) has not attained 65; and
  - (c) is otherwise eligible for a benefit on Temporary Disablement under the terms of the policy of insurance applicable to the Member.
- (2) [Deleted]
- (3) The disablement pension is to continue to be paid until –
  - (a) the Member resumes full-time employment or, if the Member is employed part-time, resumes part-time employment for comparable hours; or
  - (b) the Member dies; or
  - (c) the Member becomes Totally and Permanently Disabled; or



(d) the expiry of 2 years after it commenced to be paid,

whichever first happens.

- (3A) To avoid doubt, if a person becomes entitled to a benefit on ceasing to be an Employee of an Employer, for any reason other than death or Total and Permanent Disablement, the disablement pension is to continue to be paid until an event referred to in subclause 120(3) occurs.
- (4) The amount of the disablement pension of a Member is 80% of Salary, or such other amount as is payable under the applicable policy of insurance.
- (5) Despite any other provision of this Clause, the maximum payment that a Member is entitled to be paid under this Clause is the amount that, when added to any workers' compensation payment and any payment from the Employer received by the Member after becoming entitled to a disablement pension, does not exceed -
- (a) for a full-time employee - 80% of the Member's Salary; or
  - (b) for a part-time employee - 80% of the following proportion of the Member's Salary -  
$$\frac{\text{working hours}}{\text{full-time hours}}$$

However if a higher payment is payable under the applicable policy of insurance, the Member is entitled to that higher payment.

## **121. Cessation of Disablement Pension on Restoration of Health**

- (1) If a disablement pensioner has not attained 65, and -
- (a) the Trustee, after obtaining the report of a medical practitioner, is satisfied the Member's health has been restored so that the Member is fit to resume employment; or
  - (b) the Member has otherwise ceased to satisfy the definition of Temporary Disablement,
- the Trustee must by writing certify to that fact to the disablement pensioner.
- (2) The disablement pensioner's pension ceases on -
- (a) the disablement pensioner resuming employment as contemplated in paragraph 120(3)(a); or
  - (b) if the disablement pensioner:

- (i) fails to resume employment, where the Trustee has certified in accordance with paragraph 121(1)(a) that the Member is fit to resume employment – the day after the day the Member receives the certification;
- (ii) has otherwise ceased to satisfy the definition of Temporary Disablement – the day the pension ceases under the applicable policy of insurance,

whichever is the earlier.

## **122. Death or Total and Permanent Disablement of Disablement Pensioner**

- (1) The Trustee must pay a benefit on the death or Total and Permanent Disablement of a disablement pensioner.
- (2) The benefit is that payable under Clause 124 but is calculated on the basis that the Member is deemed to have died or ceased to be employed as a result of his or her Total and Permanent Disablement on the day he or she first became entitled to the pension.

## **123. Lump Sum Benefit if Disablement Pension Continues for 2 Years**

If -

- (a) a Member has not attained 65; and
- (b) the Member has received a Temporary Disablement pension for a continuous period of 2 years; and
- (c) the Trustee, in its discretion, has determined that the Member remains Temporarily Disabled,

the Trustee, must on the Member ceasing to be an Employee, pay the Member a benefit equal to the sum of -

- (d) the Member's Reserve of the Member; plus
- (e) the Member's Accumulation Account Balance.

## **124. Benefit on Death of Member**

- (1) The Trustee must pay a benefit on the death of a Member.
- (2) The benefit is to be an amount equal to the benefit that would have been paid if the Member had retired on account of Total and Permanent Disablement when the Member died.

**125. Benefit for Retrenchment or Resignation (or Termination) for Serious Ill Health**

- (1) The Trustee must pay a benefit to a Member who has not attained 55 on -
  - (a) the Member's retrenchment (the fact of which shall be determined by the Employer and notified to the Trustee in writing); or
  - (b) the Member's resignation (or termination of services by the Employer) because of serious ill health - if the Trustee, after obtaining the report or reports of 1 or more medical practitioners designated by the Trustee, determines that the ill health is not Total and Permanent Disablement but is serious ill health.
- (2) The benefit is the sum of -
  - (a) the Member's Reserve of the Member; plus
  - (b) the Member's Accumulation Account Balance.

**126. Effect of Resignation or Dismissal**

- (1) If, in relation to a Member's cessation of Employment, the Member is not entitled to any benefit under any other provision of Part 2, the Member is, subject to subclauses (2) and (3), entitled to a benefit equal to the sum of -
  - (a) the Member's Reserve of the Member; plus
  - (b) the Member's Accumulation Account Balance.
- (2) A Member who resigns from Employment with a Participating Entity to accept Employment with another Participating Entity is not entitled to a benefit under this Clause 126 and shall continue to be a Member of the Fund.
- (3)
  - (a) If a Member with a balance in the SEAQ Accumulation Fund Sub-Account within the Staff Retiring Provident Account ceases Employment before age 55, the employer-financed component of the Member's SEAQ Accumulation Fund Sub-Account will be vested in the Member at the rate of 2% per completed year of membership subject to a maximum entitlement equal to 80% of the total employer-financed component, with the balance of that sub-account being preserved in the Fund until it is paid out under Clause 72.
  - (b) If a Member elects to preserve the Member's balance in the SEAQ Accumulation Fund Sub-Account until the conditions of release under the Relevant Law have been satisfied, the full

balance of that sub-account will become payable under Clause 72.

### **127. Minimum Benefits**

- (1) This Clause 127 applies despite any other provision of this Part 2.
- (2) If a Member made an election under Section 45 of the Articles, that part of the Member's Accrued Defined Benefit which relates to the Member's employment prior to that election will be the greater of –
  - (a) that part of the Member's Accrued Defined Benefit arising from the Member's Benefit Multiple purchased under subsection 45(3) of the Articles; and
  - (b) the Member's balance that was applied to the purchase under subsection 45(3) of the Articles increased with interest at the prescribed rate under the Articles prior to the Commencement Date and thereafter adjusted for net changes in value allocated to that amount from time to time.
- (3) "Accrued Defined Benefit" means that part of the Member's benefit calculated under whichever of the following provisions applies to the Member:
  - Paragraph 117(a);
  - Paragraph 118(a), without any adjustment for net changes in value;
  - Paragraph 119(2)(a);
  - Paragraph 123(d);
  - Paragraph 125(2)(a);
  - paragraph 126(1)(a).

### **128. Deleted**

### **129. Benefit at age 70**

Where a Member:

- (a) has attained age 70;
- (b) has not ceased to be an Employee; and
- (c) requests that the Trustee pay the Member's benefit,

the Member is entitled to a benefit calculated in accordance with Clause 118 as if the Member had ceased to be an Employee on the date of the request. To avoid doubt, Clause 72 applies to the benefit.

## **PART 3**

### **DEFINED CONTRIBUTION SECTION**

#### **DIVISION 24 - APPLICATION AND REFERENCE TO MEMBERS**

##### **130. Application**

The provisions of this Part 3 shall apply to -

- (a) the members of QESI ESS who were contributing or deemed to be contributing under Section 10 of the Articles and who became Members of the Fund by force of the Act and have subsequently not elected to become Defined Benefit Members;
- (b) members of the Accumulations Fund with no other entitlement in QESI ESS who have become Members of the Fund by force of the Act;
- (c) any other Member whom the Employer of that Member nominates to be subject to this Part;
- (d) any Personal Member.

##### **130A. Transfer from Part 2**

Where a Member has been a Member to whom the provisions of Part 2 applied, and is to become a Member to whom the provisions of this Part apply pursuant to subclause 130(c), the Trustee shall on the advice of the Actuary determine:

- (a) the amount of the Member's accrued benefit calculated in accordance with Part 2 as at the date on which the Member becomes a Member to whom this Part applies; and
- (b) the allocation of the Member's accrued benefit to such of the Staff Retiring Provident Account, Voluntary Contribution Account, Member Account and Employer Account as are established for that Member.

##### **131. Reference to a Member**

A reference to a Member in this Part shall be a reference to a Defined Contribution Member.

##### **131A. Definitions**

In addition to the definitions contained in Clause 1, the following definitions will apply in relation to the benefits to be provided pursuant to this Part 3 of the Deed –

“disablement pensioner” means a Member who is, for the time being, entitled to receive a pension in relation to the Member’s Temporary Disablement.

“Risk Benefit” means:

- (a) in relation to a benefit payable on a Member’s death or Total and Permanent Disablement, a lump sum benefit the amount of which is determined under Clause 142B(a);
- (b) in relation to a benefit payable on a Member’s Temporary Disablement, an income benefit the annual amount of which is determined under Clause 142B(b).

“Total Account Balance” of a Member means the sum of:

- (a) the balance of the Member's Staff Retiring Provident Account; plus
- (b) the balance of the Member's Voluntary Contribution Account; plus
- (c) the balance of the Member's Member Account; plus
- (d) the balance of the Member's Employer Account.

## **DIVISION 25 - ACCOUNTS**

### **132. Staff Retiring Provident Account**

- (1) The Trustee shall establish with respect to each Member who had an entitlement in the Staff Retiring Provident Account in the QESI ESS a Staff Retiring Provident Account which will consist of 2 sub-accounts called the Provident Fund Sub-Account and the SEAQ Accumulation Fund Sub-Account.
- (2) Credited to the appropriate sub-account of this account shall be -
  - (a) the amount standing to the credit of the Member in the Member's Provident Fund Account or SEAQ Accumulation Fund Account in the QESI ESS on the day immediately prior to the Commencement Date which is transferred to the Fund, and from the sub-account shall be debited -
  - (b) Fund Expenses and tax, if any, which the Trustee determines to deduct from that sub-account;
  - (c) any benefits which are due to be paid to or with respect to the Member from that sub-account; and
  - (d) any benefit in that sub-account forfeited under subclause 142(2),and the sub-account shall be adjusted for net changes in value allocated to the sub-account from time to time.

### **133. Voluntary Contribution Account**

The Trustee shall establish with respect to each Member a Voluntary Contribution Account to which shall be credited -

- (a) the amount standing to the credit of the Member in the Member's Voluntary Contribution Account in QESI ESS on the day immediately prior to the Commencement Date and which is transferred to the Fund;
- (b) contributions made by the Member, or by another person (other than an Employer) for the credit of the Member, pursuant to Clause 137, and amounts transferred or rolled over to the Fund for the credit of the Member;
- (c) if so directed by the Employer, additional contributions paid by the Employer to the Fund with respect to a Member pursuant to subclause 59(2),

and from which shall be debited -

- (d) Fund Expenses and tax, if any, which the Trustee determines to deduct from that account; and
- (e) such amount as the Trustee from time to time determines, on the advice of the actuary, is appropriate to cover the cost to the Fund of providing benefits on the death, Total and Permanent Disablement or Temporary Disablement of the Member, and which the Trustee determines to deduct from that account; and
- (f) any benefits which are due to be paid to or with respect to the Member from that account; and
- (g) any amount, comprising part or all of a contribution or contributions allocated to the Member's Voluntary Account, debited at the request or direction of the Member for allocation to the benefit of another Member or for transfer to Another Fund for the credit of the person nominated by the Member,

and which shall be adjusted for net changes in value allocated to that account from time to time.

#### **134. Member Account**

The Trustee shall establish with respect to each Member a Member Account to which shall be credited -

- (a) basic contributions to the Fund made by a Member pursuant to Clause 136 and amounts allocated to the Member Account under Clause 130A; and

and from which shall be debited -

- (b) Fund Expenses and tax, if any, which the Trustee determines to deduct from that account; and
- (c) such amount as the Trustee from time to time determines, on the advice of the actuary, is appropriate to cover the cost to the Fund of providing benefits on the death, Total and Permanent Disablement or Temporary Disablement of the Member, and which the Trustee determines to deduct from that account; and
- (d) any benefits which are due to be paid to or with respect to the Member from that account; and
- (e) any amount, comprising part or all of a contribution or contributions allocated to the Member's Member Account, debited at the request or direction of the Member for allocation to the benefit of another Member or for transfer to Another Fund for the credit of the person nominated by the Member,



and which shall be adjusted for net changes in value allocated to that account from time to time.

### **135. Employer Account**

The Trustee shall establish with respect to each Member an Employer Account to which shall be credited -

- (a) the Member's Accumulated Balance;
- (b) Employer contributions with respect to the Member pursuant to Clauses 138 and 139 and amounts allocated to the Employer Account pursuant to Clause 130A,

and from which shall be debited -

- (c) Fund Expenses and tax, if any, which the Trustee determines to deduct from that account; and
- (d) such amount as the Trustee from time to time determines, on the advice of the actuary, is appropriate to cover the cost to the Fund of providing benefits on the death, Total and Permanent Disablement or Temporary Disablement of the Member, and which the Trustee determines to deduct from that account; and
- (e) any benefits which are due to be paid to or with respect to the Member from that account; and
- (f) any amount, comprising part or all of a contribution or contributions allocated to the Member's Employer Account, debited at the request or direction of the Member for allocation to the benefit of another Member or for transfer to Another Fund for the credit of the person nominated by the Member,

and which shall be adjusted for net changes in value allocated to that amount from time to time.

### **135A. Other allocations to accounts**

The Trustee may allocate such amounts, other than contributions, to the Voluntary Contribution Account, Member Account or Employer Account of the Member, as determined by the Trustee (or, where the Trustee has established other accounts or sub-accounts in respect of the Member, to such of those accounts or sub-accounts as the Trustee determines).

## **DIVISION 26 - CONTRIBUTIONS**

### **136. Basic Contributions**

- (1) Unless otherwise provided for by this Deed each Member shall contribute to the Fund at a rate equal to -
  - (a) for Members who immediately prior to the Commencement Date contributed to QESI ESS at a rate of 3.75% of Salary, 3.75% of Salary;
  - (b) for Members who immediately prior to the Commencement Date contributed to QESI ESS at a rate of 5% of Salary, 5% of Salary;
  - (c) for Members who immediately prior to the Commencement Date were members of the Accumulations Fund and did not contribute to QESI ESS, they have no obligation to contribute to the Fund;
  - (d) in all other cases for a Member who is an Employee, at such rate as may be agreed from time to time between the Member and the Employer of which written notice has been given to the Trustee;
  - (e) for Personal Members, at such rate as is nominated by the Member and accepted by the Trustee.
- (2) Contributions under this clause will cease on the earlier of the Member -
  - (a) ceasing to be an Employee; and
  - (b) attaining the age of 65 years.

### **137. Voluntary Contributions**

Members may on joining the Fund and at such other times as the Trustee may determine elect to make Voluntary Contributions to the Fund either on a regular basis or as a lump sum, with the form of election being determined by the Trustee and the manner of payment being as agreed by the Member and the Trustee. An election to make Voluntary Contributions to QESI ESS will continue as an election to make Voluntary Contributions to the Fund. Any person may make such contributions for the credit of a Member at such times as the Trustee agrees to accept.

### **138. Employer Contributions**

Each Employer shall contribute to the Fund with respect to each Member employed by that Employer as follows -

- (a) if the Member contributes at a rate of 3.75% of Salary under paragraph 136(1)(a), 11.475% of the Member's Salary;

- (b) if the Member contributes at a rate of 5% of Salary under paragraph 136(1)(b), 10.225% of the Member's Salary; and
- (c) in all other cases at such rate as the Employer may determine from time to time either generally or with respect to individual Members, notice of which has been given to the Trustee in writing.

### **139. SG Contributions**

In addition to any contributions made by an Employer to the Fund with respect to a Member under Clause 138, an Employer shall contribute to the Fund such additional amounts, if any, which, when added to the contributions made by the Employer with respect to that Member to Another Fund, will be sufficient to ensure that the Employer does not incur a liability to pay a charge under the SG legislation with respect to that Member.

#### **139A. Contributions by Prescribed Employers**

- (1) Subject to this Deed, each Prescribed Employer shall contribute to the Fund in respect of:
  - (a) each Member employed by that Employer; and
  - (b) each week or part of a week from the commencement of that person's membership whichever of the following amounts apply:
    - (i) such amounts the Trustee from time to time determines;
    - (ii) such amount (whether or not calculated by reference to a percentage or rate of salary, wage or earnings) as the Employer is required by an Industrial Instrument applicable to the terms of the Member's employment to contribute to a superannuation fund for that Member's benefit,

PROVIDED THAT such amount shall not be less than the amount which, when added to the contributions made by the Employer with respect to that Member to Another Fund, will be sufficient to ensure that the Employer does not incur a liability to pay a charge under the SG Legislation with respect to that Member.

- (2) The number of weeks in respect of which a Prescribed Employer is required by subclause 139A(1) to make contributions in respect of a Member shall be reduced by one for each period of five consecutive normal working days that the Member is absent without pay from active employment by the Employer.

(3) In this Clause:

"active employment" means active continuous attendance by a Member to the Member's normal duties as an employee of an Employer at the Member's usual place of employment and "actively employed" has a corresponding meaning;

"employed" in relation to a Member, includes each period in respect of which accident pay is payable.

"Industrial Instrument" means an award or a collective agreement or certified agreement, or any other industrial instrument prescribing terms and conditions of employment, that is applicable to the terms of a Member's employment with an Employer.

"week" means the consecutive days beginning on a Monday and ending on a Friday; and, in relation to a Member:

- (i) reference to part of a week does not apply to any week other than a week in which employment commences; and
- (ii) references to a week of employment does not apply to any week in which employment ceases unless employment of the Member ceases on a Friday after being actively employed for each of the previous days in the week.

"Prescribed Employer" means:

- (i) an Employer that the trustee of SPEC Super notifies the Trustee was required to make contributions to SPEC Super in respect of Employees on the same terms as this Clause;
- (ii) an Employer that has agreed to make contributions under this Clause in respect of that Employer's Employees who become Members; or
- (iii) an Employer that has agreed to be substituted for an Employer that was so required or made such an agreement.

(4) Where a Prescribed Employer is contributing to the Fund in respect of a Member who is receiving compensation under the Workers' Compensation and Rehabilitation Act 2003 (Queensland) (as amended or replaced from time to time) ("Act") the Employer shall continue to contribute to the Fund in respect of that Member for such period during which the Member is in receipt of such compensation at the initial rate at which the same is payable under the Act PROVIDED THAT:

- (a) the contribution by the Employer referred to in this subclause shall only be made whilst the Member is an employee of the Employer; and

- (b) the contribution by the Employer under this subclause shall cease when the compensation received by the Member under the Act is reduced from such initial rate or is ceased.

## **DIVISION 27 - BENEFITS**

### **140. Death or Total and Permanent Disablement Before Age 65**

If a Member leaves Employment prior to age 65 because of death or Total and Permanent Disablement the benefit payable to or with respect to the Member shall be equal to the sum of -

- (a) the Member's Total Account Balance; plus
- (b) the Risk Benefit (if any) payable on the Member's death or Total and Permanent Disablement.

### **140A. Temporary Disablement Benefit**

The Trustee must pay an income benefit to a Member who is entitled to a Risk Benefit on Temporary Disablement, in accordance with the terms of the insurance policy under which the income benefit is paid.

### **141. Retrenchment Benefit**

If a Member leaves Employment because of retrenchment (the fact of which shall be determined by the Employer and notified to the Trustee in writing) the Member will be entitled to a benefit equal to the Member's Total Account Balance.

### **142. Leaving Employment Before or at Age 65**

- (1) If a Member leaves Employment before or at age 65 for any reason (apart from death or Total and Permanent Disablement or retrenchment) the Member will, subject to subclause 142(2), receive a benefit equal to the sum of -
  - (a) the balance of the Member's Staff Retiring Provident Account reduced by any amount forfeited under subclause 142(2); plus
  - (b) the balance of the Member's Voluntary Contribution Account; plus
  - (c) the balance of the Member's Member Account; plus
  - (d) the balance of the Member's Employer Account.
- (2) If a Member with a balance in the SEAQ Accumulation Fund Sub-Account of the Staff Retiring Provident Account leaves Employment -
  - (a) in the case of a male Member, before age 55; or
  - (b) in the case of a female Member, before age 50,

then the employer-financed component of the Member's SEAQ Accumulation Fund Sub-Account will be vested in the Member at the rate of 2% per completed year of membership subject to a maximum entitlement equal to 80% of the total employer-financed component, with the balance of that sub-account being forfeited to the Fund,

**PROVIDED THAT** if in the opinion of the Trustee special circumstances exist or if requested by the Employer, the Trustee may in its absolute discretion reduce the amount forfeited to the Fund so that the Member receives the total amount of the employer-financed component of the benefit.

- (3) A Member referred to in subclause 142(2) who contributes to the Fund at a rate of 5% of Salary may choose to preserve the total amount of their Staff Retiring Provident Account until they satisfy the conditions of release under the Relevant Law for preserved benefits, in which case the full balance of that sub-account will be payable when those conditions are satisfied.

#### **142A. Death after cessation of Employment**

If a Member whose benefit entitlement is retained in the Fund under Clause 72 dies, the benefit payable with respect to the Member shall be equal to the sum of –

- (a) the amount of the Member's retained benefit entitlement; plus
- (b) the Risk Benefit (if any) payable on the Member's death.

#### **142B. Determination of amount of Risk Benefits**

- (a) The amount of the Risk Benefit payable on the death or Total and Permanent Disablement of a Member is the proceeds of the insurance policy (if any) received on the Member's death or Total and Permanent Disablement.
- (b) The amount of the Risk Benefit payable on the Temporary Disablement of a Member is the income benefit payable under the insurance policy (if any) received in respect of the Member's Temporary Disablement. The income benefit is payable for the period provided under the insurance policy and will cease to be paid as provided under the insurance policy.
- (c) The Trustee may:
  - (i) take out different insurance policies covering different groups of Members;
  - (ii) provide insured Risk Benefits on different terms to different groups of Members.

### **143. Leaving Employment After Age 65**

If a Member leaves Employment for any reason after age 65 the Member will be entitled to a benefit equal to the Member's Total Account Balance.

### **144. Benefit at age 65**

Where a Member:

- (a) has attained age 65;
- (b) has not ceased to be an Employee; and
- (c) requests that the Trustee pay the Member's benefit,

the Member is entitled to a benefit calculated in accordance with Clause 143 as if the Member had ceased to be an Employee on the date of the request. To avoid doubt, Clause 72 applies to the benefit.

### **144A. Benefits for non Employee Members**

- (1) The Trustee may in relation to a Personal Member –
  - (a) at any time, transfer the balance in the accounts established for the Member under Division 25, or any part of that balance, to Another Fund;
  - (b) where the Relevant Law so permits, pay the balance in the accounts established for the Member under Division 25, or any part of that balance, to or as directed by the Member.
- (2) If the Trustee has taken out an insurance policy covering that Member in the event of the Member's death or Total and Permanent Disablement, the proceeds of that policy received on the Member's death or Total and Permanent Disablement are added to the benefit payable in respect of the Member.



## **PART 4 OF TRUST DEED**

### **SECTION 11 AND SECTION 18 MEMBERS**

#### **DIVISION 28 - APPLICATION**

##### **145. Application**

The provisions of this Part 4 will apply to members of QESI ESS who -

- (a) became Members of the Fund by force of the Act;
- (b) immediately before the Commencement Date, were entitled to benefits under Sections 11 to 11N ("Section 11 Members") or Sections 18 to 18L ("Section 18 Members") of the Articles; and
- (c) have no entitlement under any other Part of this Trust Deed.

##### **146. Reference to a Member**

A reference to a Member in this Part shall be a reference to a Section 11 or Section 18 Member.

## **DIVISION 29 - PROVISIONS TO APPLY**

### **147. Sections of Articles to Apply**

The following sections of the Articles as at the Commencement Date and any other provision of the Articles at that date which are required to ensure that Section 11 Members and Section 18 Members continue to receive the same level of benefits from, and to have the same level of obligation to contribute to, the Fund as they had in QESI ESS on the day immediately prior to the Commencement Date, are incorporated into this Deed, mutatis mutandis, but as amended in Clause 147A -

- (a) Sections 6, 9 and 11 to 11N with respect to Section 11 Members;
- (b) Sections 18 to 18L with respect to Section 18 Members;
- (c) Section 10 with respect to contributions to and entitlements in relation to the Staff Retiring Provident Account and the Voluntary Contribution Account.

### **147A. Amendments to Applicable Sections of Articles**

- (1) The definition of "Member's Accumulated Contributions" in Article 11C is incorporated into this Deed, mutatis mutandis, but amended by the addition of a new paragraph (d) in the following terms:
  - "(d) any contributions deemed to have been made for the credit of the Member in substitution for contributions the Member is required to make or has otherwise agreed to make, with compound interest at the prescribed rate".
- (2) Article 18E is incorporated into this Deed, mutatis mutandis, but as amended by the substitution of the following terms for paragraph (1):
  - "(1) In relation to a member who makes an election under section 18A, the "member's accumulated contributions" means an amount equal to the sum of the following amounts:
    - (i) to 30 June 1990 - at 4% per annum; and
    - (ii) from 1 July 1990 - at the prescribed rate;
  - (d) any contributions deemed to have been made for the credit of the member in substitution for contributions the member is required to make or has otherwise agreed to make, with compound interest at the prescribed rate."

#### **148. Determinations or Regulations**

The following determinations and regulations made under Schedule 5 to the Electricity Act 1976 will continue to apply, mutatis mutandis, with respect to Section 18 Members -

- (a) Determination published in Queensland Government Gazette on 6 August 1988 at page 3254;
- (b) Electricity (Superannuation Scheme) Determination (No. 2) 1988;
- (c) Electricity (Superannuation Scheme) Determination (No. 3) 1988;
- (d) Determination published in Queensland Government Gazette on 28 April 1990 at pages 2652 and 2653;
- (e) Determination published in Queensland Government Gazette on 28 April 1990 at pages 2654 and 2655;
- (f) Electricity (Superannuation Scheme Determination) Regulation 1993.

#### **149. Rules of the Accumulations Fund to Apply**

The Rules of the Accumulations Fund at the Commencement Date are incorporated into this Deed, mutatis mutandis, to the extent required to give effect to the continuation of Members' entitlements in the Accumulations Fund as part of their entitlements in the Fund.

## SCHEDULE 1

### MEMBER'S RESERVE FACTOR TABLE

Age of Member	Factor F	Age of Member	Factor F
40 or less	.70	48	.86
41	.72	49	.88
42	.74	50	.90
43	.76	51	.92
44	.78	52	.94
45	.80	53	.96
46	.82	54	.98
47	.84	55 or over	1.00

## APPENDIX 1

1. The following additional definitions are added to Clause 1 'Definitions' of the Deed and are only applicable to the Part 2A Members, Part 3B Members and Part 3C Members as defined with respect to the accounts of those Members in the GPS Plan immediately before the Transfer Date.

"Accumulation Account" means in relation to a Part 2A Member the account of that Member established in accordance with Part 2A of the Deed.

"Annual Salary" means, in relation to a Part 2A Member, Part 3B Member or Part 3C Member, at any particular date the annual rate of the Member's Salary as at that date together with such additional amount advised by the Employer from time to time.

"AWOTE Factor" means a factor calculated using the formula:

$$X/Y$$

where X means the Average Weekly Ordinary Time Earnings Index published by the Bureau of Statistics for a quarter two quarters before the quarter in which the Member ceases employment; and

Y means the Average Weekly Ordinary Time Earnings Index published by the Bureau of Statistics for a quarter two quarters before the quarter in which the Member's Salary was reduced.

"Basic Benefit" means in respect of a Member that Member's own contributions to the Plan, and employer contributions deemed to be member contributions under Clause 60 (Salary Sacrifice arrangements) of the Trust Deed, accumulated and adjusted for net changes in value allocated to them from time to time, and adjusted for any taxation.

"Beneficiary" means a person (including as the context may require any Member) who is beneficially entitled to receive a benefit from the Plan in accordance with the Deed.

"Deferral Date" means the earliest to occur of:

- (a) the Member's death;
- (b) the retirement of the Member from the workforce because of permanent incapacity or permanent invalidity;
- (c) (i) if the Member has attained age 55, the date upon which the Member retires from gainful employment PROVIDED THAT the

Trustee is reasonably satisfied that the person intends never again to be gainfully employed; or

- (ii) if the person has attained age 60, the date upon which the Member retires from employment;
- (d) the date upon which the Member attains age 65;
- (e) such earlier date, if any, as the Trustee may determine for any particular purpose either generally or in any particular case, including without limitation for the purpose of permitting or ensuring immediate payment to a Member of any benefit or portion of a benefit which, by reason of its limited amount, does not have to be deferred or preserved after the Member has left the employ of the Employer in order to comply with or satisfy any applicable requirement or a Relevant Law regarding the deferral or preservation of benefits,

being, in any case, a date at which all or part of a benefit may be paid from the Fund without causing the Fund to fail to comply with or satisfy any applicable requirement of a Relevant Law.

"Equitable Share" means in relation to a Member or Beneficiary as at any particular date the amount determined by the Trustee, after obtaining the advice of the Actuary, to be that person's equitable share of the Fund as at that date.

"Final Average Salary" means, despite clause 4 of the Trust Deed, in relation to a Member the Member's average Annual Salary during the period of two years immediately preceding the earlier of the date the Member ceased to be employed by the Employer and the Normal Retirement Date PROVIDED THAT if the period of the Member's Plan Membership which immediately precedes the earlier of the aforesaid dates is a duration of less than two years the Member's average Annual Salary during the period of the Member's Plan Membership shall be deemed to be the Member's Final Average Salary PROVIDED FURTHER THAT if the Salary of a Member who has completed two years of Plan Membership has been reduced the Final Average Salary of the Member shall be the greater of:

- (a) the Member's Final Average Salary calculated at the date of cessation of employment; or
- (b) the Member's average Annual Salary during the period of two years immediately preceding the date of reduction of Salary, multiplied by the AWOTE Factor.

To remove any doubt, clause 4 of the Trust Deed does not apply to Members who immediately before the Transfer Date were members of the GPS Plan with respect to the accounts of those Members in the GPS Plan immediately before the Transfer Date.

"GPS Plan" means the superannuation fund known as the Gladstone Power Superannuation Plan constituted by Trust Deed dated 16 June 1995 as varied from time to time.

"Insurer" means an insurer from whom insurance is sought or with whom insurance is effected by the Trustee pursuant to the Deed.

"Member's Benefit Multiple" means, despite clause 109 of the Trust Deed, for Members who immediately before the Transfer Date were members of the GPS Plan, 19.5% multiplied by the period of Plan Membership calculated in years with completed days counting proportionately, but excluding any Transfer Multiple.

"Member's Reserve" means, despite clause 109 of the Trust Deed, in relation to a Member or Beneficiary as at any particular date the greater of:

- (a) 2.5 x Basic Benefit; or
- (b) an amount calculated using the formula  $(TM + GPSM) \times FAS$  discounted by 2% for each year by which the Member's age at that date precedes age 55 (with days counting proportionally) PROVIDED THAT the total discount shall not exceed 30%,

where TM means Transfer Multiple

GPSM means Member's Benefit Multiple; and

FAS means Final Average Salary.

"Normal Retirement Date" means in relation to a Member the 65th anniversary of the Member's date of birth or such other date as may be agreed between the Trustee, the Employer and the Member from time to time.

"Part 2A Member" is a member who immediately prior to the Transfer Date was a Part A Member in the GPS Plan or any other person the employer determines to be a Part 2A Member.

"Part 3B Member" is a member who immediately prior to the Transfer Date was a Part B Member in the GPS Plan or any other person the employer determines to be a Part 3B Member.

"Part 3C Member" is a member who immediately prior to the Transfer Date was a Part C Member in the GPS Plan or any other person the employer determines to be a Part 3C Member.

"Plan Membership" means, despite clause 2 of the Trust Deed, in relation to a Member the most recent uninterrupted period during which the Member has been a Member and in the employ of the Employer, and also any further period which the Employer with the consent of the Trustee may declare to be

Plan Membership for the purposes of the whole or any particular provision of the Deed.

"Preserved Benefit" means a benefit which must be preserved in the Plan until the Deferral Date under a Relevant Law.

"Retrenchment" means in relation to a Member termination of employment with the Employer in respect of which the Member's Employer certifies to the Trustee in a form acceptable to the Trustee that:

- (a) such termination was for one or more of the following reasons, namely:
  - (i) that the position occupied by the Member has ceased to exist;
  - (ii) that the work for which the Member was engaged or which was subsequently allotted to the Member is finished or is about to finish;
  - (iii) that the quantity of work which the Member is qualified or competent to perform has diminished; or
  - (iv) that the work or affairs or staff of the Employer has been reorganised or re-arranged for business policy reasons,  
  
or such other reasons as that Employer considers constitute Retrenchment, and not being a result of the Member's incompetence or misconduct or failure to achieve standards of performance or conduct satisfactory to the Employer in relation to the tasks allotted to the Member or otherwise; and
- (b) the Member was not offered an alternative position with an Employer or with any other person which the Member's Employer considers to be reasonably comparable (though not necessarily equivalent) to the position which the Member last held before ceasing employment,

and "Retrenched" shall have a corresponding meaning. A Member shall not be considered to have been Retrenched unless the Member's Employer certifies as aforesaid.

"Salary" means, despite clause 3 of the Trust Deed, in relation to a Member the payment (whether called salary or wages) made by the Employer to the Member in respect of that Member's work classification by way of fixed remuneration, including any allowance that is a permanent addition to that payment together with such additional amount advised by the Employer from time to time. Salary does not include any additional remuneration paid while a Member acts in a higher work classification, overtime, commission, bonuses, shift allowances, weekend or other penalty rates, fees or any allowance paid to the Member from time to time which is not a permanent addition to the fixed remuneration applicable to the work classification, except for a loading that shall be added to the fixed remuneration as follows:



- (a) 30%, in the case of continuous shift workers;
- (b) 15%, in the case of non-continuous shift workers.

To remove any doubt, clause 3 of the Trust Deed does not apply to Members who immediately before the Transfer Date were members of the GPS Plan with respect to the accounts of those Members in the GPS Plan immediately before the Transfer Date.

"Service" means continuous employment with one or more of the Employers (whether concurrently or successively) and, for the purpose of determining the length of a Member's Service, Service means the most recent uninterrupted period during which the Member has been so employed PROVIDED THAT in any particular case Service shall include any further period which the Employer, with the consent of the Trustee, may deem to be Service for the purposes of the whole or any particular provision of the Trust Deed.

"Total Account Balance" means in relation to a Member at any particular date the total amount standing to the credit of the Member's Benefit Accounts as at that date, after all appropriate debits and credits have been made to such Accounts.

"Total and Permanent Disablement", in relation to a Member, means disablement by which a Member's physical or intellectual disability, bodily injury, illness, disease or infirmity is of such degree that in the opinion of the Trustee having regard to the advice of the Plan's medical advisers and all other relevant evidence the Member is unable ever again to perform any remunerative work for which they are reasonably qualified by education, training or experience PROVIDED THAT, if the Trustee pursuant to the Deed has effected a policy of insurance under which insurance is or may become payable in the event of the disablement of any Member or group of Members and the circumstances in which the disablement insurance is or would have been payable under that policy are in the opinion of the Trustee similar to the circumstances described in this definition, then the Trustee may determine that either generally or in any particular case Total and Permanent Disablement will have the same meaning as is given to those words or what the Trustee may consider to be the corresponding word or words for the purposes of that policy, in which event (unless otherwise agreed between the Trustee and the Employer in any particular case) any determination by the relevant Insurer as to whether or not a Member is so disabled in terms of that policy will be final and binding on all interested persons for the purposes of the Deed. "Totally and Permanently Disabled" has a corresponding meaning.

"Transfer Credit" means in respect of a Member the amount determined to be the transfer credit by the Actuary in respect of that Member.

"Transfer Date" means the date on which the Employer's admission to the Fund took effect.

"Transfer Multiple" means in respect of a Member the multiple advised to the Trustee by the Trustee of the GPS Plan.

"Trustee of the GPS Plan" means NRG Gladstone Superannuation Pty Ltd ACN 062 220 133.

A reference in this Deed to Part 2 includes a reference to Part 2A.

A reference in this Deed to Part 3 includes a reference to Part 3B or 3C.

- 2.** The following provisions are added after "Part 2 - Defined Benefit Section" of the Deed:

## **PART 2A. DEFINED BENEFIT SECTION - GPS MEMBERS**

### **A.1 Member Contributions**

A.1.1 Part 2A shall apply to and in respect of Part 2A Members.

A.1.2 A Part 2A Member shall contribute to the Fund at the rate of 5% of salary unless released from making contributions pursuant to Clause 60 of the Trust Deed.

### **A.2 Accumulation Account**

#### **A.2.1 Establishment of Accounts**

The Trustee shall establish and maintain Accumulation Accounts (Member, Voluntary Contribution and Rollover) and such other accounts or sub-accounts as it from time to time determines. The same debits or credits shall not be made to more than one of the accounts. Nothing in this Clause shall entitle any Member to any specific asset of the Fund and the Trustee shall have an absolute discretion as to which part of the Fund is applied to provide funds to enable the payment of any benefit which becomes payable from the Fund.

#### **A.2.2 Part 2A Accumulation Accounts**

There shall be credited to the Accumulation Accounts in respect of each Part 2A Member:

- (a) any Voluntary Contribution made, with the approval of the Trustee, by a Part 2A Member;
- (b) any additional Employer Contribution made in accordance with Clause 59(2);
- (c) any Transfer Credit which the Trustee may determine to credit to such an account;
- (d) any amounts which the Trustee may determine to credit to such Account as a consequence of a transfer into the Fund from Another Fund pursuant to the Trust Deed; and
- (e) such other amounts which the Trust Deed may require to be credited thereto or which the Trustee, with the consent of the Employer, may consider it appropriate and equitable to credit thereto;

and there shall be debited to those Accounts:

- (f) any Fund Expenses and taxes debited to the Accounts;
- (g) any amounts which the Trustee may debit to such Account as a consequence of a transfer out of the Fund to Another Fund pursuant to the Trust Deed;
- (h) any benefit paid from such Account pursuant to the Trust Deed; and
- (i) any other amounts which the Trust Deed may require to be debited thereto or the Trustee may consider it appropriate and equitable to debit thereto,

and those Accounts shall be adjusted for net changes in value allocated to them from time to time.

### **A.2.3 Payment of Accumulation Accounts**

Subject to the preservation requirements of the Relevant Law, upon leaving Service for any reason other than death, a Member shall be paid the balance of the Accumulation Accounts in addition to any other benefits payable under this Deed. Upon the death of a Member while in the employ of the Employer, the Trustee shall in addition to any other benefits payable under this Deed pay the balance of the Member's Accumulation Accounts to such persons and in such proportions as the Trustee shall decide, having regard to the persons to whom and the proportions in which any other benefits arising from the death of the Member are paid.

## **A.3 Retirement Benefits**

### **A.3.1 On or After Age 55**

If a Member retires from Service on the Normal Retirement Date or at any time on or after age 55 but before the Normal Retirement Date there shall be payable to the Member from the Fund a lump sum benefit calculated as follows:

$$(TM + MBM) \times FAS$$

where TM means Transfer Multiple;

MBM means Member's Benefit Multiple; and

FAS means Final Average Salary

PROVIDED THAT if the benefit calculated above is less than the Member's Reserve then the lump sum benefit payable under this Clause A.3.1 shall be equal to the Member's Reserve.

### **A.3.2 Retirement After Normal Retirement Date**

If a Member is retained in Service after the Normal Retirement Date the Trustee and the Member may make such arrangements as are consistent with the applicable requirements of the Relevant Law as to:

- (a) the payment of a retirement benefit on or after attainment of age 65 notwithstanding the Member's retention in Service; or
- (b) the deferral of retirement benefits

PROVIDED THAT the amount of the benefit payable from the Fund to a Member who is retained in Service shall be the lump sum benefit which would have been payable pursuant to Clause A.3.1 if the Member had retired on the Normal Retirement Date adjusted for net changes in value allocated to that amount from time to time, for the period from the Normal Retirement Date to the date of payment of that benefit.

## **A.4 Death or Total and Permanent Disablement**

### **A.4.1 Before Age 60**

Subject to Clauses A.9.1 and A.9.2 below, upon the death or Total and Permanent Disablement of a Member while in Service before age 60 there shall be payable from the Fund in accordance with the provisions of Clause 79 or Clause 80 a lump sum benefit calculated as follows:

$[TM + MBM + 19.5\% \times (60 - Y)] \times PFAS$   
where

TM means Transfer Multiple

MBM means Member's Benefit Multiple

Y means age in years (with completed days counting as part years) at the date of death or Total and Permanent Disablement; and

PFAS means projected Final Average Salary at age 60 calculated as if the Member remained in Service until age 60 and assuming no change in Annual Salary after death or Total and Permanent Disablement, provided that if, in calculating PFAS, it is necessary to calculate the AWOTE Factor, for the purpose of determining "X" (in the formula "X/Y" in the definition of AWOTE Factor) the quarter in which the member ceases employment

shall be taken to be the quarter in which the member died or became Totally and Permanently Disabled.

#### **A.4.2 On or After Age 60**

Subject to the Trust Deed, upon the death or Total and Permanent Disablement of a Member while in Service on or after attainment of age 60 there shall be payable from the Fund in accordance with the provisions of Clause 79 the lump sum benefit which would have been payable pursuant to Clause A.3.1 or A.3.2 as if the Member had retired from Service on the date of death or Total and Permanent Disablement.

#### **A.5 Benefits on Cessation of Employment in Other Circumstances**

Subject to Clause A.8 if a Member ceases to be in Service before the Normal Retirement Date in circumstances where no benefit is payable under any other Clause of this Part 2A including resignation for reasons of ill-health there shall be payable to the Member from the Fund a lump sum benefit equal to the Member's Reserve.

#### **A.6 Benefit at Normal Retirement Date**

Where a Member:

- (a) has attained the Normal Retirement Date;
- (b) has not ceased to be an Employee; and
- (c) requests that the Trustee pay the Member's benefit,

the Member is entitled to a benefit calculated in accordance with Clause A.3.2 as if the Member had ceased to be an Employee on the date of the request. To avoid doubt, Clause 72 applies to the benefit.

#### **A.7 SGC Minimum Benefit**

Notwithstanding anything expressed or implied to the contrary in this Deed, the benefit payable to or in respect of a Member when taken into account with any other benefit provided for or in respect of a Member from any other superannuation fund to which the Employer contributes in respect of the Member, shall not be less than the benefit determined by the Employer and advised to the Trustee as being sufficient to meet the minimum benefit required to be provided by the Employer to or in respect of that Member in accordance with the Superannuation Guarantee (Administration) Act 1992 or by any other Commonwealth legislation in order to avoid or minimise the

imposition of any penalty, charge, tax or other impost by that legislation by the Superannuation Guarantee Charge Act 1992 or by other Commonwealth legislation.

## **A.8 Deferral Date**

Notwithstanding any other provision of this Part 2A no Preserved Benefit shall be paid to a Member prior to that Member's Deferral Date.

## **A.9 Insurance**

### **A.9.1 Restrictions and Adjustments**

- (a) If insurance is effected or sought to be effected by the Trustee with an Insurer in respect of any benefit which might become payable from the Fund in respect of a person or group of persons and:
  - (i) that Insurer refuses to provide or increase insurance in respect of a person on its standard terms; or
  - (ii) that Insurer for any reason whatever fails to provide increase or maintain or reduces terminates or withholds insurance or does not admit or refuses to consider or defers a claim in whole or in part,then, unless otherwise agreed between the Trustee and the Employer, the benefits in respect of which insurance has been or would have otherwise been effected shall be reduced to the extent to which insurance has not been effected on standard terms or has otherwise not been obtained, increased or maintained or has been reduced, terminated or withheld or such a claim is deferred or not admitted, and the Trustee may adjust any affected benefit in such manner as the Trustee, after obtaining the advice of the Actuary, considers appropriate in effecting such a reduction.
- (b) If any event provided for in paragraph (a) occurs in relation to insurance sought or effected, the Trustee shall not be bound to seek alternative insurance with the same or another Insurer or, if the Trustee may decide to seek alternative insurance, the Trustee may limit that search to such Insurer or Insurers as the Trustee may see fit.
- (c) In any case, the Trustee may adjust the amount, time for and basis of payment of all or part of a benefit in respect of which insurance has been effected in such manner as the Trustee may consider appropriate to take account of the terms and conditions upon which the proceeds of such insurance are payable by the relevant Insurer and the amount thereof.

- (d) Any adjusted benefits provided pursuant to this Clause shall be in lieu of and in full satisfaction of the benefits which would or might have been or become payable but for the operation of this Clause.

#### **A.9.2 Self-insurance of Benefits**

If insurance is not sought by the Trustee in respect of the whole of a benefit which might become payable from the Fund in respect of a person but the Trustee believes that an event provided for in Clause A.9.1(a) would or would likely have occurred if the Trustee had done so, then (unless otherwise agreed between the Trustee and the Employer) Clause A.9.1 shall apply as if:

- (a) the Trustee had in fact sought or effected insurance in respect of that benefit of such amount and on such conditions as shall be determined by the Trustee with the consent of the Employer; and
- (b) such of the events provided for in Clause A.9.1(a) as the Trustee shall determine had in fact occurred and for such reasons, in such circumstances and with such effect as the Trustee with the consent of the Employer shall determine.



3. The following provisions are added after "Part 3 - Defined Contribution Section" of the Deed:

**PART 3B ACCUMULATION RULES - GPS MEMBERS**

**B.1 Application - Membership Category**

**B.1.1** Part 3B shall apply to and in respect of Part 3B Members.

**B.2 Member's Accounts**

**B.2.1 Accounts to be Maintained**

For the purpose of determining the benefits which may become payable to or in respect of a Member, the Trustee shall establish and maintain in respect of each Part 3B Member accounts as provided in this Clause B.2. The Trustee may establish and maintain such other accounts or sub-accounts as it from time to time determines. The same debits or credits shall not be made to more than one of the accounts. Nothing in this Clause shall entitle any Member to any specific asset of the Fund and the Trustee shall have an absolute discretion as to which part of the Fund is applied to provide funds to enable the payment of any benefit which becomes payable from the Fund.

**B.2.2 Member Accounts**

There shall be credited to the Member's accounts (Member, Employer, Voluntary Contribution and Rollover) in respect of each Part 3B Member -

- (a) any contribution made by a Part 3B Member pursuant to Clause B.3.1;
- (b) any contribution made by a Part 3B Member pursuant to Clause B.3.2;
- (c) any amounts credited to the accounts pursuant to Clause B.4;
- (d) any Transfer Credit which the Trustee may determine to credit to such accounts;
- (e) any amounts which the Trustee may determine to credit to such Accounts as a consequence of a transfer into the Fund from Another Fund pursuant to the Trust Deed;
- (f) such other amounts which the Trust Deed may require to be credited thereto or which the Trustee, with the consent of the Employer, may consider it appropriate and equitable to credit thereto; and

- (g) any other amounts which the Trust Deed may require to be credited thereto or the Trustee may consider it appropriate and equitable to credit thereto;

and there shall be debited to those Accounts -

- (h) any amounts debited to the Accounts pursuant to Clause B.6;
- (i) any amounts which the Trustee may debit to such Account as a consequence of a transfer out of the Fund to Another Fund pursuant to the Deed;
- (j) any benefit paid from such Account pursuant to the Deed; and
- (k) any other amounts which the Trust Deed may require to be debited thereto or the Trustee may consider it appropriate and equitable to debit thereto,

and those Accounts shall be adjusted for net changes in value allocated to them from time to time.

### **B.3 Member Contributions**

#### **B.3.1 Prescribed contributions**

Part 3B Members shall contribute 4% of Salary to the Fund, for any period prior to 1 March 2010. For any period from 1 March 2010, Part 3B Members are not required to contribute to the Fund.

#### **B.3.2 Voluntary Contributions**

A Part 3B Member may elect to contribute to the Fund (in addition to any contributions made by the Member pursuant to Clause B.3.1):

- (a) an amount of Salary, as agreed between the Member and the Employer;
- (b) such other amount or amounts, as agreed between the Member and the Trustee,

to be credited to the Member Account.

## **B.4 Employer Contributions and Allocations**

### **B.4.1 Employer's Contributions**

Each Employer shall contribute to the Fund with respect to each Part 3B Member 11% of the Member's Salary to be credited to the Member's Account.

### **B.4.2 Allocations to Member's Accounts**

Subject to the Relevant Law, Employer contributions may be satisfied by allocations from the Fund, at the direction of the Employer, and with the agreement of the Actuary. The Trustee shall deduct an amount from such allocations in respect of notional tax, unless the Employer directs otherwise.

### **B.4.3 Additional Voluntary Contributions**

The Employer may make additional contributions in respect of a Member which shall if so nominated by the Employer be deemed to be Member contributions.

## **B.5 Insurance Elections**

Subject always to Clauses A.9.1 and A.9.2, Part 3B Members shall nominate on their date of admission to the Fund (or at other times at the discretion of the Trustee with the consent of the Employer) an insurance multiple as prescribed in Clause B.8. Any such election shall be in writing in a form prescribed by the Trustees and signed by the Member. If a Member does not nominate an insurance multiple pursuant to this Clause, the 15% rate specified in Clause B.8 shall be applicable.

## **B.6 Group Life Insurance Costs and Fund Expenses**

- (a) The cost of Group Life Insurance effected under the Deed and the Fund Expenses and taxes may be:
  - (i) deducted from Employer contributions (so far as they extend) before such contributions are credited to the Members' Accounts;
  - (ii) debited to the Members' Accounts or any one or more of them;
  - (iii) debited to the Fund; or
  - (iv) dealt with partly in one such way and partly in another or in any other manner determined by the Trustee from time to time either generally or in any particular case.

- (b) Any deduction or debit for the purposes of this Clause may be made on an estimated basis, with appropriate subsequent adjustments to take account of any difference between estimated and actual amounts.

## **B.7 Retirement, Leaving Service and Retrenchment Benefits**

If a Member retires from the employ of the Employer on or after attaining age 55 and in circumstances other than provided for in Clause B.8, or if a Member is Retrenched by the Employer or if a Member leaves Service for any other reason including ill health, there shall be payable to the Member from the Fund, subject to clause 72, a lump sum benefit equal to the Member's Total Account Balance PROVIDED THAT the portion which must be preserved in order to comply with a requirement of the Relevant Law shall be transferred to Another Fund pursuant to Clause 83 of the Trust Deed and the balance shall be paid in the form of an immediate lump sum.

## **B.8 Death or Total and Permanent Disablement**

### **B.8.1 Death or TPD Before Normal Retirement Date**

A Member who dies or becomes Totally and Permanently Disabled while in the employ of the Employer prior to Normal Retirement Date shall be entitled to a benefit being the aggregate of:

- (a) the Member's Total Account Balance; and
- (b) (subject to Clauses A.9.1 and A.9.2) the proceeds of the insurance policy received on the Member's death or Total and Permanent Disablement.

### **B.8.2 Death or TPD After Normal Retirement Date**

A Member who dies or becomes Totally and Permanently Disabled while in Service on or after Normal Retirement Date shall be entitled to a benefit equal to the Total Account Balance.

## **B.9 Benefit at age 65**

Where a Member:

- (a) has attained age 65;
- (b) has not ceased to be an Employee; and
- (c) requests that the Trustee pay the Member's benefit,

the Member is entitled to a lump sum benefit equal to the Member's Total Account Balance. To avoid doubt, Clause 72 applies to the benefit.



## **PART 3C - SUPERANNUATION GUARANTEE CHARGE - GPS MEMBERS**

### **C.1 Application - Membership Category**

Part 3C shall apply to and in respect of Part 3C Members.

### **C.2 Members' Accounts**

#### **C.2.1 Accounts to be Maintained**

For the purpose of determining the benefits which may become payable to or in respect of a Member, the Trustee shall establish and maintain in respect of each Part 3C Member accounts as provided in this Clause C.2. The Trustee may establish and maintain such other accounts or sub-accounts as it from time to time determines. The same debits or credits shall not be made to more than one of the accounts. Nothing in this Clause shall entitle any Member to any specific asset of the Fund and the Trustee shall have an absolute discretion as to which part of the Fund is applied to provide funds to enable the payment of any benefit which becomes payable from the Fund.

#### **C.2.2 Member's Accounts**

There shall be credited to the Member's accounts (Employer, Voluntary Contribution and Rollover) in respect of each Part 3C Member:

- (a) any contribution made in respect of a Part 3C Member pursuant to Clause C.4.1;
- (b) any additional voluntary contribution made by a Part 3C Member;
- (c) any Transfer Credit which the Trustee may determine to credit to such account;
- (d) any amounts which the Trustee may determine to credit to such Account as a consequence of a transfer into the Member's accounts from Another Fund pursuant to the Deed; and
- (e) such other amounts which the Deed may require to be credited thereto or which the Trustee, with the consent of the Employer, may consider it appropriate and equitable to credit thereto; and
- (f) any other amounts which the Deed may require to be credited thereto or the Trustee may consider it appropriate and equitable to credit thereto;

and there shall be debited to those Accounts:

- (g) any amounts debited to the Accounts pursuant to Clause C.5;
- (h) any amounts which the Trustee may debit to such Account as a consequence of a transfer out of the Fund to Another Fund pursuant to the Deed;
- (i) any benefit paid from such Account pursuant to the Deed; and
- (j) any other amounts which the Deed may require to be debited thereto or the Trustee may consider it appropriate and equitable to debit thereto,

and those Accounts shall be adjusted for net changes in value allocated to them from time to time.

### **C.3 Member Contributions**

**C.3.1** Part 3C Members are not required to contribute to the Fund.

#### **C.3.2 Voluntary Contributions**

A Part 3C Member may elect to contribute to the Fund:

- (a) an amount of Salary, as agreed between the Member and the Employer;
- (b) such other amount or amounts, as agreed between the Member and the Trustee,

to be credited to the Member Account.

### **C.4 Employer Contributions and Allocations**

#### **C.4.1 Employer's Contributions**

Each Employer shall contribute to the Fund with respect to each Part 3C Member:

- (a) an amount sufficient to fund the minimum benefit required to be provided by that Employer for its Employees in accordance with the Superannuation Guarantee (Administration) Act 1992 or by any other Commonwealth legislation in order to avoid or minimise the imposition of any penalty, charge, tax or other impost by that legislation by the Superannuation Guarantee Charge Act 1992 or by other Commonwealth legislation; and

- (b) such additional amount (if any) as the Employer determines from time to time in respect of Part 3C Members or any of them.

#### **C.4.2 Allocations to Member's Accounts**

Subject to the Relevant Law, Employer contributions may be satisfied by allocations from the Fund, at the discretion of the Employer, and with the agreement of the Actuary. The Trustee shall deduct an amount from such allocations in respect of notional tax, unless the Employer directs otherwise.

#### **C.4.3 Additional Voluntary Contributions**

The Employer may make additional contributions in respect of a Member which shall if so nominated by the Employer be deemed to be Member contributions.

### **C.5 Group Life Insurance Costs and Fund Expenses**

- (a) The cost of Group Life Insurance effected under this Deed and the Fund Expenses and taxes may be:
  - (i) deducted from Employer contributions (so far as they extend) before such contributions are credited to the Members' Accounts;
  - (ii) debited to the Members' Accounts or any one or more of them;
  - (iii) debited to the Fund; or
  - (iv) dealt with partly in one such way and partly in another or in any other manner determined by the Trustee from time to time either generally or in any particular case.
- (b) Any deduction or debit for the purposes of this Clause may be made on an estimated basis, with appropriate subsequent adjustments to take account of any difference between estimated and actual amounts.

### **C.6 Retirement, Leaving Service and Retrenchment Benefits**

If a Member retires from the employ of the Employer on or after attaining age 55 and in circumstances other than provided for in Clause C.7, or if a Member is Retrenched by the Employer or if a Member leaves Service, there shall be payable to the Member from the Fund, subject to clause 72, a lump sum benefit equal to the Member's Total Account Balance PROVIDED THAT the portion which must be preserved in order to comply with a requirement of the Relevant Law shall be transferred to Another Fund pursuant to Clause 83 of the Deed and the balance shall be paid in the form of an immediate lump sum.



## **C.7 Death or Total and Permanent Disablement**

### **C.7.1 Death or TPD Before Normal Retirement Date**

A Member who dies or becomes Totally and Permanently Disabled while in the employ of the Employer prior to Normal Retirement Date shall be entitled to a benefit being the aggregate of:

- (a) the Member's Total Account Balance; and
- (b) (subject to Clauses A.9.1 and A.9.2) the proceeds of the insurance policy received on the Member's death or Total and Permanent Disablement.

### **C.7.2 Death or TPD After Normal Retirement Date**

A Member who dies or becomes Totally and Permanently Disabled while in Service on or after Normal Retirement Date shall be entitled to a benefit equal to the Total Account Balance.

## **C.8 Benefit at age 65**

Where a Member:

- (a) has attained age 65;
- (b) has not ceased to be an Employee; and
- (c) requests that the Trustee pay the Member's benefit,

the Member is entitled to a lump sum benefit equal to the Member's Total Account Balance. To avoid doubt, Clause 72 applies to the benefit.

4. The following provisions are added after Clause 149.

#### **PART 5 - ADDITIONAL PROVISIONS FOR PART 2A, 3B AND 3C MEMBERS**

- 150.** The provisions of this Part 5 apply to Part 2A Members, Part 3B Members and Part 3C Members with respect to the accounts of those Members in the GPS Plan immediately before the Transfer Date.

**151. Transfer from one Employer to Another**

If a Member transfers from the employ of NRG Gladstone Operating Services Pty Ltd ACN 061 519 275 or NRG Asia-Pacific Ltd ARBN 059 791 561 to the employ of NRG Gladstone Operating Services Pty Ltd ACN 061 5129 275 or NRG Asia-Pacific Ltd ARBN 059 791 561 or, if the new employer, the old employer and the Trustee expressly agree, any other Employer, then \*unless the new employer, the old employer and the Trustee expressly agree otherwise) that transfer shall not be deemed to constitute a cessation of employment for the purposes of an entitlement to any benefit under the Deed.

**152. Temporary Cessation of Employment**

If a Member ceases to be in the employ of an Employer in circumstances in which in the opinion of the Trustee it is reasonable to expect that cessation will only be of a temporary nature and that the Member will soon again become employed by an Employer, the Trustee may determine that the Member's membership of the Plan may continue subject to such conditions as may be agreed upon by the Trustee, the Member and the Employer.

**153. Part-Time Employment, Absence or Non-Eligibility**

Subject to Relevant Law, the Employer by whom a Member is employed and the Trustee may determine special terms, conditions and restrictions in relation to the contributions to be payable and the benefits to be provided in respect of a Member during and in respect of any period when in the opinion of the Employer the Member is employed by the Employer in other than a full-time capacity, the Member is absent from active employment with the Employer (whether with or without pay or the approval of the Employer) or the Member remains in the employ of the Employer but is not a person who is classified as an Eligible Employee for the purposes of the Deed.

**154. Payment of Benefits**

A benefit payable from the Fund shall be payable at such place and in such manner (including payment in specie or in kind) as the Trustee shall determine or approve and every person to whom a benefit is payable (whether in that person's own right or for and on behalf of another person) shall upon request by the Trustee provide such information and do such acts and things as the Trustee may consider necessary, desirable or expedient.